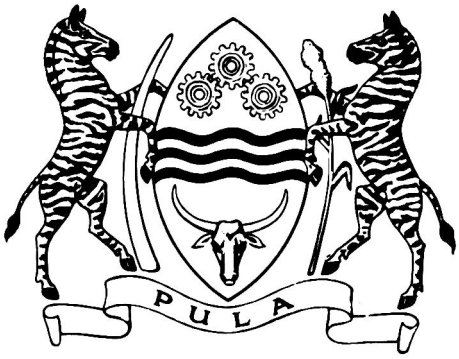
REPUBLIC OF BOTSWANA



GOVERNMENT GAZETTE

EXTRAORDINARY

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BANK OF BOTSWANA ACT, 1996

No. 19 **of 1996**

ARRANGEMENT OF SECTIONS

PART I — *Preliminary*

SECTION

PART II — *Establishment, Constitution and Objectives*

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An Act to provide for the establishment of the Bank of Botswana, its constitution, objectives and powers; to regulate the issue of Bank notes and coins; to provide for certain matters connected with banking, currency and coinage, and for matters connected therewith and incidental thereto.

Date of Assent: 30.12.96

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

Short title and commencement

1. This Act may be cited as the Bank of Botswana Act, 1996 and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint:

Provided that the Minister may by the same or different notices, appoint different dates for different provisions of the Act to come into operation.

Interpretation

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

"Bank" means the Bank of Botswana established under section 3;

"Board" means the Board of the Bank established under section 8;

"Deputy Governor" means a deputy governor appointed under section 13;

"financial institution," "bank" and "licensed" shall have the same meanings ascribed thereto under the Banking Act, 1995; Act No. 13 of 1995

"Governor" means the Governor of the Bank appointed under section 13;

"legal tender" means currency which, legally, cannot be refused to settle debt or to effect payment at an agreed price;

"member" means a member of the Board and includes the Governor;

"officer" means an employee of the Bank who is authorized by the board to sign legal or other documents on behalf of the Bank;

"public issue" means any financial instrument issued or guaranteed by Government, which members of the public are eligible to hold.

PART II — *Establishment, Constitution and Objectives*

Establishment of central bank

3. (1) There is hereby established a central bank, to be known as the Bank of Botswana, which shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and which, subject to the provisions of this Act, may hold and dispose of movable and immovable property and do all such other things as are necessary for or conducive to the proper carrying out of its objectives and the performance of its functions.

(2) The Bank shall have its head office in Gaborone and may establish branches in Botswana and, with the approval of the Minister, abroad, and may appoint agents and correspondents in Botswana and abroad.

Principal objectives of Bank

4. (1) The principal objectives of the Bank shall be —

(*a*) first and foremost to promote and maintain monetary stability, an efficient payments mechanism and the liquidity, solvency and proper functioning of a soundly based monetary, credit and financial system in Botswana;

(*b*) secondly, in so far as it is not inconsistent with the objectives set out in paragraph (*a*), to foster monetary, credit and financial conditions conducive to the orderly, balanced and sustained economic development of Botswana; and

(*c*) thirdly, to assist insofar as it is not inconsistent with the objectives as set out in paragraphs (*a*) and (*b*), in the attainment of national economic development goals.

(2) In the attainment of the objectives set out in subsection (1), the Bank shall have and may exercise all the powers generally conferred upon a central bank.

PART III — *Capital, Profits and Reserves*

Capital

5. (1) The authorized capital of the Bank shall be P 25 000 000.

(2) Government shall be the sole subscriber to and holder of the capital of the Bank, and its holdings of such capital shall not be transferable in whole or in part or be subject to any encumbrance whatsoever.

(3) Whenever the assets of the Bank are less than the sum of its liabilities and capital, the Minister, notwithstanding the provisions of any other written law, shall cause to be transferred to the ownership of the Bank non-negotiable non-interest bearing Government securities for such amount as is necessary for the purpose of preserving such capital from any impairment, which securities shall be a charge on the Consolidated Fund.

Profits

6. (1) At the end of each financial year of the Bank, the Bank shall transfer any net profits from its operations to the Government in accordance with a schedule to be agreed between the Bank and the Minister after —

(*a*) meeting all expenses for such year;

(*b*) making provision for bad and doubtful debts;

(*c*) making provision for depreciation of physical assets;

(*d*) making provision for pensions, gratuities and other benefits for its officers and employees;

(*e*) making provision for such other items as the Board may deem necessary;

(*f*) making good the issued capital and General Reserve balances; and

(*g*) deducting any amounts due and payable to the Bank by the Government.

(2) Any net losses incurred by the Bank in any financial year shall, after the Bank has advised Government thereof, be charged first to the General Reserve and then to the Capital.

(3) In determining profits and losses at the end of the financial year, the Bank shall clearly distinguish profits and losses arising from normal operations and profits and losses arising from exchange fluctuations.

General Reserve

7. (1) The Bank shall establish and maintain a General Reserve sufficient to enable it to accomplish its principal objectives, the amount of which General Reserve shall be determined from time to time by the Board in consultation with the Minister.

(2) The Bank may transfer, to the General Reserve, funds from other reserve accounts which it maintains.

PART IV — *Board, Management and Staff*

Establishment and powers of Board

8. (1) There shall be a Board of the Bank, constituted in accordance with section 9, in which the powers of the Bank, subject to the provisions of this Act, shall be vested and which shall be responsible for the policy and general administration of the Bank.

(2) The Board may make bye-laws and issue directives and instructions to regulate the conduct of the business of the Bank, and may delegate its powers to the Governor or to such committees as the Board may establish.

Membership of Board

9. (1) The Board shall consist of the Governor, who shall be Chairman, and eight other members appointed in accordance with section 10.

(2) The Deputy Governors shall be entitled to attend all meetings of the Board but shall have no vote except when acting as Chairman or unless they have been appointed members under section 10.

Other members of Board

10. (1) The members, other than the Governor, shall be the Permanent Secretary of the Ministry responsible for finance and persons appointed by the Minister from among persons of good standing and experience in business, professional or academic matters.

(2) Of the members appointed by the Minister under subsection (1), not more than two shall be public officers.

(3) The members appointed under this section, other than the Deputy Governors, shall be appointed for terms not exceeding four years and shall be eligible for re-appointment.

(4) The members appointed under this section shall be entitled to such fees and allowances as may be determined by the Board with the approval of the Minister.

Vacancy

11. If any member dies, resigns, ceases to hold, or is otherwise removed from office before the expiry of the term for which he has been appointed, another person shall be appointed at the earliest opportunity under section 9 or 10, as the case may be, for the remaining period of such first-mentioned member's term.

Meetings and quorum of Board

12. (1) The Board shall meet as often as the business of the Bank may require but not less frequently than once in each quarter of the year.

(2) Pursuant to its bye-laws, the Board may provide for regular meetings for which no notice shall be necessary, and for special meetings to be convened at the written request of the Governor or any two other members, for which special meetings notice shall be required.

Conflicts of interest

18. (1) No member appointed under section 10 shall act as a representative of any commercial, financial, agricultural, industrial or other interest, or receive or accept directions therefrom in respect of duties to be performed under this Act.

(2) Every such member shall fully and promptly disclose to the Board any interest, whether personal, commercial, financial, agricultural, industrial or other, which he may directly or indirectly hold or be connected with and which becomes the subject of consideration by the Board, and shall recuse himself from any Board deliberations and voting related thereto:

Provided that such an interest, if so disclosed, shall not disqualify such member for the purpose of constituting a quorum.

(3) Every officer and employee of the Bank shall fully and promptly disclose to the Bank any material indebtedness or interest, whether personal, commercial, financial, agricultural, industrial or other, which he or any dependent member of his family may directly or indirectly incur, hold or be connected with, and any changes related thereto.

(4) No member, officer or employee of the Bank shall accept any gift or advantage for himself or on behalf of any person with whom he may have family, business or financial connexions if the acceptance thereof would result, or give the appearance of resulting, in a diminishment of his impartial devotion to his duties under this Act.

(5) Any person who contravenes any of the provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding P25 000 or to imprisonment for a term not exceeding five years, or to both.

Secrecy

19. (1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court of competent jurisdiction or under any written law, or when so required or authorized by the Board, no member, officer or employee of the Bank, or auditor appointed under section 56(1), shall disclose to any person any information relating to the affairs of the Bank or of any bank, financial institution, business or other person which he has acquired in the performance of his duties or the exercise of his functions.

(2) Every person appointed under or employed in carrying out the provisions of this Act, except the Minister, shall make an oath or declaration of secrecy in the manner and form prescribed.

(3) Every such person who, in contravention of the true intent of the oath or declaration of secrecy made by him and without lawful excuse, reveals any matter or thing which has come to his knowledge in the performance of his duties or the exercise of his functions shall be guilty of an offence and shall be liable to a fine not exceeding P25 000 or to imprisonment for a term not exceeding five years, or to both.

(4) Any person who, being required by this section to make the prescribed oath, acts in the execution of his office before he has made such oath, shall be guilty of an offence and shall be liable to a fine not exceeding P20 000.

PART V — *Monetary Unit, Notes and Coins*

Monetary unit

20. (1) With effect from 23rd August, 1976 the monetary unit of Botswana shall be the Pula, divided into one hundred Thebe, the symbols for which shall be "P" and "t" respectively.

(2) With effect from the date referred to in subsection (1), any reference to an amount of money expressed in terms of a currency in force in Botswana on the said date in any —

(*a*) written law of Botswana, including any instrument having effect by virtue of an Act; or

(*b*) contract, agreement, sale, payment, bill, note, instrument, and security for money, and any transaction, dealing, matter and thing whatever relating to money, or involving the payment of or the liability to pay any money, existing as of the aforesaid date and which is to be executed or discharged in Botswana,

shall be deemed to be a reference to the corresponding amount of money expressed in terms of the Pula calculated at the official rate declared by the Bank.

Exchange rate

21. The framework for determining the external value of the Pula shall be determined by the President on the recommendation of the Minister after consultation with the Bank.

Sole right to issue notes and coins

22. (1) The Bank shall have the sole right to procure the printing of notes and the minting of coins denominated in Pula and Thebe and to issue them into circulation.

(2) No person other than the Bank or an entity duly authorized by the Bank shall issue in Botswana notes or coins, or any documents or tokens payable to bearer on demand, having the appearance of, or purporting to be, or which are likely to pass as or be confused with legal tender.

(3) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable to a fine of not less than P50 000 but not more than P1 000 000 or to imprisonment for a term not exceeding seven years or to both.

Notes and coins to be legal tender

23. Notes and coins issued by the Bank shall be legal tender within Botswana and shall be valid —

(*a*) in the case of notes, for the payment of any amount;

(*b*) in the case of coins, for the payment of an amount not exceeding P100.

Manufacture and characteristics of notes and coins

24. (1) The Bank shall arrange for the printing of notes and the minting of coins and for all matters relating thereto, and for the security and safekeeping of unissued notes and coins, and for the custody and destruction, as necessary, of plates, dies and retired or soiled or torn notes or soiled or damaged coins.

(2) Notes and coins issued by the Bank shall be of such denominations, composition, form and design as shall be approved by the Minister.

(3) The characteristics of notes and coins to be issued by the Bank shall be published in the Gazette.

Power to recall currency

25. The Bank may, on giving such notice as it deems appropriate or desirable in the circumstances, which shall be published in the Gazette and in such other manner calculated to inform the public as the Minister may determine, call in, for the purpose of withdrawing from circulation, any notes or coins which it has issued, on payment of the face value thereof in accordance with section 26, and any such notes or coins shall, on the expiry of such notice and notwithstanding section 23, cease to be legal tender:

Provided that a holder of such notes and coins shall be entitled within such period, being not less than five years, as may be specified in such notice or in any subsequent notice, to claim payment from the Bank of the face value thereof.

Exchange of notes and coins

26. (1) Upon surrender by any person to the Bank or to any agent authorized by the Bank for the purpose of any notes or coins which it has issued, the Bank shall, subject to subsections (2) and (3), exchange on demand and without charge such notes or coins for notes and coins of equivalent value and of such denominations as may be requested:

Provided that in the event of the unavailability of a requested denomination, the Bank may deliver notes and coins of available denominations which most nearly approximate those requested.

(2) Coins which have been perforated, cut, clipped, broken, or on which any mark has been privately impressed, or which show signs of non-monetary use, or the design of which is not distinguishable, shall not be exchanged by the Bank, except in its sole discretion.

(3) The conditions under which mutilated or otherwise damaged notes may be exchanged at partial or full face value shall be determined from time to time by the Bank.

Penalty for mutilation of notes

27. Any person who, without the permission of the Bank, wilfully —

(*a*) cuts, tears, perforates, or in any other way whatsoever mutilates any note issued by the Bank;

(*b*) writes, prints, stamps or draws anything upon any such note; or

(*c*) attaches or affixes any seal or stamp to or upon any such note,

shall be guilty of an offence and shall be liable to a fine not exceeding P2 500 or to imprisonment for a term not exceeding six months, or to both.

Recovery of lost or stolen notes and coins

28. No person shall be entitled to recover from the Bank the value of any lost or stolen notes or coins, except as may be provided under the terms of a waiver expressly executed in respect of the assumption by the Bank of risks incident to shipment of notes and coins:

Provided that nothing in this section shall affect the liability of the Bank for any loss suffered by any person in consequence of the negligence or misconduct, in the course of his official duties, of the Governor, Deputy Governor or member, or any officer, employee or agent of the bank.

Counterfeiting, forgery, etc.

29. (1) Any person who counterfeits, forges, or, without the permission of the Bank, photocopies or otherwise reproduces any note issued by the Bank shall be guilty of an offence and shall be liable to a fine of not less than P100 000 but not more than P1 000 000 and to imprisonment for a term of not less than seven years, but not more than 14 years.

(2) A certificate signed by a duly authorised officer of the Bank that any note or coin is or is not genuine shall be prima facie evidence of such fact in any legal proceedings in Botswana.

PART VI — *International Reserve*

Primary International Reserve

30. (1) The Bank shall establish and maintain, on such terms and conditions as the Board may from time to time determine, a Primary International Reserve which shall consist of all or any of the following —

(*a*) demand or time deposits, money at call, notes and coins, bills of exchange, and commercial paper issued by corporations denominated in such foreign currencies as the Board may, for purposes of this section, approve;

(*b*) treasury bills, bonds, and other securities denominated in such foreign currencies issued or guaranteed or de facto guaranteed by such foreign governments or corporations, or international financial institutions as the Board may, for the purposes of this section, approve;

(*c*) such fully collateralized loans of the assets listed in paragraphs (*a*) and (*b*) as the Board may for purposes of this section approve;

(*d*) such collective investment funds, including pooled or group trust funds or mutual funds, which invest in any or all of the assets referred to in paragraphs (*a*), (*b*) and (*c*), as the Board may, for the purposes of this section, approve;

(*e*) any internationally recognized reserve asset, including —

(i) the reserve tranche position of Botswana in the International Monetary Fund;

(ii) Botswana's holdings of Special Drawing Rights;

(*f*) such other assets as the Board, with the agreement of the Minister, may, for the purposes of this section, approve.

(2) Any changes in the value of the Primary International Reserve in any financial year in terms of Pula arising from currency exchange gains or losses shall be charged to the General Reserve established under section 7.

Adequacy of Primary International Reserve

31. (1) The Bank shall use its best endeavours to maintain the Primary International Reserve established under section 30 at a level which determined by the Board to be sufficient to enable the Bank to achieve its principal objectives.

(2) If such Primary International Reserve has declined or, in the opinion of the Governor, appears to be in danger of declining below the level specified in section 31, the Governor shall submit to the Minister a report on the reserve position and the causes which have led or may lead to such a decline together with recommendations concerning the measures that the Bank considers necessary to forestall or otherwise remedy the situation.

(3) Until such time as, in his opinion, the situation has been rectified, the Governor shall make further reports and recommendations at intervals not exceeding three months.

Operations in foreign exchange

32. The Bank may, subject to such terms and conditions as may from time to time be determined by the Board, buy, sell or deal in any of the reserve assets listed in section 30 using for these purposes any of the instruments commonly used in such transactions.

Limitations

33. In connexion with the operations referred to in section 32, the Bank shall deal only with governments, government institutions, international institutions, financial organizations of good standing and such persons as have been approved by the Board.

Long term investment funds

34. (1) If in the Bank's opinion, the primary international reserve is in excess of the amount needed to accomplish its principal objectives and to finance the international transactions of Botswana and is likely to remain in that position for some time, the Bank may, after consultation with the Minister, establish a separate long-term investment fund or funds in which to invest the assets in excess of those needed for the Primary International Reserve.

(2) The Minister may decide to invest part of the Government's balances at the Bank in such long term investment funds, and the Bank shall set up separate investment accounts for such Government balances.

(3) The Bank, after consultation with the Minister, shall determine the policies, terms and conditions for any such long term investment funds including the selection of appropriate investments and the payment of dividends, which dividends shall be charged to the income of the Bank and to the Government investment accounts, as the case may be.

(4) In any financial year, any changes in the Pula or market value of such long term investment funds that are attributable to the Government investment accounts shall be charged to such investment accounts.

(5) Any changes in the Pula or market value of such long term investment funds that are attributable to the Bank shall be charged to separate reserve accounts established by the Bank to record such changes.

(6) If such special reserve accounts are insufficient to cover reductions in the Pula or market value of the Bank's share of such long term investment funds, such insufficiency shall be charged to the General Reserve.

(7) The accounts and auditing for any such long-term investment funds shall be governed by sections 55, 56 and 57.

PART VII — *Relations with Financial Institutions*

Opening accounts for domestic financial institutions, etc.

35. The Bank may open accounts for, and accept deposits from domestic financial institutions and other domestic persons under such terms and conditions as the Board may from time to time determine.

Opening accounts for other institutions, etc.

36. The Bank may also open accounts for, and accept deposits from —

(i) foreign financial institutions, foreign governments, international and regional organizations, and

(ii) other persons authorized to tender for auctions of Bank of Botswana, Government or other public securities.

Operations with account holders

37. (1) For the purposes of this section, "account holders" means financial institutions and other persons maintaining accounts with the Bank under section 35.

(2) The Bank may, on such terms and conditions as the Board may from time to time determine —

(*a*) purchase from, sell to, discount and rediscount for account holders, bills of exchange and promissory notes drawn or made for commercial, industrial or agricultural purposes, bearing two or more good signatures of which at least one shall be that of a bank, and maturing within 184 days from the date of their acquisition by the Bank;

(*b*) purchase from, sell to, discount and rediscount for account holders any treasury bills or other securities issued or guaranteed by Government, forming part of a public issue and maturing within 184 days of the date of their acquisition by the Bank;

(*c*) sell to, purchase from, discount and rediscount for account holders any securities issued by the Bank of Botswana.

(3) The Bank may, on such terms and conditions as the Board may from time to time determine, grant to account holders loans and advances for periods not exceeding 92 days —

(*a*) secured by —

(i) instruments specified in paragraph (*a*), (*b*) or (*c*) of subsection (2),

(ii) other securities issued or guaranteed by Government and forming part of a public issue,

(iii) warehouse receipts and documents of title issued in respect of staple commodities or other goods duly insured, or

(iv) holdings of any assets which the Bank is permitted to buy, sell or deal in under section 30; or

(*b*) unsecured or secured by such other assets, on such special terms and conditions as the Board shall determine when, in its opinion, such a loan or advance is exceptionally necessary to meet the liquidity requirements of the borrower.

Determination of rates for discounts and advances

38. The Bank shall determine and publicly announce from time to time its rates for discounts, rediscounts, loans and advances made under section 37, and may determine differential rates and ceilings for various classes of transactions or maturities.

Primary reserve requirements

39. (1) The Bank may, from time to time, require, by written notice to the principal place of business in Botswana of each financial institution, as confirmed by a subsequent order published in the Gazette, the maintenance by financial institutions of primary reserves, including marginal primary reserves, against such deposit and similar liabilities as may be specified by the Bank for this purpose:

Provided that the Bank may in the exercise of its functions under this subsection require different primary reserves for different types of financial institutions as determined by the Bank.

(2) Such primary reserves shall be maintained by way of cash holdings, or by way of deposits with the Bank or by both in such proportion as the Bank may from time to time determine.

(3) No interest shall be paid by the Bank on any part of such primary reserves.

(4) The Bank may fix different reserve ratios for different classes of deposit and similar liabilities and may determine the method of their computation:

Provided that —

(i) the Bank shall not, without the prior approval of the Minister, require a financial institution to hold a total amount of primary reserves in excess of 25 per cent of its total deposit and other similar liabilities,

(ii) the initial fixing of, or any increase in, the required primary reserve ratios shall be effective only after reasonable notice, not less than 30 days, or such shorter period as the Minister may approve, has been given, and shall not relate to a period prior to the initial date of the notice,

(iii) the Bank may determine that the requirements of this subsection may be met by meeting the required primary reserve ratio on the basis of averages of daily reserve holdings over such averaging period as the Bank may determine,

(iv) the required primary reserve ratios, the method of their computation, and any averaging period determined under paragraph (iii) shall be uniform for all financial institutions within the same class.

(5) The Bank may impose on and collect from any financial institution which fails to maintain required primary reserves in the appropriate ratio fixed under this section a levy not exceeding one-fifth of one percent per day on the amount of deficiency in such institution's primary reserves until the deficiency is corrected.

Regulation of interest and credit

40. (1) The Bank may, with the approval of the Minister, specify, in respect of any or all financial institutions, by notice published in the Gazette and by written notice to the principal place of business in Botswana of each financial institution affected thereby —

(*a*) the methods of computation and maximum and minimum rates of interest payable in respect of any class of deposit and similar liabilities;

(*b*) the permissible purposes, aggregate ceilings, maximum amounts beyond which the approval of the Bank is necessary, minimum cash margin or security, maximum maturities, and maximum interest rates chargeable in respect of —

(i) the making of any class of advances, whether by loans or overdrafts, and investments,

(ii) the discounting of any class of bills of exchange, promissory notes and other commercial, industrial, agricultural or financial paper,

(iii) the issuing of any class of letters of credit;

(iv) the granting of any class of acceptance and other forms of credit;

(*c*) the minimum and maximum commissions, service charges and other fees which may be levied on any class of transactions with the public;

(*d*) the manner of disclosure to the public and to —

(i) each depositor of the effective annual interest rate payable in respect of deposits made therewith,

(ii) each person to whom credit is extended of the terms of obtaining such credit, including the effective annual interest rate payable in respect thereof:

Provided that the Bank in notices under this subsection may differentiate in respect of the aforesaid items between —

(i) financial institutions or classes thereof and

(ii) other creditors referred to in subsection (2), or classes thereof, or members of such classes.

(2) With the approval of the Minister, all or any of the provisions of subsection (1) may be made applicable by the Bank, by notice published in the Gazette and by written notice served on the person affected thereby, to any person a substantial share of whose operations, in the opinion of the Bank, includes the extension of credit.

(3) The Bank may call for and examine the accounts, books and papers of any person who, it has reason to believe, is extending or has extended credit and to whom the Bank considers the provisions of subsection (1) should be applied under subsection (2).

(4) Any notice issued under this section shall come into effect on such date as is specified therein but in any case not earlier than 30 days after the date of publication in the Gazette.

(5) Any financial institution which fails to comply with the provisions of a notice issued under subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding P50 000.

(6) Any person to whom the provisions of subsection (1) have been made applicable, pursuant to subsection (2), and who —

(*a*) fails to comply with a notice issued under subsection (1);

(*b*) knowingly supplies false information to the Bank; or

(*c*) fails to furnish, within the time prescribed by the Bank, any documents called for by the Bank under subsection (3), shall be guilty of an offence and shall be liable —

(i) in respect of an offence under paragraph (*a*) or (*b*), to a fine not exceeding P50 000,

(ii) in respect of an offence under paragraph (*c*), to a fine not exceeding P5 000 for every day during which such offence has continued.

Maximum amounts of foreign currency holdings or loans

41. The Bank may from time to time determine the maximum amount which any financial institution may hold or maximum indebtedness which it may incur in foreign currencies generally or in any specified currency or currencies.

Clearing facilities

42. The Bank may, in conjunction with financial institutions, organize facilities for the clearing of cheques and other instruments for effecting payments.

PART VIII — *Relations with Government*

Banker, fiscal agent of and adviser to Government

43. (1) The Bank shall act as banker and financial adviser to, and fiscal agent of, Government.

(2) It shall be the duty of the Bank, through the Minister, to render advice and to furnish reports on matters relating to the objectives of the Bank and concerning any matter which, in its opinion, is likely to affect the achievement of the objectives of the Bank.

Bank depository of Government funds

44. (1) The Bank shall be the official depository of Government funds:

Provided that Government may maintain accounts in Botswana with and generally use the services of financial institutions in such cases and on such terms and conditions as may be agreed between the Minister and the Bank.

(2) Unless the Government and the Bank shall otherwise agree, the Bank shall receive from Government, and disburse on its behalf, Government moneys and keep account thereof without remuneration for such services:

Provided that no interest shall be required to be paid by the Bank on Government balances held with the Bank unless the Bank and the Government otherwise agree.

(3) The Bank may maintain and operate special accounts for Government, including trustee accounts, in accordance with arrangements made between Government and the Bank.

Management of Government securities

45. The Bank shall be entrusted, upon such terms and conditions as may be agreed with Government, with the issue and management of Government securities or securities guaranteed by Government which form a public issue.

Agency functions

46. The Bank may act as agent for Government for such purposes and on such terms and conditions as may be agreed between Government and the Bank.

Banker and fiscal agent to Government boards and agencies

47. The Bank may act as banker and fiscal agent to statutory and wholly-owned Government corporations or Government controlled corporations and to local authorities on such terms and conditions as may be agreed between the parties concerned, with the approval of the Minister.

Borrowings by Government and public bodies, etc.

48. Prior to any borrowing from a source other than the Bank, Government and every statutory or wholly-owned Government corporation, Government controlled corporation or local authority shall seek the advice of the Bank concerning the timing, terms and conditions of such borrowing and shall promptly notify the Bank of the terms and conditions of any such borrowing subsequently entered into:

Provided that the Minister may prescribe minimum amounts below which such borrowers shall not be required to seek the advice of the Bank to proposed borrowings in Pula.

Advances to Government

49. Subject to the provisions of any other written law, the Bank may grant temporary advances to Government subject to repayment within six months following the end of the financial year in which they were granted, at such rates of interest as may be agreed between the Bank and the Minister.

Transactions in Government securities

50. The Bank may purchase and sell securities issued or guaranteed by Government which form part of a public issue.

Limitation on lending to Government

51. (1) Except in accordance with sections 37, 47, 49, 50 and 58 (2), the Bank shall not, directly or indirectly, acquire the securities of, or grant any advances to, Government, or advances or credit facilities to any statutory or wholly-owned Government corporation, Government controlled corporation, Government agency, or local authority.

(2) Except as provided in subsection (4), the total of outstanding advances and credit facilities granted by the Bank in accordance with sections 37(3) and 49(1) and the Bank's holdings of securities purchased in accordance with section 50 shall at no time exceed 5 per cent of Government's average annual ordinary revenue for the three financial years immediately preceding for which accounts are available:

Provided that —

(i) for the purposes of this section, the ordinary revenue of Government shall include all revenues from taxes, levies, royalties, duties and fees, rents, profits and income from any investment or undertaking by Government from any of its subdivisions or institutions, Government agencies, statutory or wholly-owned Government corporations, Government controlled corporations or local authorities, but shall not include proceeds of funds raised by way of loans, grants, or any forms of economic assistance; and the average of the annual ordinary revenue shall mean the average of the annual ordinary revenue for the three financial years immediately preceding for which accounts are available, and

(ii) If the accounts for the latest completed financial year are not yet available, the official estimates of such year's ordinary revenue may be used in the aforesaid computation.

(3) In the event that, in the opinion of the Bank, the limitation provided in subsection (2) is likely to be exceeded, the Bank shall submit to the Minister a report on the Bank's outstanding advances and credit facilities and holdings of securities, and the causes which may lead to such excess together with such recommendations as it deems appropriate to forestall or otherwise remedy the situation; the Bank shall make further reports and recommendations at intervals not exceeding six months until such time as, in its opinion, the situation has been rectified.

(4) In the event that the limitation provided in subsection (2) is, in the opinion of the Bank, in imminent danger of being exceeded, the Bank shall forthwith advise the Minister of the fact and the Minister shall consult with the Bank on the advisability of temporarily permitting a further increase, whether directly or indirectly, in the Bank's total advances, credit facilities

and holdings of securities referred to in the said subsection; if the Bank and the Minister agree in writing that it is essential in the national interest that the said limitation be temporarily waived, the said limitation may, for such period not exceeding six months and on such terms and conditions as may be agreed, be increased by an amount not to exceed an additional 5 per cent of the Government's average ordinary revenue for the three financial years immediately preceding:

Provided that —

(i) before entering into an agreement under this subsection, the Minister shall advise the Bank that Government accepts responsibility for the adoption of the policy so determined,

(ii) every such agreement shall be published forthwith in the Gazette, and

(iii) the Minister shall cause to be laid before the National Assembly, within 15 sitting days after an agreement under this subsection has been entered into, a copy thereof and statements by the Minister and the Bank in respect thereof.

Agent for the administration of exchange control

52. (1) The Bank shall act as agent for Government in the administration of any law in force relating to exchange control, in accordance with such regulations, instructions and directives as the Minister may from time to time issue for this purpose.

(2) Returns, statements, accounts or information required to be submitted to the Minister under the provisions of any such law shall be transmitted through the Bank.

Depository and fiscal agency for international financial organizations

53. The Bank shall, upon designation by the Minister, serve as the depository of, and the fiscal agency through which dealings shall be conducted with, any international financial organization of which Botswana is a member.

Policy directives by President

54. (1) If, after consultation with the Bank, the Minister is of the opinion that the policies being pursued by the Bank are not adequate for, or conducive to, the achievement of the objectives of the Bank as set out in section 4, the Minister may submit a recommendation to the President, and the President may, by directive, determine the policy to be adopted by the Bank.

(2) The Minister shall inform the Bank in writing of the policy so determined and that Government accepts responsibility for the adoption of the policy.

(3) The Bank shall thereupon give effect to such policy while the directive remains in operation.

(4) Any directive issued under subsection (1) shall be published forthwith in the Gazette and the Minister shall cause to be laid before the National Assembly, within 15 sitting days after the Minister has informed the Bank of the policy determined, a copy of such directive together with statements by Government and the Bank in respect of the matter concerning which the directive was issued.

PART IX — *Accounts, Financial Statements and Financial Year*

Accounts, financial statements and financial year

55. (1) The Bank shall maintain accounts and records, in accordance with sound accounting principles, which shall fairly reflect the financial condition and operations of the Bank.

(2) The Bank shall prepare annually a set of financial statements in accordance with standards appropriate for a central bank.

(3) The financial year of the Bank shall begin on the 1st day of January and end on the 31st day of December.

Audit

56. (1) The financial statements of the Bank shall be audited by auditors approved by the Minister and appointed annually by the Board:

Provided that no person shall be qualified to be so appointed if he is a member of the Board, an officer or servant of the Bank and unless he holds one or more of the qualifications referred to in section 123 (1) of the Companies Act.

Cap 42:01

(2) There shall be an audit committee of the Board which shall be chaired by a non-executive member of the Board and may include non-Board members, which committee shall be responsible for the review of the financial statements of the Bank and the management and audit thereof and shall make recommendations to the Board concerning accounting and auditing policies, financial controls and appointment of auditors.

(3) Without prejudice to subsection (1), the Auditor General shall, if so requested by the Minister, examine and report on the accounts of the Bank or any aspects of its operations, and the Bank shall provide the Auditor General with all necessary and proper facilities therefor.

Annual report and monthly return

57. (1) The Bank shall, within three months after the close of each financial year, transmit to the Minister —

(*a*) a copy of the annual financial statements certified by the auditors; and

(*b*) a report of its operations and affairs during that year, which accounts and report shall be published by the Bank.

(2) The Minister shall, within 30 days after their receipt, cause a copy of the annual financial statements and the report of operations to be laid before the National Assembly.

(3) The Bank shall, as soon as possible after the last working day of each month, make up and publish a return of its assets and liabilities as at the close of business on that day, a copy of which shall be transmitted to the Minister and published in the Gazette.

PART X — *General*

Prohibited activities

58. (1) Except as otherwise provided in this Act, the Bank shall not —

(*a*) engage in trade, purchase the shares of any corporation or company, including the shares of any financial institution, or otherwise have an ownership interest in any financial, commercial, agricultural, industrial or other undertaking, except as the Board may deem necessary for the training or welfare of its staff;

(*b*) acquire by purchase, lease or otherwise any real right in or to immovable property except so far as the Bank considers necessary or expedient for the provision of premises for the conduct of its business or housing, welfare facilities for its staff and similar requirements incidental to the performance of its functions under the provisions of this Act;

(*c*) make unsecured advances except as provided in section 37(3)(*b*) or in subsection (4);

(*d*) make advances secured otherwise than as set forth in this Act;

(*e*) except as provided in sections 30, 32, 33, and 37(3)(*b*) or in subsection (2), accept shares as security;

(*f*) make loans or issue guarantees of any kind that are not fully and adequately secured.

(2) Nothing in this section shall prevent the acquisition by the Bank in the course of satisfaction of debts due to it or any interests referred to in subsection (1)(*a*) or rights referred to in subsection (1)(*b*):

Provided that all such interests or rights so acquired shall be disposed of at the earliest suitable opportunity.

(3) Notwithstanding the provisions of subsection (1), the Bank, with the approval of the Minister, may establish pension plans or provident funds or similar schemes for the benefit or protection of officers and employees and their dependants and nominees, and may make contributions to any such fund or scheme subject to such terms and conditions as shall be prescribed by the Board.

(4) Notwithstanding the provisions of subsection (1), and subject to such terms and conditions as shall be determined by the Board, the Bank may grant advances to any of its officers or employees for such purposes and in such amounts as the Minister may approve.

Bank may call for information

59. (1) For the purposes of the administration of this Act and in the proper performance of its functions under this Act, the Bank may call for such information as it may require from any person.

(2) Any person who fails to supply any information called for by the Bank under subsection (1) or who supplies any false or misleading information shall be guilty of an offence and shall be liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding two years, or to both.

Exemption from Banking Act No. 13 of 1995

60. The Bank shall not be subject to any of the provisions applicable to financial institutions under the Banking Act.

Exemption from taxes, etc.
Cap. 50:01
Cap. 40:02 (Sub. Leg.)

61. The Bank shall be exempt from the payment of any taxes, levies and duties other than —

(*a*) duties leviable under the Customs and Excise Duty Act; and

(*b*) rates levied under the Town or City Council Regulations but including, without prejudice to the generality of the foregoing, stamp and transfer duty on any of its transactions, operations, property and documents, as the case may be, and any tax or levy on its income or profits.

Regulations

62. The Minister may, after consultation with the Bank, make regulations for the better carrying out of the purposes and provisions of this Act, or to give force or effect to its provisions, or for its better administration.

Repeal and saving Cap. 55:01

63. (1) The Bank of Botswana Act is hereby repealed.

(2) Any subsidiary legislation made under and in accordance with the provisions of the Bank of Botswana Act shall continue to have force and effect as if made under the provisions of this Act to the extent that it is not inconsistent with such provisions, until revoked or amended by or under this Act.

(3) Any thing done under or in pursuance of the provisions of the Bank of Botswana Act shall, insofar as it is not inconsistent with the provisions of this Act, continue to have force and effect as though it were done under or in pursuance of the provisions of this Act.

PASSED by the National Assembly this 19th day of December, 1996.

C.T. MOMPEI,
Clerk of the National Assembly.

COLLECTIVE INVESTMENT UNDERTAKINGS ACT, 1996

No. 20 **of 1996**

ARRANGEMENT OF SECTIONS

SECTION

PART I — *Preliminary*

PART II — *Collective Investment Undertakings*

PART III — *Regulatory Authority*

PART IV — *Miscellaneous Provisions*

An Act for the regulation and control of the establishment and carrying on of collective investment undertakings; and for matters related thereto.

Date of Assent: 30.12.96

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

Short title and commencement

1. This Act may be cited as the Collective Investment Act, 1996 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Interpretation

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

"collective investment undertaking" means an undertaking in whatever form established by law or by contract having the following characteristics —

(*a*) two or more persons hold a participatory interest in the capital of the undertaking through shares, units or otherwise;

(*b*) the object of the undertaking is the collective investment of the participants' capital contributions through the spreading of risk;

(*c*) the participants share the risk and the benefit of investment *pro rata* to their participatory interest; and

(*d*) the participatory interest may be repurchased or redeemed directly or indirectly out of the assets of the undertaking or the undertaking has established a mechanism through a recognised stock exchange or other organised market which ensures that a participatory interest may be sold at a price which approximates its attributable net asset value;

"company" means a body corporate constituted under the laws of Botswana or of any other jurisdiction;

"Committee" means the Investment Supervisory Committee established under section 23;

"constitution" in relation to a collective investment undertaking means the constitutive documents in whatever form establishing the collective investment undertaking and pursuant to which the rights of the participants are determined and the participatory interests are defined;

"depositary" means a company which meets the criteria which the Minister may, by regulation, determine for the purposes of this Act, and which holds the assets of a collective investment undertaking subject to the constitution of that collective investment undertaking;

"domestic collective investment undertaking" means a collective investment undertaking which has been established in, and is subject to, the laws of Botswana, and in which participatory interests are marketed in Botswana;

"exempt domestic collective investment undertaking" means an undertaking which, even though established in Botswana, is exempted, under this Act, from any condition imposed by this Act;

"exempt foreign collective investment undertaking" means a collective domestic undertaking which has not been established in Botswana and which provides only administrative services in Botswana;

"foreign collective investment undertaking" means a collective investment undertaking which has not been established in Botswana but in which participatory interests are marketed in Botswana;

"fund administration" means the provision of administration and accounting services to collective investment undertakings in the manner provided for in section 10;

"fund administrator's licence" means a licence granted by the Registrar under section 11;

"licensed fund administrator" means the holder of a fund administrator's licence and includes a person exempted from obtaining a fund administrator's licence pursuant to this Act;

"liquid assets" means the aggregate amount of such approved securities, deposits and other assets (including cash) as the Registrar may, by notice in the Gazette, prescribe for purposes of this Act;

"Minister" means the Minister responsible for finance;

"marketing" in relation to participatory interests in a collective investment undertaking means an act or series of actions done with the intention of promoting the purchase by investors of participatory interests in a collective investment undertaking;

"offering document" means a document, including a prospectus, or a series of documents, on the basis of which persons are invited to take up participatory interests in a collective investment undertaking through subscription or through purchase;

"organised market" means a market for the trade of financial securities which is recognised by the Committee as meeting adequate standards of organisation to protect the interests of investors;

"participant" in relation to a collective investment undertaking means the person who is recognised by its constitution as the legal owner of a participatory interest in the collective investment undertaking;

"principal officer" means a principal officer to be appointed by a collective investment undertaking in terms of section 20;

"promoter" means a person who causes the preparation or distribution of an offering document or prospectus in respect of a collective investment undertaking;

"recognised stock exchange " means, for the purposes of this Act, a stock exchange registered under the Stock Exchange Act (No. 11 of 1994), or such stock exchange outside Botswana as the Minister may, by notice in the Gazette, prescribe for the purposes of this Act;

"Registrar" means the Registrar of Collective Investment Undertakings appointed under section 21;

"Secretary" means the secretary of the Committee appointed in terms of section 25;

"securities" means shares, stock, units in a unit trust scheme in property shares, units in a collective investment undertaking, debentures, debenture stock and debenture bonds, and includes unsecured notes, whether or not they have inherent option rights or are convertible.

PART II — *Collective Investment Undertakings*

Restrictions on collective investment undertakings

3. (1) No person shall in or from Botswana —

(*a*) carry on the business of a collective investment undertaking;

(*b*) represent in any way that he is carrying on business as a collective investment undertaking; or

(*c*) market a participatory interest in a collective investment undertaking or issue an offering document in respect of one

unless he has been granted a licence to carry on business as such under this Act.

(2) For the purposes of this Act, a domestic collective investment undertaking which is a body corporate shall not carry on business as a collective investment undertaking unless it has been registered under the Companies Act and has satisfied the requirements of a company under that Act.

Cap. 42:01

Licensing of collective investment undertakings

4. (1) Every person who wishes to operate as a collective investment undertaking shall apply to the Committee for a licence to do so.

(2) An application for a collective investment undertaking licence shall be made on such form as may be prescribed by the Minister and forwarded to the Registrar, and shall be accompanied by —

(*a*) the constitution of the collective investment undertaking;

(*b*) such supporting documents relating to the collective investment undertakings as may be prescribed by the Minister;

(*c*) such details relating to the promoter as may be prescribed by the Minister;

(*d*) such details relating to the depositary as may be prescribed by the Minister;

(*e*) such details relating to the fund administrator as may be prescribed by the Minister; and

(*f*) such licensing fee as may be prescribed by the Committee.

(3) The Secretary of the Committee shall examine the application to determine whether it satisfies the requirements of subsection (2) and shall, if he is so satisfied, forward the application to the Committee.

(4) The Committee shall examine every application forwarded to it by the Secretary of the Committee to determine whether the collective investment undertaking in respect thereof satisfies the requirements for the grant of a licence as specified in subsection (7).

(5) (*a*) The Committee shall, if it is satisfied that a collective investment undertaking satifies such requirements, forward the application to the Registrar and recommend to him, in writing, to grant a collective investment undertaking licence.

(*b*) The Committee shall, if it is not satisfied that the collective investment undertaking satisfies the said requirements, return the application to the applicant with a request, in writing, for such further information as it may require, for specific compliance with regard to a specific aspect of the application, or forward the application to the Registrar with such recommendation as it considers appropriate in the circumstances.

(6) The documents and details referred to in subsection (2) shall be in the English language.

(7) The Registrar shall not grant a collective investment undertaking licence unless he is satisfied that —

(*a*) the promoter of that undertaking is of sound reputation and meets such requirements as may be prescribed by the Minister;

(*b*) the individuals connected with the collective investment undertaking which shall include directors of the collective investment undertaking or directors of the company charged with the management of the collective investment undertaking meet such requirements as may be prescribed by the Minister;

(*c*) if the collective investment undertaking conducted business prior to its becoming subject to the provisions of this Act, it meets the requirements prescribed by the Minister in respect of its past business; and

(*d*) the business of the collective investment undertaking will be conducted in a proper and arms length manner with the bona fide intention of conducting such a business.

(8) The Registrar may grant a collective investment undertaking licence subject to such conditions as he considers necessary, which conditions shall be endorsed on such licence.

(9) The promoter, management and the administrator of a collective investment undertaking shall ensure that when carrying on or attempting to carry on the business of a collective investment undertaking in or from Botswana, the collective investment undertaking complies with any conditions in its licence.

(10) The Registrar may, on the written application of a licensed collective investment undertaking, waive or vary any condition contained in its collective investment undertaking licence.

Validity of licence

5. (1) A licence issued under section 4 shall be valid for a year from the date on which it was issued and shall be renewed each year thereafter.

(2) An application for the renewal of a licence shall be made on such form as may be prescribed and shall be accompanied by such renewal fee as may be prescribed by the Committee.

Transfer of licence

6. (1) No licence shall be transferred from one collective investment undertaking to another without the prior approval of the Committee.

(2) An application for the transfer of a licence shall be made to the Committee in such manner and in such form as the Minister may prescribe and shall be accompanied by such transfer fee as may be prescribed by the Committee.

(3) The Committee shall not transfer a licence to any undertaking which does not satisfy the requirements of paragraphs (*a*)-(*d*) of section 4(7).

Categories of collective investment undertakings

7. There may be licensed to operate, in Botswana, the following categories of collective investment undertakings —

(*a*) a domestic collective investment undertaking;

(*b*) an exempt domestic collective investment undertaking;

(*c*) a foreign collective investment undertaking; and

(*d*) an exempt foreign collective investment undertaking.

Revocation, suspension or endorsement of licence

8. Where any person contravenes any provision of this Act or fails to comply with any lawful direction or requirement of the Registrar or of the Comittee under any provision of this Act, or where the Registrar is satisfied that the conditions of any licence are not being adhered to, the Registrar may revoke, suspend or impose further conditions upon such licence, and shall publish a notice of such revocation, suspension or imposition in two consecutive issues of the Gazette and two newspapers circulating in Botswana.

Naming of collective investment undertakings

9. (1) The Registrar shall not grant a collective investment undertaking licence in respect of a collective investment undertaking with a name which is —

(*a*) identical to that of any company, firm, business or other entity, whether or not within Botswana, or which so nearly resembles the name of such a company, firm, business or entity as to be likely to deceive;

(*b*) likely to suggest, falsely, the patronage of or connexion with some person or authority, whether within Botswana or elsewhere; or

(*c*) likely to suggest, falsely, that the collective investment undertaking has a special status in relation to, or derived from, the Government of Botswana.

(2) If, in the Registrar's opinion, a collective investment undertaking is carrying on, or attempting to carry on business in or from Botswana in a name that the Registrar would have refused by virtue of subsection (1), the Registrar may direct the collective investment undertaking to change its name to a name approved by by him.

(3) The promoter, management and the administrator of a collective investment undertaking shall ensure that the collective investment undertaking complies with a direction given to it under subsection (2).

Administration of collective investment undertakings

10. The administration of a collective investment undertaking shall be conducted only by persons who —

(*a*) have proven expertise in fund administration;

(*b*) are of sound reputation;

(*c*) have such financial resources as may be prescribed by the Minister; and

(*d*) have been granted a licence to practice as fund administrators under this Act.

Licensing of Fund Administrators

11. (1) No person shall provide fund administration services to a collective investment undertaking in or from Botswana unless that person has been granted a licence to operate as a fund administrator under this Act.

(2) Every person who wishes to operate as a fund administrator shall apply to Registrar for a fund administrator's licence.

(3) An application for a fund administrator's licence, accompanied by the prescribed licensing fee, shall be made to the Registrar in the form approved or prescribed by the Minister and shall be accompanied by documentary evidence establishing that —

(*a*) the applicant is a company established under the law of Botswana;

(*b*) the applicant meets the prescribed minimum capital requirements;

(*c*) the staff of the applicant has proven expertise in the provision of accounting and administration services to collective investment undertakings; and

(*d*) the directors and shareholders of the applicant are of sound reputation.

(4) The Secretary of the Committee shall examine the application to determine whether it satisfies the requirements of subsection (3) and shall, if he is so satisfied, forward the application to the Committee.

(5) The Committee shall examine every application forwarded to it by the Secretary of the Committee to determine whether the fund administrator in respect thereof satisfies the requirements for the grant of a licence as specified in section 10.

(6) (1) The Committee shall, if it is satisfied that a fund administrator satisfies such requirements, forward the application to the Registrar and recommend to him, in writing, to grant a fund administrator's licence;

(2) The Committee shall, if it is not satisfied that the fund administrator satisfies the said requirements, return the application to the applicant with a request,in writing, for such further information as it may require, for specific compliance with regard to a specific aspect of the application, or forward the application to the Registrar with such recommendation as it considers appropriate in the circumstances.

(7) A licence issued under this section shall be valid for a year from the date on which it was issued and shall be renewed each year thereafter.

(8) An application for the renewal of a licence under this section shall be made on such form as may be prescribed by the Minister and shall be accompanied by such renewal fee as may be prescribed by the Committee.

(9) No licence shall be transferred from one fund administrator to another without the prior approval of the Committee, and the Committee shall not transfer a licence to any fund administrator who does not satisfy the requirements of subsection (3).

(10) An application for the transfer of a fund administrator's licence shall be made to the Committee in such manner and in such form as the Minister may prescribe.

Conduct of fund administrators

12. The Minister may by regulation prescribe such minimum standards of conduct of fund administrators as he may deem appropriate.

Changes to constitution or conduct of business

13. (1) The Minister may prescribe which changes to the constitution of, or to any aspect of the conduct or business of a collective investment undertaking require prior notification to, or prior approval of, the Minister.

(2) No changes referred to in subsection (1) which require the prior approval of the Minister shall be implemented without the Minister having given such approval in writing.

Contents of offering document

14. The Minister may prescribe the information which shall be contained in the offering documents of a collective investment undertaking.

Investment or borrowing restrictions and minimum participation level

15. The Minister may prescribe investment or borrowing restrictions which shall be imposed on any category of collective investment undertaking; and the minimum level of participation by a single investor in any category of collective investment undertakings.

Fees

16. (1) Every collective investment undertaking to which a licence has been granted shall pay, to the Secretary of the Committee on the due date, such licence and renewal fee as may be prescribed by the Committee.

(2) Every fund administrator to whom a licence has been granted shall pay, to the Secretary of the Committee on the due date, such licence and renewal fees as may be prescribed by the Committee.

(3) If any fee referred to in subsection (1) or (2) is not paid on or before the prescribed date the Committee may —

(*a*) impose an additional fee equal to that fee for each month or part of a month during which the fee and any additional fee imposed by virtue of this subsection remains unpaid; or

(*b*) revoke the licence by giving written notice of the revocation to the collective investment undertaking or fund administrator as the case may be and by publishing the notice of revocation twice in the Gazette and in two newspapers circulating in Botswana

(4) The Committee may, for good cause, waive any additional fee imposed by virtue of subsection (3).

Audit of collective investment undertakings

17. (1) A collective investment undertaking shall cause its accounts to be audited by an independent auditor approved by the Registrar for such periods and with such frequency as the Minister may prescribe.

(2) A collective investment undertaking shall cause the report of its auditor to be furnished to such persons, including the Registrar and the Committee, in such form, with such content, for such periods and with such frequency, as the Minister may prescribe.

(3) The Minister may by regulation prescribe the form and the content of the audit reports and accounts published pursuant to the provisions of subsections (1), (2) and (3).

(4) The auditor of a collective investment undertaking shall, where that undertaking does not comply with the provisions of its constitution or of this Act, any regulation or rule in respect of the accounts or the form or contents of such accounts, notify the undertaking in writing of this fact, and the undertaking shall, within fourteen days of such notification, comply.

(5) The auditor of the collective investment undertaking shall send a copy of the notification referred to in subsection (4) to the Registrar as well as to the Committee.

(6) Notwithstanding the provisions of this section, the Registrar may, where he considers it necessary to do so, instruct a collective investment undertaking to cause a supplementary audit of its accounts to be carried out, and to submit such supplementary audit to him within such time as he may specify.

(7) The audit report and accounts which are published pursuant to the provisions of this section shall be in the English language.

Investigations by Registrar

18. (1) The Registrar may, where he has reason to believe that a collective investment undertaking or its promoter, trustee, manager, fund administrator, advisor, depositary or other person who is contracted to perform services for the collective investment undertaking has failed to comply with any provision of this Act or of any regulation or rule made thereunder, carry out an investigation of such default.

(2) The Registrar may, in carrying out an investigation under this section, request such information as he considers necessary from the collective investment under-taking, promoter, trustee, manager, fund administrator or other person referred to in subsection (1).

(3) If so requested by the Registrar —

(*a*) a collective investment undertaking shall give the Registrar access to or provide him with such records, information or explanation in respect of itself as the Registrar may require; and

(*b*) a promoter, trustee, manager, administrator, advisor, depositary or any person who is contracted to perform services for a collective investment undertaking shall also give the Registrar access to or provide the Registrar with such records, information or explanation in respect of himself, or in respect of the collective investment undertaking he is contracted to perform services for,

and the Registrar shall be entitled to make copies or take extracts from any such records.

(4) A person who gives any information, explanation or access to any records pursuant to this section shall not give information, or an explanation or access to records which he knows to be false or misleading.

(5) The Registrar shall, for the purposes of carrying out an investigation pursuant to this section, have the same powers, rights and privileges as are normally conferred upon a Commissioner under the Commissions of Inquiry Act, and the provisions of that Act shall, *mutatis mutandis,* apply in relation to the investigation and to any person summoned to give evidence or giving evidence at the investigation.

(6) (*a*) The Registrar may, if he considers it necessary, submit interim reports of any investigation carried out by him to the Minister; but shall, if so directed by the Minister, submit such interim reports to him;

(*b*) The Registrar shall, on the conclusion of the investigation carried out by him, submit a final report to the Minister on that investigation.

(7) The Minister shall cause any report made to him under subsection (6) to be printed and published, and shall send copies of every such report to the Attorney General, the Registrar of Companies and to the Governor of the Bank of Botswana.

(8) If, after the conclusion of an investigation under this section, the Registrar is of the opinion that there are reasonable grounds for suspecting that any person has committed an offence, he shall refer the matter to the Attorney-General.

(9) Subject to the provisions of subsections (10) and (11), any expenses incurred in connexion with an investigation shall, in the first instance, be defrayed by the Registrar.

(10) The Registrar may direct a collective investment undertaking or person referred to in subsection (1) to defray the whole or any part of the expenses referred to in subsection (9):

Provided that before making any such direction, the Registrar shall —

(*a*) where he has referred a matter to the Attorney-General in terms of subsection (8), await the outcome of any criminal proceedings instituted as a result of that reference, and shall thereafter take into account any order of the court made in terms of subsetion (11) when making that direction;

(*b*) notify that collective investment undertaking or person in writing that he intends to make that direction; and

(*c*) afford that collective investment undertaking or person an opportunity to show cause, in writing, why that direction should not be made.

(11) A person who is found guilty of an offence prosecuted as a result of an investigation may be ordered by the court which convicted him to pay, to the Registrar, the whole or any part of the expenses referred to in subsection (9).

(12) The expenses to be defrayed by the Registrar in terms of subsection (9) shall be paid out of monies appropriated for the purpose by the National Assembly, and any sums directed or ordered to be paid to the Registrar in terms of subsections (10) or (11) shall be recoverable by the Registrar by action in a competent court, and paid to the State.

Custody of assets

19. (1) The custody of the assets of a collective investment undertaking shall be entrusted to a depositary.

(2) The Registrar may by regulation determine the criteria for a depository for the purposes of this Act.

(3) The depositary's liability shall not be affected by the fact that it has entrusted all or some of the assets in its custody to a third party.

(4) The depositary shall ensure that —

(*a*) any sale, issue, re-purchase or cancellation of investments effected by or on behalf of the collective investment undertaking is carried out in accordance with the constitution of that undertaking, and with the laws of Botswana;

(*b*) in transactions involving the assets of the collective investment undertaking, the consideration is remitted to it within the settlement periods applicable to the assets concerned;

(*c*) the income of the collective investment undertaking is applied in accordance with its constitution.

(5) The Registrar may by regulation exempt one or more categories of collective investment undertakings from the requirements of this section.

Principal officer and address for service

20. (1) Every collective investment undertaking shall at all times be represented for the purposes of this Act by a principal officer, duly appointed by itself, who resides in Botswana.

(2) Every collective investment undertaking shall, in writing, notify the Registar and the Committee of an address for service of notices made in terms of this Act.

(3) Every change of principal officer or of the address for service of notices on the collective investment undertaking shall be notified in writing to the Registrar and the Committee by the principal officer within 15 days of such change occurring.

(4) A collective investment undertaking which fails to comply with the provisions of subsections (1) and (2) shall be guilty of an offence and shall be liable to a fine of P500.00 for every day during which the offence continues.

(5) The appointment of a principal officer shall be subject to the approval of the Registrar and Committee, each of whom may decline to approve such appointment or may subsequently withdraw its approval of a person who has been appointed.

(6) The principal officer shall be responsible for the doing of all such things as are required under this Act to be done in respect of the collective investment undertaking of which he is the representative and in case of default both he and the collective investment undertaking shall be liable to the penalty prescribed.

(7) Everything done by the principal officer which he is required to do in his representative capacity shall be deemed to have been done by the collective investment undertaking and any notice given to, or request made upon, the principal officer by the Minister, the Registrar or the Committee, shall be deemed to have been given to or made upon the collective investment undertaking.

(8) The absence of or failure to appoint a principal officer shall not excuse a collective investment undertaking from the necessity of complying with any of the provisions of this Act and the collective investment undertaking shall be subject to and liable to comply with its provisions as if there were no requirement to appoint a principal officer.

(9) Every notice, process or proceeding which, under this Act, may be given to, served on or taken against any collective investment undertaking may be given to, served on or taken against the principal officer and if at any time there is no principal officer any such notice, process or proceeding may be given to, served on or taken against any officer or person acting in the management of the collective investment undertaking or as agent for the collective investment undertaking and such person shall have the same liability in respect of that notice, process or proceeding as the collective investment undertaking or the principal officer would have had if it had been given to, served on or taken against the collective investment undertaking or principal officer.

PART III — *Regulatory Authority*

Appointment and functions of Registrar of collective investment undertakings

21. (1) The Minister shall, subject to the laws governing the public service, appoint —

(*a*) an officer, to be called the Registrar of Collective Investment Undertakings, who shall exercise the powers and perform the duties assigned to the Registrar under this Act; and

(*b*) an officer, to be called the Deputy Registrar of Collective Investment Undertakings who may, subject to the control and directions of the Registrar, do anything which may lawfully be done by the Registrar.

(2) Any reference in this Act to the Registrar shall be construed as including a reference to the Deputy Registrar of collective investment undertakings appointed under subsection (1) (*b*).

(3) The Registrar may, subject to such conditions as he may determine, delegate or assign any power or duty assigned to him under this Act to an officer or employee in the public service, but shall not thereby be divested or relieved of a power or duty so delegated or assigned.

(4) The Minister, Registrar or any officer or contract worker in the employ of the Ministry of Finance, shall not be liable in respect of any bona fide exercise of any discretion in the performance of any duty imposed upon him under this Act.

Annual report by Registrar

22. The Registrar shall, once in every calendar year, submit, to the Minister, a report concerning the activities of all collective investment undertakings and concerning all matters relating to the promotion or management of collective investment undertakings or analogous schemes, and the Minister shall table such report in the National Assembly within 60 days after the commencement of its next ensuing session.

Investment Supervisory Committee and Interim Committee

23. (1) There is hereby established an interim committee to be known as the Interim Investment Supervisory Committee (referred to in this section as "the Interim Committee").

(2) The Interim Committee shall consist of —

(*a*) two persons appointed by the Minister from such sector or sectors as he deems appropriate; and

(*b*) not less than two or more than six persons appointed by the Minister from the private sector, which persons shall hold office for two years from the commencement of this Act.

(3) There shall be established, on the expiration of the 2 year interim period referred to in subsection (2), a permanent committee to be known as the Investment Supervisory Committee which shall consist of —

(*a*) two persons appointed by the Minister from such sector or sectors as he deems appropriate; and

(*b*) not less than two or more than six persons who shall be elected by collective investment undertakings and fund administrators licensed under this Act, as well as by depositaries:

Provided that not more than two of such persons shall be members or employees of any one partnership or company.

(4) The members of the Committee shall hold office for two years and shall be eligible for re-appointment at the conclusion of their term of office.

(5) No person shall be appointed or elected as a Committee member and no person shall be qualified to hold office as a Committee member if he —

(*a*) is not resident in Botswana;

(*b*) has in terms of a law in force in any country —

(i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged, or

(ii) made an assignment to, or arrangement or composition with, his creditors, which has not been rescinded or set aside; or

(*c*) has within the period of 10 years immediately preceding the date of his proposed appointment or election, been convicted —

(i) in Botswana of a criminal offence, or

(ii) outside Botswana of an offence by whatever name called which, if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction, to imprisonment for a term of not less than six months, with or without the option of a fine, whether or not the sentence has been suspended, and for which he has not received a free pardon.

(6) The Minister may appoint any person, other than the Registrar to the Committee as an alternate to a member appointed thereto by the Minister and that person —

(*a*) shall act as a committee member only when the appointed committee member to whom he is alternate is unable to exercize his functions on the Committee by reason of ill health, absence from Botswana or other reasonable cause; and

(*b*) when acting as a committee member, shall —

(i) exercize the functions and powers and perform the duties of the appointed committee member to whom he is alternate, and

(ii) for the purposes of this Act, be deemed to have been duly appointed to the Committee in terms of subsection (2)(*a*).

(7) The Committee shall elect from amongst its members a Chairman and a Vice Chairman at the first Committee meeting after the appointments and the elections referred to in subsection (3); and the Interim Committee shall also elect from amongst its members a Chairman and a Vice Chairman at its first meeting after the appointments and elections referred to in subsection (2).

(8) If there is at any time, a vacancy in the office of Chairman, Vice Chairman or Secretary, the Committee members may elect an elected Committee member to fill that vacancy.

(9) A Committee member shall be paid out of the funds of the Committee, such remuneration and allowances, if any, as the Committee may from time to time determine, which remuneration and allowances shall be subject to approval by the Registrar.

(10) Subject to the provisions of this Act, the Committee shall regulate its own procedure.

Functions of Committee

24. The functions of the Committee shall be —

(*a*) to do all things required to be done by it in terms of this Act, and such other things not being inconsistent with the terms of this Act as, in the opinion of the Committee, are necessary for ensuring compliance with its provisions including —

(i) the protection of participants,

(ii) ensuring the transparency of operation of collective investment undertakings,

(iii) ensuring the competency of all persons employed by and connected with a collective investment undertaking is of a standard sufficiently high for the protection of participants, and

(iv) ensuring that all persons employed by and connected with a collective investment undertaking are fit and proper persons to be involved with such an undertaking;

(*b*) to promote the collective investment undertaking industry in Botswana;

(*c*) to make rules for,

(i) the conduct of collective investment undertakings —

(ii) the conduct of promoters, depositaries, administrators, managers, auditors, advisors and officers of collective investments undertakings,

(iii) the content and frequency of information to be supplied by collective investment undertakings to the Registrar, the Committee and participants,

(iv) the creation, cancellation and issue and redemption of participatory interests by a collective investment undertaking, and

(v) the frequency and method of valuation of participatory interests in and by a collective investment undertaking;

(*d*) to administer the funds of the Committee and to borrow moneys for the purposes of the Committee;

(*e*) to make recommendations to and advise the Registrar in respect of regulations and notices to be issued in terms of this Act, licences sought and to be issued in terms of this Act, or any action to be taken by the Registrar in terms of this Act;

(*f*) to prescribe the minimum requirements for and contents for, a constitution or a prospectus or offering document and any advertisements issued by a collective investment undertaking.

Appointment and functions of Secretary

25. (1) The Committee shall appoint a Secretary and such other officers of the Committee as the Committee considers necessary or desirable which Secretary and officers shall —

(*a*) hold office on such terms and conditions as may be fixed by the Committee; and

(*b*) carry out such functions as may be assigned to them by or under this Act or by the Committee.

(2) The Secretary shall keep —

(*a*) a register of all collective investment undertakings registered in terms of this Act;

(*b*) a list of units that are available for subscription or purchase by potential participants;

(*c*) a register of all licensed administrators; and

(*d*) a list of depositaries; and shall, at such intervals as may be prescribed by the Minister, supply copies thereof to the Registrar.

(3) The Secretary shall notify the Registrar in writing of any change in the membership of the Committee within a period of 14 days of the date of such change.

Vacation of office of Committee member

26. (1) A committee member shall vacate his office and his office shall become vacant —

(*a*) after a period of 30 days from the date upon which he —

(i) gives notice in writing to the Chairman, or in his absence, to the Vice-Chairman, of his intention to resign his office, unless it is agreed between himself and the Chairman, or the Vice-Chairman, as the case may be, that such vacation of office shall take place after such shorter period as they may jointly agree, or

(ii) is sentenced by a court of competent jurisdiction to such imprisonment as is referred to in section 23(5) after conviction for an offence referred to in that section:

Provided that if, during that period of 30 days, an application for a free pardon is made or an appeal is filed, the question of whether or not the member is to vacate his office shall not be determined until the final disposal of that application or appeal, whereupon that member shall forthwith vacate his office and his office shall become vacant unless he is granted a free pardon, his conviction is set aside, his sentence is reduced to a term of imprisonment of less than 6 months or a punishment other than imprisonment is substituted;

(*b*) if he becomes disqualified in terms of section 23(5) to hold office as a Committee member;

(*c*) if he is required in terms of subsection (2) to vacate his office;

(*d*) if he is absent without the permission of the Committee from 3 consecutive Committee meetings of which he has had notice to attend;

(*e*) if being an elected member he is expelled from membership of the Committee by a resolution —

(i) of the Committee passed by a majority of not less than two thirds of the Committee members present and voting at a Committee meeting of which notice has been given, or

(ii) of the Collective Investment Undertakings licensed in terms of this Act passed by a majority of not less than two thirds of such undertakings present and voting at a special meeting convened for the purpose.

(2) The Registrar may, after consultation with the Committee, require a Committee member to vacate his office, if the Registrar is satisfied that the Committee member —

(*a*) has been adjudged guilty of having acted improperly as a Committee member; or

(*b*) is mentally or physically incapable of performing his duties efficiently.

(3) The Registrar shall suspend from office a Committee member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprionment may be imposed, and whilst that Committee member is so suspended he shall not carry out any duties or be entitled to any remuneration or allowances as a Committee member.

(4) If at any Committee meeting a Committee member is aware that any matter which, directly or indirectly, beneficially affects —

(*a*) himself or his spouse or child;

(*b*) any person who is a debtor, creditor, partner, employee or agent of the Committee member or is closely connected to that member;

(*c*) any person who is a debtor under a mortgage bond of any body corporate or person of which the Committee member is a director or officer or under which he holds any office or position other than that of auditor; or

(*d*) any company of which he is a director,

is to be discussed or is under discussion, that Committee member shall forthwith declare to the Committee meeting his interest in that matter and the Committee may, if it deems it appropriate, require him torecuse himself from the discussion.

(5) A Committee member who fails to comply with the provisions of subsection (4) shall be guilty of an offence and shall be liable to a fine not exceeding P20 000.00.

(6) On the death of, or the vacating of office by, a Committee member —

(*a*) the Minister shall, in the case of an appointed Committee member, appoint another person; or

(*b*) the Committee shall, in the case of an elected Committee member, co-opt a member to take the place of the member who has died or vacated office until the expiry of the period during which such member would otherwise have continued in office.

(7) If the members of the Committee, as the case may be, for any reason fail, neglect or refuse —

(i) to elect any of the Committee members as envisaged in section 23(3)(b), 23(7) and section 27(4), or

(ii) to co-opt a member in terms of subsection (6)(*b*), the Minister may appoint a person or persons, as the case may be, to fill the vacancy or vacancies left unfilled by reason of such failure, neglect or refusal.

(8) A Committee member appointed by the Minister in terms of subsection (6)(b) shall, for the purposes of this Act, and as the case may be, be deemed to have been elected by or to the Committee, or coopted, as the case may be, in terms of the provisions of this Act.

(9) If an elected Committee member is granted leave of absence by the Committee, the Committee may co-opt any person to fill the vacancy during the absence of that elected committee member.

Committee meetings

27. (1) The Committee may, at any time, at the request of the Registrar, the Secretary or any member of the Committee, issue a notice in writing convening a meeting to deal with any matter which it is obliged, under this Act, to deal with.

(2) The notice referred to in subsection (1) shall —

(*a*) be sent by the Secretary to the Registrar and to every Committee member not less than seven days before the date of the meeting concerned; and

(*b*) set out the agenda of that meeting.

(3) A simple majority of the members of the Committee present at any meeting shall form a quorum thereat.

(4) At a meeting of the Committee, the Chairman, or in his absence the Vice Chairman, shall preside, or, in the absence of both the Chairman and the Vice Chairman, the Committee members present shall elect from amongst themselves, a Chairman to preside at that meeting.

(5) At a Committee meeting, each Committee member present shall have one vote on each question before the Committee and, in the event of an equality of votes, the person presiding at the Committee meeting shall have a casting vote, in addition to his deliberate vote.

(6) No decision or act of the Committee, or act done under the authority of the Committee, shall be invalid by reason only of the fact that, at the time the decision was taken, or the act was done or authorised —

(*a*) the Committee did not consist of the full number of Committee members for which provision is made in section 23(3); or

(*b*) a disqualified person acted as a Committee member:

Provided that the number of Committee members entitled to vote was at the time not less than half of all the Committee members for which provision is made in subsection (1).

(7) If it is not practicable to hold a Committee meeting for the transaction of business of an urgent nature, the Chairman may, after consulting such of the other Committee members as are available in the circumstances, deal with the business himself and, as soon as may be thereafter, give to the Committee for ratification full particulars of the nature and extent of the urgency of the business, the circumstances in which that urgency arose and the action taken by him in the matter:

Provided that where the Chairman has obtained the prior approval of not less than half of the Committee members for which provision is made in section 23(3), ratification of the action taken by him shall not be refused.

Annual General meeting

28. (1) The Committee shall, at least once in every year, issue a notice, in writing, convening an annual general meeting of collective investment undertakings and Committee members at such place, date and time as may be specified in that notice.

(2) The notice referred to in subsection (1) shall —

(*a*) be sent by the Secretary to every collective investment undertaking, the Registrar, Committee members and Committee auditor not less then twenty one days before the date of the meeting concerned; and

(*b*) set out the agenda of that meeting.

(3) The Committee may itself at any time, and shall, at the request in writing of —

(*a*) the Registrar;

(*b*) the Secretary; or

(*c*) not less than two collective investment undertakings issue a notice in writing convening a special meeting of all collective investment undertakings, the Registrar, the Secretary, Committee members and the Committee auditor at such place, date and time as may be specified in that notice.

(4) The notice referred to in subsection (3) shall —

(*a*) be sent by the Secretary to every collective investment undertaking, the Registrar, Committee members and Committee auditor; and

(*b*) state the purpose for which the special meeting concerned is being convened.

(5) At each meeting referred to in this section the Chairman, or in his absence, the Vice Chairman, shall preside, or, in the absence of both the Committee members present shall elect, from amongst themselves, a Chairman to preside at that meeting.

(6) Each collective investment undertaking shall have one vote on each question before a meeting convened under this section and, in the event of an equality of votes, the person presiding at the Committee meeting shall have a casting vote in addition to his deliberative vote.

(7) A simple majority of collective investment undertakings present at the meeting shall form a quorum thereat.

(8) The Secretary shall send, to every collective investment undertaking, the Registrar and the auditor of the Committee, a copy of the Minutes of each meeting convened under this section within fourteen days of the meeting being held.

Liability of Committee members

29. No liability shall attach to any Committee member employee or agent of the Committee for any loss or damage sustained by any person as a result of the bona fide exercise or performance by any such Committee member, any employee, or agent of the Committee, of any power or duty conferred or imposed upon the Committee by this Act.

Financial provisions relating to Committee

30. (1) The funds of the Committee shall consist of —

(*a*) the licensing fees payable by collective investment undertakings in terms of section 4;

(*b*) the licence renewal fee payable by collective investment undertakings in terms of section 5;

(*c*) any other licences and other fees, charges and other monies payable to the Secretary in terms of this Act other than those payable under section 18(12).

(2) The Secretary shall keep proper accounts and other records relating to the affairs of the Committee including such particular records as the Registrar may prescribe, and shall preserve such records for a period of not less than six years from the date of the last entry therein.

(3) The records referred to in subsection (2) shall be kept by the Secretary at the principal office of the Committee and shall at all reasonable times be open to inspection by —

(*a*) any Committee member;

(*b*) the Registrar; and

(*c*) the Committee auditor.

(4) The Secretary shall, after the end of every financial year of the Committee, prepare —

(*a*) an account of all revenue and expenditure of the Committee;

(*b*) a balance sheet;

(*c*) a report setting out the activities of the Committee; and

(*d*) such accounts, statements and reports other than those referred to in paragraphs (*a*) to (*c*) as may be prescribed by the Minister in respect of that financial year.

(5) All documents prepared in terms of subsection (4) shall be audited and shall be signed by the Chairman and not less than two other Committee members, and copies thereof shall then be —

(*a*) sent by the Secretary to the Registrar; and

(*b*) laid by the Secretary before the annual meeting at which members of the Committee are elected, following the end of the financial year in respect of which they were prepared.

PART IV — *Miscellaneous Provisions*

Prohibition of schemes analogous to collective investment undertakings, subject to exceptions

31. (1) Subject to the provisions of subsection (2), no person shall do any act or enter into any agreement or transaction for the purpose of establishing, carrying on or managing any scheme, other than a collective investment undertaking in terms of this Act, in pursuance of which persons are or will be invited or permitted, for valuable consideration, to acquire an interest or undivided share in an asset or one or more groups of assets and to participate proportionately in the income or profits derived therefrom.

(2) The provisions of this section shall not apply in respect of any scheme or arrangement which may be exempted therefrom by the Minister by regulations or by notice published in the Gazette for the purposes of this section.

(3) A collective investment undertaking may make application in writing to the Registrar for an exemption under subsection (2), which application shall be lodged with the Registrar before the scheme or arrangement in question is put into operation.

Minimum capital, guarantees and other requirements

32. The Minister may by regulation prescribe —

(*a*) the minimum capital requirements to be imposed on any category of collective investment undertaking;

(*b*) guarantee and other requirements to be imposed on promoters to safeguard investors from losses; and

(*c*) guarantee and other requirements to be imposed on managers, administrators, depositaries and registered agents of collective investment undertakings, to safeguard investors from losses.

Regulations

33. (1) The Minister may, after consultation with the Committee, make regulations for the carrying out of or for giving effect to the provisions of this Act.

(2) Notwithstanding the generality of the provisions of subsection (1), the Minister may make regulations prescribing penalties, not exceeding a fine of P10,000.00 for the non-rendition, by any person, of any balance sheet, account, statement, document or report required to be furnished in terms of this Act.

(3) Any penalty prescribed under subsection (2) may vary according to the period which has elapsed since the last date on which the balance sheet, account, statement, document or report in question was required to be made, transmitted or deposited,

(4) Any penalty payable under subsection (4) shall be a debt due to the Government and may be recovered by the Minister by action in any competent court.

Rules

34. The Committee may make rules in respect of any matter which by this Act is required or permitted to be specified in the rules, and any person who fails to comply with such rules shall be guilty of an offence.

Appeals

35. Any person who, or any collective investment undertaking which is not satisfied with any decision or direction of the Registrar under this Act may, within such time and in such manner as may be prescribed by the Minister, appeal to the Minister, and the Minister may confirm, set aside or vary the decision appealed against.

Offences

36. (1) A collective investment undertaking which —

(*a*) carries on business otherwise than within the terms of its licence;

(*b*) fails to comply with any condition of its licence;

(*c*) supplies to or makes available to the Registrar any information which it knows to be false or misleading; or

(*d*) contravenes any provision of this Act shall be guilty of an offence and shall be liable to a fine not exceeding P30,000.00.

(2) Any person who contravenes any provision of this Act, or who supplies to or makes available to the Registrar any information which he knows to be false or misleading shall be guilty of an offence and shall be liable to a fine not exceeding P30 000.00 or to a term of imprisonment not exceeding 5 years or to both such fine and such imprisonment.

Winding up of collective investment undertaking

37. The Registrar may by regulation prescribe the conditions in terms of which and under which a collective investment undertaking shall be wound up in order to protect the interests of participants, which conditions may include a special investigation or audit of the affairs of a collective investment undertaking prior to distributions of the assets thereof pursuant to such winding up.

Transitional

38. (1) Any person who, at the coming into operation of this Act —

(*a*) is carrying on any business or activity which falls under the scope of this Act; or

(*b*) possesses the characteristics of a collective investment undertaking as defined in section 2,

shall, within six months of the coming into operation of this Act, comply with the provisions thereof.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable to the penalty provided in section 36 (2).

PASSED by the National Assembly this 19th day of December, 1996.

C.T. MOMPEI,
Clerk of the National Assembly.

STOCK THEFT ACT, 1996

No. 21  of 1996

ARRANGEMENT OF SECTIONS

SECTION

An Act to re-enact with amendments the Stock Theft Act

Date of Assent: 30.12.96.

Date of Commencement: 31.12.96.

1. This Act may be cited as the Stock Theft Act, 1996. **Short title**

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

"offensive weapon" means any article made or adapted for use for causing injury to the person, or intended by any person having it with him for such use by him, and includes, but is not limited to, a firearm, a spear, an axe, a hatchet, a club and a knife;

"police officer" includes a special constable, a member of the Police Reserve Force and an officer of the Local Police Force;

"produce" means the whole or any part of any skins, hides, horns or carcass of stock, any wool, mohair, ostrich egg or ostrich feathers;

"public sale" means a sale effected —

(*a*) in any public market;
(*b*) by any shopkeeper during the hours when his shop may by any law remain open for the transaction of business;
(*c*) by a duly licensed auctioneer at a public auction; or
(*d*) in pursuance of an order of a competent court;

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"receive" has the meaning assigned to it in section 317 of the Penal Code;
"steal" has the meaning assigned to it in section 264 of the Penal Code.
"stock" means any horse, mare, gelding, ass, mule, bull, cow, ox, ram, ewe, wether, goat, pig or ostrich, or the young thereof;
"sufficient fence"means any wire fence or any other fence, wall or hedge through which no stock could pass without breaking it, or any natural boundary through or across which no sheep would ordinarily pass.

Stealing of Stock or produce

3. (1) Any person who steals any stock or produce, or receives any stock or produce knowing or having reason to believe it to be a stolen stock or produce, shall be guilty of an offence and, notwithstanding the provisions of any other written law, shall be sentenced for a first offence to a term of imprisonment for not less than five years or more than 10 years without the option of a fine, and for a second or subsequent offence to a term of imprisonment for not less than seven years or more than 14 years without the option of a fine.

(2) Where, for the purpose of stealing any stock or produce, or in the course of stealing any stock or produce, violence or the threat of violence is used, the penalty shall be a term of imprisonment for not less than 10 years or more than 15 years without the option of a fine, and if the violence used or threatened involves the use of a firearm or other offensive weapon the penalty shall be a term of imprisonment for not less than 12 years or more than 20 years without the option of a fine.

(3) A person charged under subsection (1) may be convicted of the offence of stealing any stock or produce or of receiving any stock or produce notwithstanding that the person stated in the charge to be the owner of the stock or produce is wrongly named as the owner of the stock or produce.

(4) Any person who procures, incites, hires, directs, instigates, or colludes with, another person to contravene the provisions of subsection (1) shall be guilty of an offence and shall suffer the same penalties as the person who contravenes those provisions.

(5) Any sentence imposed in respect of an offence under this section shall be consecutive to and not concurrent with any other sentence imposed on the same accused person, and no sentence or any part of any sentence imposed in respect of an offence under this section shall be suspended.

(6) Where a person convicted of an offence under this section is a holder of a fresh produce licence under the Trade and Liquor Act, the court convicting the person may order the cancellation of the licence, and accordingly the provisions of section 20 of the Trade and Liquor Act shall have effect.

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Presumptions

4. In any proceedings, where it is proved to the satisfaction of the court that a person —

(*a*) was found in possession of any stock or produce reasonably suspected of being stolen;

(*b*) was found in possession of any stock or produce of which the brand or ear marks or numbers, or other identification marks have been altered, disfigured, obliterated or tampered with in any manner;

(*c*) was found in possession of any stock or produce and unable to produce a bill of sale or other satisfactory evidence of ownership, identifying the stock or produce and the person from whom it was obtained, and from which such person can be traced;

(*d*) was found in possession of any forged documents of sale or ownership in relationship to any stock or produce,

it shall be presumed that such person is guilty of an offence under section 3 in relation to the stock or produce concerned, and shall suffer the penalties provided thereunder, unless the contrary is proved.

Trespass with intent to steal

5. (1) A person who in any manner enters any land enclosed on all sides with a sufficient fence, or any kraal with intent to steal any stock or produce on such land or in such kraal shall be guilty of an offence.

(2) Where a person is found on any such land or in any such kraal, then, unless —

(*a*) he satisfies the court that he had reasonable and lawful excuse for his presence there; or

(*b*) he was proceeding along a road or thoroughfare traversing such land or part of such land,

the onus shall be on him to prove that he did not enter such land or kraal with intention to steal the stock or produce therein.

Night delivery of stock forbidden

6. Any person who for purposes of trade makes or accepts delivery between the hours of sunset and sunrise of any stock or produce sold or purchased or otherwise disposed of or acquired by him in any other manner than at a public sale shall be guilty of an offence.

Tampering with stock or produce

7. Any person who knowingly tampers with, alters, or assists in tampering with, alteration of any brand or ear mark on stock or produce so as to, or be likely to, conceal or disguise the identification of such stock or produce shall be guilty of an offence and liable to a fine of P5 000, or to imprisonment for three years, or both.

Search, seizure and arrest

8. (1) Any police officer may, without a warrant, arrest and search any person found, or suspected of being, in possession or charge or control of any stock or produce if he believes, on reasonable grounds, that the stock or produce is stolen, whether or not that person has stolen the stock or produce himself, or received it knowing or having reason to believe that the stock or produce to be stolen, or has assisted in stealing the stock or produce, and may seize the stock and produce and any documents relating to it.

(2) A police officer who has arrested any person or seized any stock or produce in accordance with the provisions of subsection (1), shall as soon as possible take that person and that stock or produce, as the case may be, and any documents seized relating to the stock or produce, to the nearest police station.

(3) Without prejudice to subsections (1) and (2), whenever any justice of the peace, police officer or owner, lessee or occupier of land reasonably suspects that any person has in or under any receptacle or covering, or in or upon any vehicle any stolen stock or produce, such justice of the peace, police officer, owner, lessee or occupier may without warrant search such receptacle or vehicle and remove such covering, and if he thereupon finds any stock or produce which he reasonably suspects to have been stolen he may without warrant arrest such person and shall as soon as possible convey him and the stock or produce so found to a police station or charge office.

Document of identification to be furnished on disposal

9. (1) Any person (including any auctioneer or agent) who sells, barters, gives or in any other manner disposes of any stock to any other person shall at the time of delivery to such other person of the stock so sold, bartered, given or disposed of, furnish such other person with a document (hereinafter called a "document of identification") —

(*a*) stating —

(i) his full name and address and, if the stock was sold, bartered, given or disposed of on behalf of some other person, also the name and address of such other person;

(ii) the full name and address of the person to whom the stock was sold, bartered, given or disposed of;

(*b*) certifying that such stock is his property or that he is duly authorized by the owner thereof to deal with or dispose of it.

(2) No person to whom any stock has been sold, bartered, given or otherwise disposed of and to whom a document of identification is required to be furnished in terms of subsection (1) shall take delivery of such stock without obtaining such document at the time of delivery.

(3) Any person to whom a document of identification has been furnished in terms of subsection (1) shall retain it in his possession for a period of at least one year.

(4) Any person may within the period referred to in subsection (3) demand an inspection of such document, and upon such demand the person having possession of such document shall produce it for inspection to the person making the demand.

(5) Any person who —

(*a*) contravenes any provision of this section;

(*b*) contravenes any provision of subsection (4); or

(*c*) wilfully makes any false statement in a document of identification,

shall be guilty of an offence.

(6) Any person who delivers any stock to an auctioneer or agent for the purpose of sale or disposal in any other manner, shall, for the purposes of this section, be deemed to have disposed of such stock to such auctioneer or agent.

Acquisition of stock or produce otherwise than at public sale

10. (1) Subject to the provisions of this section, no person (in this section including an auctioneer or agent) shall, in any manner, acquire or receive into his possession any stock or produce for the purpose of sale except at a public sale.

(2) Where any person acquires or receives into his possession, otherwise at a public sale, any stock or produce for the purpose of sale from any person who has no known place of residence (in this section referred to as "the seller"), he shall, at the time of delivery of the stock or produce to him, obtain a certificate issued by the seller in respect of the stock or produce.

(3) A certificate referred to in subsection (2) shall be issued not more than 30 days before the delivery of the stock or produce from the seller, giving a description of the stock or produce and certifying that the seller is entitled to dispose of or deal with such stock or produce.

(4) A person who has obtained a certificate referred to in subsection (2) shall retain it in his possession for a period of at least one year.

(5) A police officer may, within the period referred to in subsection (4), demand an inspection of such certificate, and upon such demand the person having possession shall produce it for inspection.

(6) Any person who contravenes any provision of this section or who wilfully makes any false statement in a certificate referred to in subsection (2) shall be guilty of an offence.

Stock or produce driven or conveyed

11. (1) No person shall, without lawful authority, drive, convey or transport any stock or produce unless he is the owner or he has in his possession a certificate (hereinafter called a "removal certificate") issued to him by the owner of such stock or produce or the duly authorized agent of such owner, in which is stated —

(*a*) the name and address of the person who issued the certificate;
(*b*) the name and address of the owner of such stock or produce;
(*c*) the place from which and the place to which such stock or produce is being driven, conveyed or transported;
(*d*) the name of the driver, conveyer or transporter;
(*e*) the date of issue thereof; and
(*f*) if applicable, the registration number, model and make of the vehicle with which the stock or produce is being conveyed or transported.

(2) No person shall cause or permit any stock or produce of which he is the owner to be driven, conveyed or transported by any other person without furnishing him with a removal certificate which he is required to have in terms of subsection (1).

(3) Any justice of the peace, a police officer, or owner, lessee or occupier of land may demand from any person who is required in terms of subsection (1) to have in his possession a removal certificate, an inspection of such certificate, and upon such demand the person having possession of such certificate shall produce it for inspection to the person making the demand.

(4) No person who is or was employed by an owner or occupier of any land shall remove any stock or produce owned by him or under his control from any land owned or occupied by such owner or occupier unless he is in possession of a document furnished by such owner or occupier, the agent of such owner or occupier, or a police officer on a date not more than 30 days before the removal, which date shall be stated in the document, giving a description of such stock or produce and certifying that he was to the best knowledge and belief of the person furnishing the document entitled to remove such stock or produce on the date specified therein.

(5) Any owner or occupier of land, or any agent of such owner or occupier, shall, when requested to do so by any person who is or was in the employ of such owner or occupier and who is in possession on land owned or occupied by such owner or occupier of any stock or produce which he desires to remove therefrom, forthwith furnish him with any document which he may require in terms of subsection (4).

(6) Any person who has obtained such a document as is referred to in subsection (4) shall retain it in his possession for a period of at least one year.

(7) Any justice of the peace, police officer, or owner, lessee or occupier of land, may within the period referred to in subsection (6), demand an inspection of such document, and upon such demand the person having possession of such certificate shall produce it for inspection to the person making the demand.

(8) Any person who —

(*a*) contravenes any provision of this section;

(*b*) contravenes any provision of subsection (3) or (7);

(*c*) wilfully makes any false statement in a removal certificate or a document furnished in terms of subsection (5); or

(*d*) falsely declares that he is the owner of stock or produce which is being driven, conveyed or transported by him,

shall be guilty of an offence.

(9) For the purposes of subsections (1), (2) and (8)(*d*) "owner" includes any person who obtained stock or produce by virtue of an agreement of sale in terms of which such person does not become the owner of such stock or produce merely by virtue of the delivery to him of such stock or produce.

Wrongful arrest

12. (1) A person who under colour of this Act wrongfully and maliciously or without probable cause arrests any person or effects any search shall be guilty of an offence.

(2) In any charge under this section the onus of proof that the arrest or search which is the subject of the charge was not wrongful and malicious or without probable cause shall be upon the accused.

(3) Nothing contained in this section shall be construed as taking away or diminishing any civil right or liability in respect of a wrongful or malicious arrest.

Orders of compensation Cap. 08:02

13. The provisions of section 316 of the Criminal Procedure and Evidence Act, relating to the award of compensation to the victim of an offence, shall have effect where, on a conviction for an offence under this Act, it is proved that any person has suffered loss or damage as a result of such offence.

Forfeiture of assets derived from theft

14. (1) Upon application made by the police to the court of a senior magistrate or above, the court may order an investigation by the police into the dealings and assets of any person reasonably suspected of being engaged in the business of stealing or receiving stock or produce, or dealing in stolen stock or produce, or any other fraudulent activities in relation to stock or produce.

(2) If, upon such investigation, it is found that any assets of such person have been derived from or are attributable to any of the activities referred to in subsection (1) the court shall order the forfeiture of such assets to the Government.

(3) For the purposes of subsections (1) and (2), the court may make an order —

(*a*) authorizing the police to search for and seize any assets of the person concerned, pending the investigation;

(*b*) requiring any person to make available to the police any document relevant to the location or identification of any assets of such person;

(*c*) prohibiting any dealing in any assets of such person without an order of the court; or

(*d*) requiring any bank or other financial institution to produce to the police any information relevant to any assets of such person.

(4) Any person who has any interest in any assets seized or forfeited under this section may apply to the court to have such assets released.

(5) Any person who deals with any assets, which are subject to an order of the court under this section, in breach of or contrary to the terms of such order shall be guilty of an offence and liable to a fine of P10 000, or to a term of imprisonment for five years, or both.

Unclaimed stock or produce

Cap. 36:05
Cap. 36:06

15. (1) Any stock or produce seized by the police in accordance with the provisions of this Act and of which the owner is not known or cannot be found, may be removed to the nearest or most convenient pound or matimela kraal, and if not previously claimed by its owner, which claim shall be supported by satisfactory proof and all relevant documents, shall be dealt with in accordance with the provisions of the Pounds Act or the Matimela Act, as the case may be.

(2) Where the article seized under subsection (1) is a produce and if he considers it necessary the Commissioner of Police shall cause to be published in three editions of the Gazette at monthly intervals, and similarly in at least one newspaper circulating in Botswana and shall also cause to be placed in the nearest Kgotla, a notice giving particulars of the produce seized, or where no particulars are available a fair description of the produce, and a warning that if any of the produce remain unclaimed after a reasonable period of time, which shall not be less than two months after the date of the last notice published, they shall be forfeited to the Government and dealt with as the Commissioner of Police may direct, which may include sale by public auction.

(3) Any produce seized, or taken into custody, by the police before the commencement of this Act, because it is suspected to have been stolen, or because the person lawfully entitled to it is unknown or cannot be traced, shall, within one month from the commencement of this Act, or within six months of its being seized or taken into custody, whichever is the longer period, be dealt with in accordance with the provisions of subsection (2).

Penalties

16. Any person who is convicted of an offence under this Act for which no penalty is otherwise provided shall be liable to a fine of P2 000, or to a term of imprisonment for one year, or both.

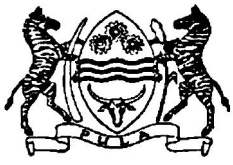
Repeal
Cap. 09:01

17. The Stock Theft Act is hereby repealed.

PASSED by the National Assembly this 19th day of December, 1996.

C.T. MOMPEI,
Clerk of the National Assembly.

DEEDS REGISTRY (AMENDMENT) ACT, 1996

No. 22  of 1996

ARRANGEMENT OF SECTIONS

An Act to amend the Deeds Registry Act
Date of Assent : 30.12.96.
Date of commencement : 31.12.96.
ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Deeds Registry (Amendment) Act, 1996. Short title

2. Section 18 of the Deeds Registry Act is amended — Amendment of section 18 of Cap. 33:02

(*a*) by substituting, for subsection (3) thereof, the following new subsection —

"(3) A woman whether married in community of property or not shall not require the assistance of her husband in executing any deed or document required or permitted to be registered in the deeds registry or required or permitted to be produced in connec tion with any such deed or document, and immovable property may be transferred or ceded to her as if she were married out of community of property and the marital power did not apply.";

(*b*) by substituting, for subsection (4) thereof, the following new subsection —

"(4) Immovable property bequeathed or donated to a woman married in community of property may be transferred or ceded to that woman and shall not form part of the joint estate where, by a condition of the bequest or donation it is excluded from the community and the marital power.";

(*c*) by substituting, for subsection (5) thereof, the following new subsection —

"(5) If immovable property not excluded from the community is registered in the name of a spouse married in community of property, neither spouse may, irrespective of when that property was so registered, alone deal with such property unless he has the consent, in writing, of the other spouse, or has been authorised by an order of court to deal therewith."; and

(*d*) by deleting, from subsection (7) thereof, the words "(assisted where necessary by her husband)" which appear therein.

PASSED by the National Assembly this 19th day of December, 1996.

C.T. MOMPEI,
Clerk of the National Assembly.

BOTSWANA RAILWAYS REHABILITATION PROJECT LOAN (RATIFICATION) ACT, 1996

No. 23 of 1996

ARRANGEMENT OF SECTIONS

An Act to ratify an agreement between the Government and the Export-Import Bank of China for the purpose of assisting in the financing of the Botswana Railways Rehabilitation Project.

Date of Assent: 30.12.96.

Date of Commencement: 30.12.96.

ENACTED by the Parliament of Botswana.

Short title

1. This Act may be cited as the Botswana Railways Rehabilitation Project Loan (Ratification) Act, 1996.

Ratification of loan

2. The raising of a loan by the Government from the Export-Import Bank of China (hereinafter referred to as "the loan"), subject to such terms and conditions as were agreed between the Government and the Bank, in a sum not exceeding one hundred and eighty million Renminbi Yuan (RMB Y 180 000 000) or the equivalent of P75 000 000, for the purpose of assisting in the financing of the Botswana Railways Rehabilitation Project is hereby ratified.

Loan to be paid into Development Fund

3. The proceeds of the loan ratified by this Act shall be paid into the Development Fund.

Loan to be charged upon Consolidated Fund

4. All sums required to repay the loan and to pay interest and other charges thereon shall be charged upon and paid out of the Consolidated Fund.

Ratification of signing

5. The signing on behalf of the Government of the agreement embodying the terms and conditions of the loan, and the doing of all such things as may be necessary or expedient to effect or facilitate the loan, are hereby ratified.

PASSED by the National Assembly this 19th day of December, 1996.

C.T. MOMPEI,
Clerk of the National Assembly.

[illegible] REHABILITATION PROJECT
(RATIFICATION) ACT, 1996

[illegible] ARRANGEMENT OF SECTIONS

[illegible]

[illegible] Act
[illegible] Government and Zambia Railways Limited
[illegible] Bank of Chile
[illegible] Rehabilitation Project

An Act to ratify an agreement between the Government and the Export-Import Bank of Chile for the purpose of assisting in the financing of the Livingstone Railways Rehabilitation Project

[illegible] 1996

[illegible] 1996

[illegible] (LBD) by the Parliament of Zambia.

1. This Act may be cited as the Livingstone Railways Rehabilitation Project (Ratification) Act, 1996. — Short title

2. The ratifying of a loan by the Government from the Export-Import Bank of Chile (hereinafter referred to as "the Bank") subject to terms and conditions as set out in an agreement between the Government and the Bank in a sum not exceeding one hundred and eighty million Yuan (RMB Y 180,000,000) or the equivalent of [illegible] for the purpose of assisting in the financing of the Livingstone Railways Rehabilitation Project is hereby ratified. — Ratification of loan

3. The project-related loan is ratified by this Act shall be used for the following purpose: — Purpose of loan

4. All sums required to repay the loan and to pay interest and other charges thereon shall be charged upon and paid out of the Consolidated Fund. — Charge on Consolidated Fund

5. The signing on behalf of the Government of the agreement referred to in the preamble and the terms and conditions of the loan, taking effect of such things as may be necessary or expedient for giving effect to the agreement shall be authorised by the Minister responsible for finance. — Ratification of signing

PASSED in the National Assembly this [illegible] day of [illegible]

C.F. [illegible]
Clerk of the National Assembly

Statutory Instrument No. 107 of 1996

BANK OF BOTSWANA ACT
(No. 19 of 1996)

BANK OF BOTSWANA ACT (DATE OF COMMENCEMENT) ORDER, 1996
(Published on 31st December, 1996)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH
1. Citation
2. Commencement of Act No. 19 of 1996

IN EXERCISE of the powers conferred on the Minister of Finance and Development Planning by section 1 of the Bank of Botswana Act, the following Order is hereby made —

Citation

1. This Order may be cited as the Bank of Botswana Act (Date of Commencement Order), 1996.

Commencement of Act No. 19 of 1996

2. The Minister hereby appoints 1st January, 1997, as the date upon which the Bank of Botswana Act shall come into operation.

MADE this 31st day of December, 1996.

F.G. MOGAE,
Minister of Finance and Development Planning.