

VOLUME IX

CHAPTER 46:04 - BANKING: SUBSIDIARY LEGISLATION (previously "FINANCIAL INSTITUTIONS") INDEX TO SUBSIDIARY LEGISLATION

Banking Regulations
Banking (Anti-Money Laundering) Regulations

BANKING REGULATIONS

(section 50)

(20th October, 1995)

ARRANGEMENT OF REGULATIONS

REGULATIONS

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2. Interpretation
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Schedule

S.I. 73, 1995,
S.I. 33, 2007.

1. Citation

These Regulations may be cited as the Banking Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires-

"back-up capital" means any additional capital that a bank may be required to provide in case it is called upon by the Central Bank to increase the level of its capital during the course of business;

"exposure" means any facility granted by a bank whether drawn or undrawn, to a client or group of connected clients, on or off-balance sheet;

"related interests" means two or more persons whether natural or legal, with borrowings from the same bank, whether on a joint or separate basis, having, by way of example, a controlling interest, common ownership, common management, common directors, cross guarantees or direct financial interdependency which cannot be substituted in the short term;

"risk weighted assets" means the aggregated values of balance sheet assets and off-balance sheet assets following adjustments for relative risks associated with the exposures in accordance with the Bank of Botswana schedule of risk weights.

3. Applications for banking licences

(1) The following corporate documents and information shall be furnished in an application for a licence to transact banking business under the Act:

- (a) the name, nationality and address of the applicant;
- (b) the name and curriculum vitae of the initial directors and principal officers, with a clear indication of the particular responsibilities to be assumed by each officer;

- (c) details of the shareholding of the applicant and prospects for local shareholding;
- (d) a list of associate companies in or outside Botswana doing banking business or engaged in any financial undertaking such as insurance, brokerage, etc.;
- (e) such audited accounting and financial data as may be required by the Central Bank including the balance sheet of the applicant as at date within 90 days prior to the date of application;
- (f) the business plan of the applicant over a period of five years from the start of operations in Botswana including scale of envisaged operations, any specialized services and financial projections;
- (g) the proposed principal place and other places of business of the applicant in Botswana, and a schedule of any proposed branch and agency network;
- (h) the proposed initial capital of the applicant;
- (i) any proposed back-up capital in case of need, and a declaration of its availability in Botswana;
- (j) in the case of a foreign applicant, the name of any supervisory authority and the country of incorporation;
- (k) in the case of an agent acting on behalf of a principal, a written authorization by the principal;
- (l) any other information that the Central Bank may deem necessary to complete the assessment of the application.

(2) All applications for a banking licence should be made in duplicate in the form shown as Annexure 1 in the Schedule hereto.

(3) Every applicant for a licence shall pay to the Central Bank a non-refundable fee of P15,000 for the processing of the application, and after the grant of the licence an annual fee of P50,000.

4. Processing of applications

For the purposes of section 8(1) of the Act, in processing an application, the Central Bank shall require to be satisfied with regard to:

- (a) the technical knowledge, integrity, experience, financial condition and history of the applicant;
- (b) the adequacy of its capital;
- (c) the character of its business, and the experience and qualifications of its management;
- (d) the convenience and needs of the community and market to be served;
- (e) the ability and willingness of the applicant to comply with any conditions the Central Bank may impose pursuant to the Act.

5. Appeal to the Minister

(1) Any appeal to the Minister against a refusal to grant a licence, the revocation of a licence, or against any condition subject to which a licence is issued, or the variation, addition, or cancellation of any such condition, shall be in writing in the form shown as Annexure 2 in the Schedule hereto, shall be accompanied by an appeal fee of P30,000, and shall:

- (a) clearly state the reasons for the appeal or the precise elements of the grievance; and
- (b) state the remedy sought.

(2) No appeal will be accepted or entertained if it is not received within six weeks following the date of communication of the rejection of the application for a licence, or the conditions appealed against.

(3) In the preparation and conduct of an appeal the assistance of counsel shall be permitted.

(4) The Minister shall meet, in person, or shall delegate a competent officer to meet, the aggrieved party at least once before reaching a decision on the appeal, and, in any event, after the appeal documentation has been reviewed by the Minister's office.

6. Surrender of licences

A bank wishing to surrender its licence in accordance with the provisions of section 11(2) of the Act shall apply therefor to the Central Bank, in writing and in the form shown as Annexure 3 in the Schedule hereto, stating in full its reasons for the request, and the Central Bank shall within 30 days of receipt of such application inform the applicant of its decision.

7. Capital requirements

(1) The percentage which a bank's unimpaired capital shall bear to its total assets, as contemplated in section 13 of the Act, shall be 8 per cent:

Provided that:

- (a) for the purposes of section 13, the term "assets" or "groups of assets and other such exposures" shall mean total risk weighted assets and other risk weighted exposures, as notified by the Bank of Botswana in a schedule of risk weights;
- (b) such calculation shall be presented in the Bank of Botswana schedule of risk weights, which shall be filled in by the bank and returned to Bank of Botswana within 21 days of the end of each calendar month;
- (c) for the purposes of such calculation, total risk weighted assets and other exposures shall mean a simple average of the risk weighted assets over a calendar quarter.

(2) For the purposes of section 13(3)(vi), the prescribed percentage shall be 50 per cent of any surplus arising from the revaluation of bank premises or equity investment:

Provided that-

- (a) where a revaluation is undertaken, all assets of a similar nature shall be revalued simultaneously and the net amount of any surplus shall be taken into account for the purpose of minimum capital determination;
- (b) such revaluation shall be undertaken by a suitably qualified and independent person, approved by the Bank of Botswana;
- (c) such revaluations shall be undertaken at specified regular intervals, not more than once every third financial year, and in accordance with a stated accounting policy and generally accepted accounting practice in Botswana;
- (d) where equity investments are revalued, such investments shall be approved by the board of directors as being of a long term strategic nature, and the revaluation shall be determined with reference to, inter alia, prices quoted on a recognized stock exchange.

(3) The minimum required capital contemplated in section 13(9) of the Act shall be as follows-

- (a) *Commercial Banks* - the greater of P5,000,000 or 8 per cent of the risk weighted assets and other risk weighted exposures of the bank as prescribed in subregulation (1);
- (b) *Credit Institutions* - the greater of P2,500,000 or 8 per cent of the risk weighted assets and other risk weighted exposures of the bank as prescribed in subregulation (1);
- (c) *Investment Banks* - the greater of P5,000,000 or 8 per cent of the risk weighted assets and other risk weighted exposures of the bank as prescribed in subregulation (1);
- (d) *Discount Houses* - the greater of P2,500,000 or 8 per cent of the risk weighted assets and other risk weighted exposures of the bank as prescribed in subregulation (1).

8. Liquid assets

(1) For the purposes of section 16(1) of the Act, every bank shall report monthly to the Central Bank the liquid assets held by it during the previous month.

(2) Such reports will be made in the format specified by the Central Bank and will be submitted to that Bank within 21 calendar days of the end of each month.

9. Limitations on certain operations

(1) For the purposes of section 17(1) of the Act, the accommodation which requires prior sanction of the bank's board of directors shall be lendings in excess of 10 per cent of unimpaired capital to a single borrower or related borrowers, except in the case of connected lending in the form of credit extension to the interests, direct or indirect, of a bank's own directors, where subregulation (3) applies.

(2) For the purposes of section 17(3) of the Act, the aggregate accommodation requiring the prior written approval of the Central Bank, shall be such accommodation in excess of 30 per cent of unimpaired capital to any single borrower or any group of related interests, except in the case of connected lending in the form of a credit extension in the interest, direct or indirect, of a bank's director, in which event subregulation (3) shall apply.

(3) For the purposes of section 17(7) of the Act the prescribed maximum unsecured amount of aggregate loans, advances and other credit facilities made to bank's own directors and their related interests without the permission of the Central Bank shall be 10 per cent of a bank's core capital:

Provided that:

- (i) no bank may extend, or allow to be outstanding, to any of its directors or their related interests, facilities which in aggregate exceed the higher of P50,000 or 1 per cent of the core capital, without the approval of the majority of its entire board of directors;
- (ii) no bank may extend or permit to be outstanding, to any of its own directors or their related interests, facilities which in aggregate exceed 25 per cent of the bank's unimpaired capital, even if such facilities are secured by tangible security acceptable to the Bank of Botswana.

**SCHEDULE
ANNEXURE 1
APPLICATION FOR A LICENCE TO ESTABLISH A BANK
(To be submitted in duplicate)**

The Governor of Bank of Botswana
Private Bag 00154, GABORONE

1. I, the undersigned, acting as principal/promotor/in the capacity as duly authorized agent on behalf of
("the principal"), hereby apply for a licence under of section 6 of the Banking Act, 1995, to establish a bank (specify class).

2. I submit with this application the documentation and a written statement containing the information prescribed by regulation 3 of the Banking Regulations, 1995.

..... <i>Date</i> <i>Applicant</i>
Applicant's address	Principal's address.....
.....
.....
.....

FOR OFFICIAL USE

principal / promotor / agent	1	
consent of principal	2	
proposed name	3	
parent bank and primary supervisory authority	4	
nature of business	5	
issued share capital	6	
details of anticipated shareholding	7	
prospective business plan	8	
proposed memorandum and articles	9	
details of management of affairs	10	
audited financial statements (if any)	11	
CV's of executives	12	
CV's of directors	13	
processing fee	14	
undertaking to provide back-up capital	15	

Application granted	
Application refused	
Application granted subject to the appended conditions	

.....
Date

.....
Governor

**ANNEXURE 2
NOTICE OF APPEAL**

The Minister of Finance and Development Planning
Private Bag 008
GABORONE

In terms of the provisions of section 7(1) of the Banking Act, 1995 and the Banking Regulations, 1995, notice is hereby given that:

- (1)
Hereinafter referred to as the appellant (In the case of a company, or other institution, represented herein by and in their respective capacities as and of the appellant, duly authorized thereto by a resolution of the board of directors (a copy of which is attached hereto as Annexure),
.....
.....
intends to appeal against the following decision of the Bank of Botswana: -
.....
.....
- (2) the affidavit/s annexed hereto as Annexure , will be used in support of the appeal;
- (3) the following address shall serve as domicilium citandi et executandi in respect of the statement to be dispatched by the Minister or the Governor of Bank of Botswana, as the case may be.
Applicant's address
.....
on behalf of the appellant

.....
on behalf of the appellant
.....
Date

**ANNEXURE 3
NOTICE OF INTENTION TO SURRENDER A BANKING LICENCE**

The Governor of Bank of Botswana
Private Bag 00154
GABORONE

- I, the undersigned, Chairman/Chief Executive of, duly empowered thereto, hereby wish to give notice of the intention to surrender a licence of the above-mentioned bank which has been operating as This is in compliance with section 11 of the Banking Act, 1995.
- The surrender of the licence came about as per our board resolution number..... dated

..... The reason(s) for surrendering the licence being
.....

3. I submit with this notification, duly signed by me, the following annexures:
 - (i) schedule of deposits and other liabilities;
 - (ii) schedule, certified by the bank's external auditors, confirming that the bank's assets exceed liabilities;
 - (iii) a list of the current Board members and principal officers together with both their current and forwarding addresses.
4. I,, on behalf of the Board of Directors of the bank do hereby declare that all depositors' interests will be duly protected, and arrangements have been made, as stipulated hereunder (see annexure), to ensure that depositors' funds are fully repaid and/or safeguarded as indicated.
5. The process to wind up operations of the bank is expected to start from to as called for under section 11(2) of the Banking Act, 1995, which states that the surrendering of the licence shall not take effect until not less than ninety days after the granting of the permission by the Central Bank.

.....
Date

.....
Chairman/Chief Executive

FOR OFFICIAL USE

SURRENDER OF LICENCE GRANTED
SURRENDER REFUSED
SURRENDER GRANTED SUBJECT TO THE APPENDED
CONDITIONS

.....
Date

.....
Governor

BANKING (ANTI-MONEY LAUNDERING) REGULATIONS

(section 51)

(1st March, 2003)

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Application
3. Interpretation
4. Anti-money laundering measures and practices
5. Customer identification
6. Verification of customers' names and addresses
7. Verification of corporate bodies
8. Trusts
9. True identity of persons on whose behalf account is opened, etc.
10. Anonymous accounts
11. Financial services through internet or other electronic means
12. Record keeping
13. Record of outward transfers, etc.
14. Reporting of suspicious activities
15. Money laundering reporting officer
16. Co-operation with law enforcement agencies
17. Obligations of board and principal officers of bank
18. Obligations of employees
19. Annual compliance report
20. Staff training

21. Programme for staff training
22. Staff not to disclose investigations to customer
23. Staff to report money laundering offence in which involved
24. External auditors
25. Offence and penalty

First Schedule
Second Schedule

S.I. 17, 2003.

1. Citation

These Regulations may be cited as the Banking (Anti-Money Laundering) Regulations.

2. Application

These Regulations apply to banks.

3. Interpretation

In these Regulations, unless the context otherwise requires-

"anti-money laundering measures and practices" means appropriate procedures and controls put in place by a bank to prevent money laundering;

"Financial Intelligence Agency" means the Directorate on Corruption and Economic Crime established under section 3 of the Corruption and Economic Crime Act;

"law enforcement agencies" means the Bank of Botswana, the Botswana Police, the Financial Intelligence Agency, the Department of Customs and Excise, the Department of Taxes and the Immigration Department;

"money laundering" has the meaning assigned to it in section 14 of the Proceeds of Serious Crime Act, and includes-

- (a) where the conduct is of a natural person, failing, without reasonable excuse, to take steps to ascertain whether or not the property is derived or realised, directly or indirectly, from an unlawful activity; or
- (b) where the conduct is of a bank, failing to implement or apply anti-money laundering measures and practices;

"opening an account" means establishing a business relationship with a bank to operate a current account, a deposit account, a savings account or a loan account, or any other obligation arising out of the contractual relationship between a bank and a customer and includes buying and selling of foreign currency to a customer by a bank, transmission of money and investment of funds;

"principal officer" has the meaning assigned to it in section 2 of the Act;

"property" means money or any other movable, immovable, corporeal or unincorporeal-thing, and includes any rights, securities and any interest in and privileges and claims over that thing and all proceeds thereof;

"suspicious transaction" means a transaction which is inconsistent with a customer's known legitimate business or personal activities or with the normal business for the type of account which the customer holds, and includes, but is not limited to, the activities listed in the First Schedule hereto; and

"transaction" means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any share, stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to, a bank, by whatever means effected.

4. Anti-money laundering measures and practices

A bank shall put in place such anti-money laundering measures and adopt such practices as are necessary for the prevention of money laundering as are set out in these

Regulations.

5. Customer identification

(1) A bank shall require its personal customers, when establishing business relations, or conducting transactions, with it, to produce the following documents for identification purposes-

- (a) Omani identity card for a citizen of Botswana above the age of sixteen years; or
- (b) a valid passport for a foreign national.

(2) Whenever a bank has doubts as to the identity of a customer in the course of its business relationship with that customer, the bank shall require that customer to renew his identification.

(3) A bank shall identify the beneficial owner of an account opened with it and any person using remittance and safe custody facilities, and if the bank fails to ascertain the identity of such owner or person, it shall close the account or deny the facilities concerned.

6. Verification of customers' names and addresses

A bank shall verify the names and addresses of its customers by any of the following methods-

- (a) obtaining a reference from a well known professional, an employer of the customer, a known customer of the bank who, or a customary authority that, knows the applicant;
- (b) in the case of non-residents, obtaining references from their foreign banks, where possible;
- (c) making a credit reference agency search;
- (d) requesting an original recent council rates or utility bill receipt;
- (e) using one of the address validation or verification services on offer; or
- (f) conducting a personal visit to the home of the applicant where appropriate, or possible.

7. Verification of corporate bodies

(1) Where a corporate body opens an account with a bank, the bank shall verify the legal existence of the corporate body and identify the directors, the beneficial owners and the management of that corporate body.

(2) A bank shall obtain the following information and documentation from a corporate body before it allows the corporate body to open an account with it-

- (a) the certificate of incorporation or equivalent, details of the registered office and the place of business;
- (b) details of the nature of the corporate body's business, the reason for the account being opened, an indication of the expected turnover, the source of funds, and a copy of the last available accounts, where appropriate;
- (c) where there is more than one signatory to the account, satisfactory evidence of the identity of at least two signatories and, where necessary, two directors, one of whom shall be an executive director;
- (d) a copy of the resolution of the Board authorising the account signatories; and
- (e) copies of powers of attorney, or any other authority, affecting the operation of the account, given by the directors in relation to the corporate body.

8. Trusts

Where a person opens a trust account with a bank, the bank shall endeavour to know and understand the structure of the trust sufficiently to determine the provider of funds and those who have control over the funds.

9. True identity of persons on whose behalf account is opened, etc

A bank shall take reasonable measures to obtain information about the true identity of the person on whose behalf an account is opened or a transaction conducted if there is any doubt as to whether any customer is acting on his own behalf.

10. Anonymous accounts

A bank shall not open or keep anonymous accounts or accounts in obviously fictitious names.

11. Financial services through internet or other electronic means

A bank shall establish clear procedures on how to identify a customer who applies for financial services through the internet or other electronic means, and shall not permit a customer to conduct business through this means unless the identity documents of the customer have been verified or confirmed.

12. Record keeping

(1) In addition to the requirements in sections 18(1) and 44(4) of the Act, a bank shall keep a record of copies of identification documents presented by customers when they first establish a business relationship with it, for a period of at least five years from the date the identification documents were presented to it.

(2) A bank shall keep records under this regulation by way of original documents, either in the form of hard copies or by using electronic storage devices.

(3) Where the records referred to in this regulation relate to an on-going investigation or transaction, which has been the subject of a disclosure, a bank shall retain those records until, in the case of an on-going investigation, the law enforcement agencies confirm that the investigation has been closed or completed, as the case may be, or, in the case of an on-going transaction, the bank confirms that the transaction has been completed.

(4) A bank shall maintain, for a period of at least five years, all records on transactions, both domestic and international, to enable it to comply expeditiously with information requests from the Financial Intelligence Agency and other competent authorities.

(5) The records referred to in sub regulation (4) shall be sufficient to permit a reconstruction of individual transactions, including the amounts and types of currency involved, if any, so as to provide, if necessary, evidence for prosecution of criminal behavior.

13. Record of outward transfers etc.

A bank shall complete such form as the Central Bank may prescribe to record an outward transfer or a foreign currency payment and such other form as the Central Bank may prescribe for any foreign currency receipts or funds from external sources where the transaction involves an amount of P10,000 or more; and shall require a customer to provide full details of the transaction including the name, identity number and full address of the customer and the beneficiary, as well as the purpose of the transaction.

14. Reporting of suspicious activities

A bank shall report to both the Central Bank and the Financial Intelligence Agency, in the Form set out in the Second Schedule hereto, any transaction involving large amounts of money or suspicious activities by its customers and shall, for this purpose, send to those institutions copies of the relevant documents and retain the originals.

15. Money laundering reporting officer

(1) For the purposes of making reports in terms of regulation 14, a bank shall designate an employee, at management level, as a money laundering reporting officer who shall serve as a contact person on money laundering matters between the bank, the Central Bank and the Financial Intelligence Agency.

(2) A Money Laundering Reporting Officer shall keep a register of all reports made to him by employees of the bank and of all reports that he makes to the Central Bank and the Financial Intelligence Agency, and shall, on written request by the other law enforcement agencies-

- (a) provide to them an acknowledgment receipt of the reports, from the Central Bank and the Financial Intelligence Agency; and
- (b) make available to those law enforcement agencies copies of reports he makes to the Central Bank and the Financial Intelligence Agency and those made to him by employees of the bank.

(3) An employee of a bank shall promptly report to a money laundering reporting officer all cases where-

- (a) he becomes aware, has knowledge or suspects or has reasonable grounds to believe, that a customer has been or is involved in an illegal activity or crime;
- (b) a customer in respect of whom the employee becomes aware, has knowledge or suspects or has reasonable grounds to believe, that another customer has been engaging in illegal activities or crime, deposits, transfers or seeks to invest funds or obtain credit against the security of funds obtained from such illegal activities or crime; or
- (c) the bank holds funds on behalf of a customer who has been, is suspected to have been or in respect of whom there exist reasonable grounds to believe that such customer has been engaging in illegal activities or crime.

(4) A money laundering reporting officer shall, after receiving a report in terms of sub regulation (3), promptly evaluate whether or not there are reasonable grounds for believing that a customer has been engaging in illegal activities or crime, and if after such evaluation he finds that such grounds exist, he shall immediately report the case to the Central Bank and the Financial Intelligence Agency.

(5) A bank shall ensure that all employees concerned with the holding, receipt, transaction or investment of funds, whether in cash or otherwise, obtained or suspected to have been obtained from illegal activities or crime, or the making of loans against the security of such funds are aware of the procedures set out in this regulation and in regulation 14.

16. Cooperation with law enforcement agencies

(1) A bank shall-

- (a) cooperate with the law enforcement agencies to facilitate the exchange of information relating to money laundering; and
- (b) comply with any law which requires the provision of information to the law enforcement agencies to assist in an investigation.

(2) No person shall institute any civil or criminal proceedings against any bank which, or any director, principal officer or employee of a bank who, cooperates with the law enforcement agencies and reports any information relating to money laundering, relating to that person.

17. Obligations of board and principal officers of bank

(1) The board and principal officers of a bank shall put in place an anti-money laundering programme, consisting of the anti-money laundering measures to be put in place and practices to be adopted in order to detect and prevent the commission of the offence of money laundering; and shall ensure that the staff of the bank is familiar with and comply with the programme.

(2) The measures and practices referred to in sub-regulation (1) shall include-

- (a) the development of internal policies, procedures and controls with due regard to the risks posed by money laundering;
- (b) the establishment of "know your customer" procedures, which shall include knowing the customer's business, establishing systems that would recognise suspicious activities and having in place internal suspicious reporting procedures;
- (c) the appointment of the Money Laundering Reporting Officer;
- (d) the establishment of a sound anti-money laundering compliance policy;
- (e) procedures to be followed by directors, principal officers, officers and employees of a bank in the conduct of their business of the bank;
- (f) instructions given to directors, principal officers, officers and employees of a bank on the prevention of the use of the bank for the purpose of engaging in activities of money laundering; and
- (g) training of directors, principal officers, officers and employees of a bank for the purpose of enabling them to identify transactions which may relate to the commission of the offence of money laundering.

18. Obligation of employees

All employees of a bank concerned with holding, receipt, transaction or investment of funds, whether in cash or otherwise, obtained or suspected to have been obtained from illegal activities or crime, or the making of loans against the security of such funds shall report to the bank either knowledge or circumstances which give rise to a reasonable belief that an offence against these Regulations has been committed, or is about to be committed.

19. Annual compliance report

The Money Laundering Reporting Officer shall prepare, for the board of the bank, an annual compliance report, relating to, among others-

- (a) changes in legislation or industry rules on money laundering issues;
- (b) compliance deficiencies in relation to money laundering; and
- (c) number of internal reports received on money laundering and the percentage of reports that have been submitted to law enforcement agencies.

20. Staff training

A bank shall train its staff, irrespective of the level of seniority, on what money laundering is and the importance of reporting any suspicious transactions to its money laundering reporting officer, and shall draw up a programme for the training of the staff of the bank.

21. Programme for staff training

(1) The programme referred to in regulation 20 shall include-

- (a) indicators that may give rise to suspicion and the procedures to be adopted when a transaction is considered to be suspicious;
- (b) a component to train the staff of a bank on how to make a report on suspicious activities;
- (c) the identification and prevention of money laundering for employees of the bank who have contact with clients and compliance personnel;
- (d) instruction, covering all aspects of money laundering procedures, to those with the responsibility for supervising or managing staff, and
- (e) an in-depth training for the money laundering reporting officer on all legislation relating to money laundering and the bank's internal policies on money laundering.

(2) A bank shall hold refresher courses at regular intervals of not less than annually for principal officers of a bank, to remind them of their responsibilities in relation to money laundering and to make them aware of any changes in the anti-money laundering measures and internal procedures.

(3) Notwithstanding the provisions of sub regulations (1) and (2), each bank shall tailor its training programme to suit its own needs depending on the size, the resources available and the type of business it undertakes.

22. Staff not to disclose investigations to customers

No staff of a bank shall disclose to any customer that the customer is being investigated for money laundering activities.

23. Staff to report money laundering offence in which involved

Every member of staff of a bank shall report to any principal officer of the bank any money laundering offence in which he is involved.

24. External auditors

(1) The Central Bank may require independent external auditors, at the expense of the concerned-bank, to conduct a special audit on the adequacy of anti-money laundering measures and practices and enforcement hereof.

(2) The external auditors referred to in sub regulation (1) shall report in writing to the Central Bank any finding resulting from any audit, or contact by any person with the bank which suggests the commission of the crime of money laundering by that person in that bank; and the Central Bank shall, where such a crime has been committed, take all necessary action to prosecute the crime.

25. Offence and penalty

A person who contravenes the provisions of these Regulations shall be guilty of an offence and liable-

- (a) if that person is a bank, to a fine of P10,000;
- (b) if that person is an employee of a bank, to a fine of P15,000 and to imprisonment for five years; or
- (c) if that person is a bank or an affiliate, subsidiary, or parent bank of a bank which has been convicted of the crime of money laundering and such conviction is not overturned on appeal, to revocation of a licence.

FIRST SCHEDULE

Examples of suspicious activities

(regulation 3)

Suspicious Customer Behaviour

- (a) Customer has an unusual or excessively nervous demeanor;
- (b) Customer discusses your record keeping or reporting duties with the apparent intention of avoiding them;
- (c) Customer threatens an employee attempting to deter a record keeping or reporting duty;
- (d) Customer is reluctant to proceed with a transaction after being told it must be reported;
- (e) Customer suggests payment of a gratuity to an employee of the bank;
- (f) Customer appears to have a hidden agenda or behaves abnormally, such as bypassing the chance to obtain a higher interest rate on a large account balance; or
- (g) Customer who is a public official opens an account in the name of a family member who begins making large deposits not consistent with the known legitimate sources of income of the family.

Suspicious Customer Identification Circumstances

- (a) Customer claims to be a law enforcement agent conducting an undercover operation when there are no valid indications to support that;
- (b) Customer furnishes unusual or suspicious identification documents and is unwilling to provide personal background information;
- (c) Customer is unwilling to provide personal background information when opening an account;
- (d) Customer opens an account without identification, references or a local address;
- (e) Customer's permanent address is outside the bank's service area or outside Botswana;
- (f) Customer's home or business telephone is disconnected;
- (g) Business customer is reluctant to reveal details about the business activities or to provide financial statements or documents about a related business entity; or
- (h) Customer provides no record of past or present employment on a loan application.

Suspicious Cash Transactions

- (a) Customer comes in with another customer and they go to different tellers to conduct currency transactions of less than P10 000;
- (b) Customer makes large cash deposit without counting the cash;
- (c) Customer opens several accounts in one or more names, and then makes several cash deposits that are less than P10 000;
- (d) Customer conducts unusual cash transactions through night deposit boxes, especially large sums that are not consistent with the customer's business;
- (e) Customer makes frequent deposits or withdrawals of large amounts of currency for no apparent business reason, or for a business that generally does not generate large amounts of cash;
- (f) Customer conducts several large cash transactions at different branches on the same day, or orchestrates persons to do so on his behalf;
- (g) Customer deposits cash into several accounts in amounts below P10 000, and then consolidates the funds into one account and wire transfers them outside of Botswana;
- (h) Customer attempts to take back a portion of a cash deposit that exceeds P10 000 after learning that a currency transaction report will be filed on the transaction;
- (i) Customer conducts several cash deposits below P10 000 at automated teller machines;
- (j) Corporate account has deposits or withdrawals primarily in cash rather than cheques;
- (k) Customer's cash deposits often contain counterfeit notes or musty or extremely dirty notes;

- (l) Customer frequently deposits large sums of cash wrapped in currency straps stamped by other banks;
- (m) Customer makes frequent purchases of monetary instruments for cash in amounts less than P10 000; or
- (n) Customer conducts an unusual number of foreign currency conversion transactions.

Suspicious Wire Transfer Transactions

- (a) Non-account holder sends wire transfer with funds that include numerous monetary instruments of less than P10 000 each;
- (b) An incoming wire transfer has instructions to convert the funds to cashier's cheques and mail them to a non-account holder;
- (c) A wire transfer that moves large sums to secrecy havens such as the Cayman Islands, Hong Kong, Luxembourg, Panama or Switzerland;
- (d) An incoming wire transfer followed by an immediate purchase by the beneficiary of monetary instruments for payment to another party;
- (e) An increase in international wire transfer activity in an account with no history of such activity or where the stated business of the customer does not warrant it;
- (f) Customer frequently shifts purported international profits by wire transfer out of Botswana;
- (g) Customer receives many small incoming wire transfers and then orders a large outgoing wire transfer to another country; or
- (h) Account in the name of a currency exchange house receives wire transfers or cash deposits of less than P10 000.

Suspicious Safe Deposit Box Activity

- (a) Customer's activity increases in the safe deposit box area, possibly indicating the safekeeping of large amounts of cash.
- (b) Customer rents multiple safe deposit boxes.

Suspicious Activity in Credit Transactions

- (a) Customer's financial statement makes representations that do not conform to generally accepted accounting principles;
- (b) Transaction is made to appear more complicated than it needs to be by use of impressive, but nonsensical terms such as "emission rate" prime bank notes," "standby commitment," "arbitrage" or hedge contracts";
- (c) Customer requests loans to offshore companies or loans secured by obligations of offshore banks;
- (d) Customer suddenly pays off a large problem loan with no plausible explanation for the source of funds;
- (e) Customer collateralizes a loan with cash deposits;
- (f) Customer uses cash collateral located offshore to obtain a loan; or
- (g) Customer's loan proceeds are unexpectedly transferred offshore.

Suspicious Commercial Account Activity

- (a) Business customer presents financial statements noticeably different from those of similar businesses;
- (b) Large business presents financial statements that are not prepared by an accountant;
- (c) Retail business that provides cheque cashing service does not make large withdrawals of cash against cheque deposits, possibly indicating that it has another source of cash;
- (d) Customer maintains an inordinately large number of accounts for the type of business purportedly being conducted;
- (e) Corporate account shows little or no regular, periodic activity; or
- (f) Transaction includes circumstances that would cause a banker to reject a loan application because of doubts about the collateral's validity.

Suspicious Trade Financing Transactions

- (a) Customer seeks trade financing on the export or import of commodities whose stated prices are substantially more or less than those in a similar market situation;
- (b) Customer makes changes to a letter of credit beneficiary just before payment is to be made;
- (c) Customer changes the place of payment in a letter of credit to an accountant in a country other than the beneficiary's stated location; or

- (d) Customer's standby letter of credit is used as a bid or performance bond without the normal reference to an underlying project or contract, or in favour of unusual beneficiaries.

Suspicious Investment Activity

- (a) Customer uses an investment account as a pass-through vehicle to wire funds particularly to off-shore locations;
- (b) Investor seems unconcerned about the usual decisions to be made about an investment account such as fees or suitable investment vehicles;
- (c) Customer wants to liquidate a large position through a series of small transactions; or
- (d) Customer deposits cash, money order, traveller's cheques or counter cheques in amounts under P10 000 to fund an investment account.

Suspicious Deposits

- (a) Customer deposits a large number of traveller's cheques often in the same denomination and in sequence; or
- (b) Customer deposits money orders bearing unusual markings.

Miscellaneous Suspicious Customer Activity

- (a) Customer who is a student uncharacteristically transfers or exchanges large sums of money;
- (b) Account shows high velocity in the movement of funds, but maintains low beginning and ending daily balances;
- (c) Transaction includes correspondence received that is a copy rather than original letterhead;
- (d) Transaction involves offshore institutions whose names resemble those of well known legitimate banks;
- (e) Transaction involves unfamiliar countries or islands that cannot be found on a world atlas or map;
- (f) Agent, attorney or financial advisor acts for another person without proper documentation such as a power of attorney.

Suspicious Employee Activity

- (a) Employee exaggerates the credentials, background or financial ability and resources of a customer in written reports the bank requires;
- (b) Employee is frequently involved in unresolved exceptions or recurring exceptions on exception reports;
- (c) Employee lives a lavish lifestyle that can not be supported by his or her salary;
- (d) Employee frequently overrides internal controls or established approval authority or circumvents policy;
- (e) Employee uses company resources to further private interests;
- (f) Employee assists transactions where the identity of the ultimate beneficiary or counter party is undisclosed; or
- (g) Employee avoids taking vacations.

SECOND SCHEDULE
Suspicious activity report
(regulation 14)

Purpose of this Form

This form provides an effective means for a bank to notify the appropriate authorities of known, or suspected, criminal conduct or suspicious activities, that may be associated with violations of the law, that come to their notice.

Authority for making the Report

In addition to regulation 14(1) of these Regulations, this Report is made under the authority of section 17(14) and (15) of the Proceeds of Serious Crime Act. The Act provides complete protection from civil liability for any bank, its directors and its employees arising as a result of any disclosure of suspected violations of the law made by way of this Report.

Part I
Reporting Bank

Name of Bank:.....	Regulating agency: Bank of Botswana Ministry of Finance and Development Planning
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		Other (specify)
Physical address:.....		
Postal address:.....		
Address of Branch Office where activity occurred:		
Physical address:..... Postal address:.....		
Account numbers affected (if any):		
a.		
b.		

**Part II
Suspect Information**

For an individual- Last Name:.....		First Name:.....	Other Names:.....	
Occupation:.....		Phone No.: Work:..... Home:.....		
For a Company, Partnership or Other Entity - Name of Entity:				
Physical address:.....		Phone No.....		
Postal address:.....				
Identification (if known)	Omang No.	Passport No. Issuing country	Company registration No.	
	Residence permit No	Tax File No.	Other (specify)	
Relationship to Bank: Accountant Agent Lawyer Auditor Borrower Broker Customer Director Employee Officer Shareholder Other				
If the suspect is an insider, is he still affiliated with the bank?				Yes No
If No, specify:	Suspended Resigned Terminated	Date of suspension, resignation or termination:.....		

**Part III
Suspicious Activity information**

Date of suspicious activity:	Amount involved in known or suspicious activity: Pula:.....
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Summary characterization of suspicious activity:		
Bribery	Counterfeit cheque	Counterfeit credit or debit card
Money laundering	False statement	Counterfeit instrument (other)
Cheque fraud	Mortgage loan fraud	Misuse of position or self dealing
Cheque kiting	Credit or debit card fraud	Commercial fraud
Electronic transfer fraud	Defalcation or embezzlement	Other (specify)
Amount of loss prior to recovery (if applicable): Pula:.....		Amount of recovery (if applicable) Pula:.....
Has the suspicious activity had a material impact on the financial soundness of the institution? No		Yes
If any law enforcement agency has already been advised, please list the agency, address and contact person:		
Agency Physical address:..... Postal address:.....		
Contact Person:.....	Phone No:.....	

**Part IV
Witness Information**

Last Name:.....	First Name:.....	Other Names:.....
Physical address:.....		Phone No: Work:..... Home:.....
Postal address:.....		

**Part V
Person preparing this Report**

Last Name:.....	First Name:.....	Other Names:.....
Title:.....	Phone No: Work:..... Home:.....	Date:.....

**Part VI
Contact for Assistance (if different from person named in Part V)**

Last Name:.....	First Name:.....	Other Names:.....
Title:.....		Date:.....

Part VII

Description of Suspicious Activity

This section of the report is critical. The care with which it is written may make the difference in whether or not the described conduct, and its possible criminal nature, are clearly understood. Please provide on the next page an account of the possible violation of law, including what is unusual, irregular or suspicious about the transaction. Use the following check list as a guide.

- (1) Explain who benefited from the transaction, how, and by how much. Indicate whether currency or monetary instruments were involved.
- (2) Indicate where the possible violation took place.
- (3) Indicate whether the transaction is an isolated incident or involves other transactions.
- (4) Is there any related litigation? If so, explain the nature of the litigation.
- (5) Describe any supporting documentation, including any explanation of the transaction given by the suspect (or anybody else) and indicate to whom and when it was given. Retain any supporting documentation.
- (6) Retain any evidence of a cover-up or attempt to deceive auditors or investigators.
- (7) Recommend any further investigation that might assist law enforcement authorities.

INSTRUCTIONS

WHO SHOULD COMPLETE THE FORM

All banks operating in Botswana (including banks, credit unions, building societies, insurance and assurance companies, fund managers, stock brokers, and foreign exchange dealers) are required to make this report following discovery of suspicious activity that is suspected of being associated with violations of the law in the categories listed below -

(a) Inside abuse

A report should be made whenever the bank detects any known or suspected criminal violation, committed against that bank or involving a transaction conducted through that bank, where the bank has a substantial basis for identifying one of its directors, officers, employees, or agents as having committed, or aided in the commission of a criminal act.

(b) Transactions aggregating P10,000 or more that involve potential money laundering

A report should be made whenever the bank becomes aware of a transaction, or series of transactions, aggregating P10,000 or more, that it knows or suspects may be in the categories listed below -

- (i) the transaction involves funds derived from illegal activities or is intended to hide or disguise funds or assets derived from illegal activities (including the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate any law or regulation; or
- (ii) the transaction has no business Or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of reasonable explanation of the transaction after examining the available facts, including the background and possible purpose of the transaction.

(c) Other suspect transactions aggregating P 20,000 or more

A report should be made whenever the bank becomes aware of any other transaction (or series of transactions), aggregating P 20,000 or more, that it knows or suspects may be associated with any actual or potential violation of any law or regulation. A report should be made regardless of whether a suspect can be identified and regardless of whether the bank has suffered actual or potential loss.

NOTIFICATION PROHIBITED

The law requires that a bank, and its directors, officers, employees and agents, who complete a suspicious activity, report, should not notify any person involved in the transaction that the transaction has been reported.

HOW TO MAKE A REPORT

Send each completed suspicious activity report to:
Directorate on Corruption and Economic Crime
Private Bag 00344
GABORONE
cc: Director

**Banking Supervision Department
Bank of Botswana
Private Bag 154
GABORONE**

Do not include supporting documentation with the suspicious activity report. Retain a copy of the report and all supporting documentation for 5 years. All supporting documentation must be made available to appropriate authorities upon request.

In cases requiring immediate attention, such as when a violation is in progress, the bank should notify the Directorate on Corruption and Economic Crime by telephone on 0800 700 100 (free call).