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No 15

Central Bank Acts
of
Botswana, Kenya, Lesotho, South Africa,
Swaziland, Tanzania, Zambia, Zimbabwe,
and the Federal Republic of Germany

Materials to Working Document No 14

compiled by

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Preface

Following the Namlaw workshop, held at the Faculty of Law of the University of Zimbabwe,¹ the Namlaw Project set out on the task of preparing a comparative study of the Central Bank Laws of various countries. The aim of the study was to provide some guidelines in drafting a Central Bank Act² for Namibia after independence.

The laws of nine countries were chosen for purposes of this study. The choices were made on the basis of various considerations. In some cases the countries are similarly situated as or closely linked to Namibia. In other cases the view was that certain aspects of the countries' laws might be useful in Namibia even though the countries chosen do not have either similarity or particular ties or even proximity to Namibia.

The Central Bank Acts of Botswana, Swaziland and Lesotho were chosen because these countries are - or used to be - members of the "Rand Monetary Zone". The Reserve Bank of Zimbabwe Act and the Statute of Zambia were chosen because these countries play a specific role in the Frontline family and in their efforts to overcome the dependency on South Africa. The Tanzanian and Kenyan Statutes which are similar even though the two East African states have different economic systems were taken into account; it was the considered opinion that the laws may be useful in the Namibian situation. Reference was made to the West-German Statute as this statute contains provisions which could serve as guides in developing the structure and role of financial institutions. The Reserve Bank of South Africa was also considered because the South African law has been applying in Namibia. The use of the laws of the German Democratic Republic, and those of Yugoslavia were considered; but unfortunately the statutes of these countries were not available in English.

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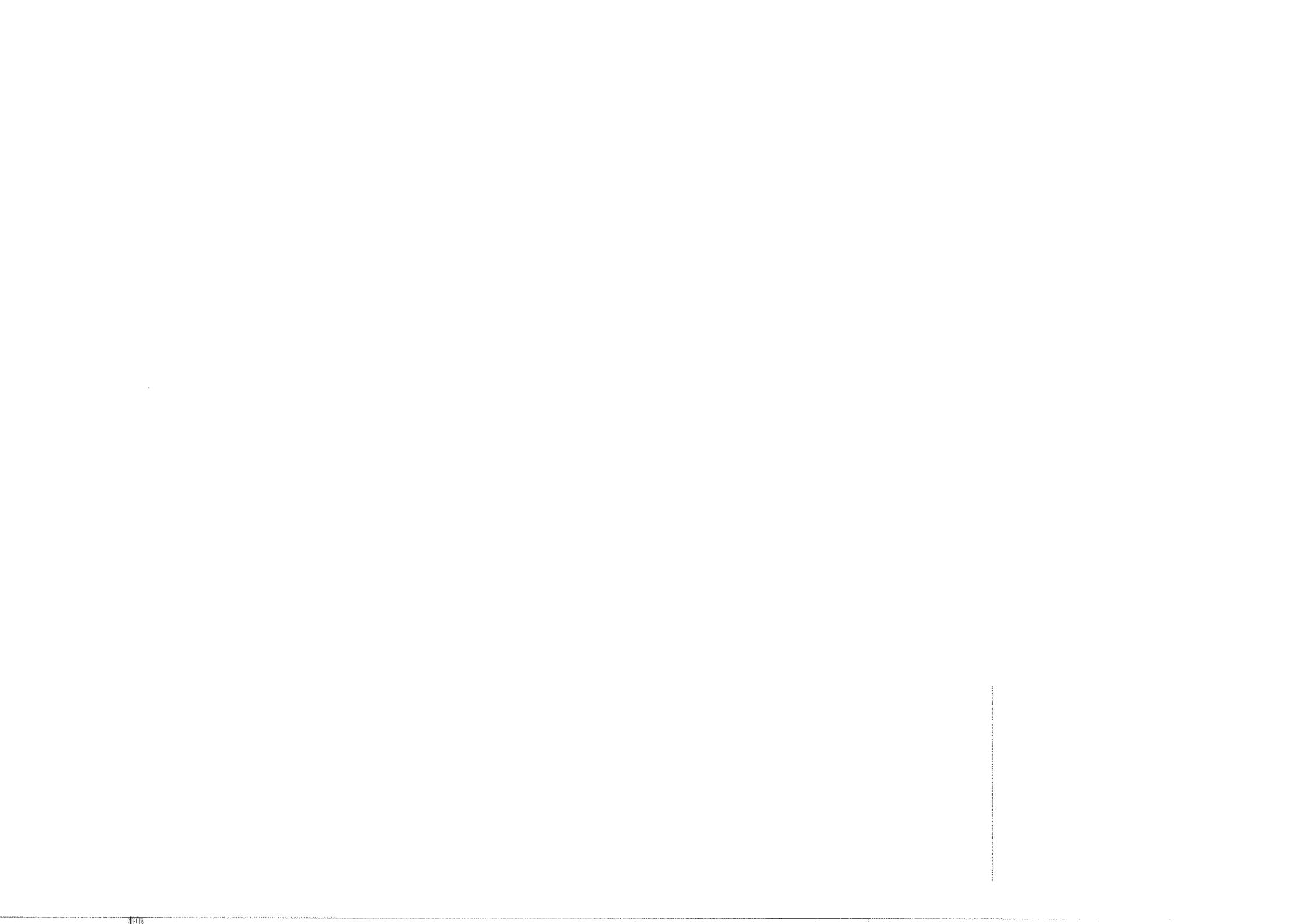
1 H Streitberger (compiler), Namlaw Project Workshop, Harare 28 - 30 June 1988. Documentation, Part I (Namibia Papers. Working Documents No 5. Bremen 1988)

2 The reference here is to the "possible policy guidelines" for the "formulation and implementation of sound monetary and fiscal policies". The need for such guidelines was pointed out in the comprehensive study on Namibia by the United Nations Institute for Namibia. See United Nations Institute for Namibia, Namibia: Perspectives for National Reconstruction and Development. Lusaka 1986:692ff

Bremen, June 1989

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Central Bank Acts
of
Botswana, Kenya, Lesotho, South-Africa,
Swaziland, Tanzania, Zambia, Zimbabwe,
and the Federal Republic of Germany

Materials to Working Document No 14

BOTSWANA:

Bank of Botswana Act

BANK OF BOTSWANA ACT, 1975

Supplement A --- Botswana Government Gazette dated 2nd May, 1975

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

Date of Assent: 22.4.75

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana.

PART I. *Preliminary*

1. This Act may be cited as the Bank of Botswana Act, 1975, and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint:

Short title
and
commencement

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

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

Inter-
pretation

“Bank” means the Bank of Botswana established under section 3;

“Board” means the board of the Bank established under section 8;

“Deputy Governor” means the Deputy Governor of the Bank appointed under section 10;

“financial institution” and “licensed” shall have the same meanings ascribed thereto under the Financial Institutions Act, 1975;

“Governor” means the Governor of the Bank appointed under section 10;

“member” means a member of the Board and includes the Governor;

“previous currency” means notes and coins which are legal tender in Botswana up to the date appointed under section 23 (2);

PART II. *Establishment, Constitution and Objects*

3. (1) There is hereby established a Bank, to be known as the Establishment 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 objects 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.

4. (1) The principal objects of the Bank shall be –

- (a) to promote and maintain internal and external 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) to foster monetary, credit and financial conditions conducive to the orderly, balanced and sustained economic development of Botswana; and
- (c) to assist, insofar as it is not inconsistent with the objects as set out in paragraphs (a) and (b), in the attainment of national economic goals.

Principal
objects of
Bank

(2) In the attainment of the objects 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*

5. (1) The authorized capital of the Bank shall be R5 000 000. Capital

(2) Government shall subscribe to the capital of the Bank in the following manner —

(a) after the establishment of the Bank, by the payment by Government to the Bank of an amount not to exceed R500 000, which shall be charged on and paid from the Development Fund, in such instalments as the Bank may request;

(b) by the transfer and vesting by Government to and in the Bank assets, in the case of land, at the valuation placed thereon by agreement between the Minister and the Bank, and, in the case of other property, valued at their cost to Government; and

(c) an amount representing the difference between the authorized capital and the total value of monies and assets paid, transferred and vested under paragraphs (a) and (b), which amount shall be charged on and paid from the Consolidated Fund and paid by Government to the Bank in such instalments as may from time to time be proposed by the Board and approved by the Minister.

(3) 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 subject to any encumbrance whatsoever.

(4) Whenever the assets of the Bank are less than the sum of its liabilities and the capital paid up under subsection (2), 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 securities issued by the Government from time to time 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.

6. The net profits of the Bank for any financial year shall be profits determined by the Bank after meeting all current expenditure for such year and after making provision for —

- (a) bad and doubtful debts and depreciation of assets;
- (b) pensions, gratuities and other benefits for its officers and employees; and
- (c) such other items as the Board may deem necessary.

7. (1) The Bank shall establish a General Reserve to which shall be transferred in respect of each financial year of the Bank 50% of its net profits, for such year whenever the balance therein is less than the Bank's capital paid in under section 5 (2), and thereafter 25% of such profits until the balance therein is equal to the Bank's authorized capital, and thereafter 10% of such profits.

(2) After transfer has been made to the General Reserve under subsection (1), the balance of the net profits for the financial year shall be applied to the redemption on behalf of Government of any securities issued and outstanding under section 5 (4) or 34 (2).

(3) After all transfers under subsections (1) and (2) have been made, the balance of the net profits for the financial year shall be paid to Government.

(4) The General Reserve established under subsection (1) may only be used to offset depreciation and losses, and no transfer under subsection (1) or (2) shall be required to be made, nor shall any payment under subsection (3) be made if, in the opinion of the Board, the assets of the Bank, excluding the Bank's holdings of any securities issued under sections 5 (4) and 34 (2), are, or after such transfer of payment would be, less than the sum of its liabilities and capital.

PART IV. Board, Management and Staff

8. (1) There shall be a Board of the Bank, constituted in accordance with section 9, in which the powers of the Bank 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.

9. (1) The Board shall consist of the Governor, who shall be chairman, and four other members appointed in accordance with section 11.

(2) The Deputy Governor shall be entitled to attend all meetings of the Board but shall have no vote except when acting as chairman or unless he shall have been appointed a member under section 11.

10. (1) The Governor and the Deputy Governor shall be persons of recognized experience in financial matters, and shall be appointed by the President, in the case of the Governor, for a term of five years, and in the case of the Deputy Governor, for a term not exceeding five years, and they shall be eligible for re-appointment.

Establishment and powers of Board

Membership of Board

Governor and Deputy Governor

(2) Subject to the provisions of this Act, the Governor and the Deputy Governor shall be appointed on such terms and conditions as may be set out in their letters of appointment, which terms and conditions shall not, during their term of appointment, be altered to their disadvantage.

(3) The Governor shall serve as chief executive officer of the Bank responsible to the Board for the execution of its policy and, on behalf of the Board, shall have the direction and control of the business of the Bank with authority to act in connexion with the conduct of the business of the Bank in all matters that are not, by this Act or by the bye-laws of the Bank, specifically reserved to be done by the Board, and, with the approval of the Board, may delegate these powers to other officers of the Bank.

(4) The Deputy Governor shall exercise such powers and carry out such duties as may be delegated or assigned him by the Governor and, in the absence of the Governor, shall act as Governor.

(5) While holding office, the Governor and the Deputy Governor shall devote the whole of their professional services to the Bank, and shall not, without the written approval of the Minister, receive any salary or supplement thereto from any source other than the Bank or occupy any other office or employment, whether remunerated or not, except as nominee of the Bank:

Provided that the Governor or the Deputy Governor may serve on any board, committee or commission established by Government, or become Governor, director or member of the board of any other body or any international financial organization of which Botswana is a member.

11. (1) The members, other than the Governor, shall be appointed by the Minister from among persons of recognized standing and experience in business, professional or academic matters.

Other members of Board

(2) Of the members appointed under subsection (1), two shall not be public officers or persons serving as consultants or advisers to Government or persons acting in a similar capacity.

(3) The members appointed under this section 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.

12. No person shall be appointed as Governor, Deputy Governor, or other member who is —

- (a) a member of the National Assembly;
- (b) a director, officer, employee or owner of, or shareholder in, any financial institution, except as nominee of Government; or
- (c) a minor or other person under legal disability.

13. (1) The appointment of a Governor, Deputy Governor or other member who —

Disqualification and removal from office

- (a) becomes subject to any of the disqualifications set out in section 12;
- (b) whether in Botswana or elsewhere, becomes an insolvent or has been declared bankrupt and has not been rehabilitated;
- (c) whether in Botswana or elsewhere, has been convicted of an offence for which he could have been sentenced to imprisonment without the option of a fine; or

(d) has, in the case of a person possessed of professional qualifications, been disqualified or suspended (other than at his own request) from practising his profession by the order of any competent authority made in respect of him personally by reason of his misconduct, shall terminate forthwith.

(2) A person holding the office of Governor, Deputy Governor or other member may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with this section.

(3) If the President considers that the question of removing the Governor, the Deputy Governor or member from office ought to be investigated, he shall appoint a tribunal, which shall consist of a chairman, who holds or has held high judicial office; and not less than two other persons, which shall enquire into the matter and report on the facts thereof to the President, and advise the President on whether such Governor, Deputy Governor or member ought to be removed from office under this section.

(4) Where a tribunal appointed under subsection (3) advises the President that such person ought to be removed from office, the President shall remove such person from office.

(5) If the question of removing a person from office has been referred to a tribunal under this section, the President may suspend that person from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal advises the President that such person ought not to be removed from office.

14. The Governor or Deputy Governor may resign his office on giving not less than three months' notice in writing to the President and the other members may resign their respective offices on giving not less than one month's notice in writing to the Minister. *Resignation*

15. If any member dies or resigns or 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 10 or 11, as the case may be, for the remaining period of such first-mentioned member's term. *Vacancy*

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

(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 notice shall be required.

(3) A quorum at any meeting shall consist of three members, including the chairman, and at least one member referred to in section 11 (2).

17. (1) All appointments of officers and employees of the Bank shall be only to positions created by or pursuant to decisions of the Board and at such remuneration and on such other terms and conditions as shall be prescribed by the Board. *Appointment of officers, employees, agents and correspondents*

(2) All appointments of agents and correspondents of the Bank shall be made pursuant to decisions of the Board.

(3) No salary, fee, wage or other remuneration, or allowances paid by the Bank shall be computed by reference to the net or other profits of the Bank.

18. (1) No member appointed under section 11 shall act as *Conflicts of interest* 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 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 a consideration by the Board, and shall refrain from voting thereon:

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

(3) 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.

(4) Any person who contravenes any of the provisions of this section shall be guilty of an offence and liable on conviction to a fine of R5 000 and to imprisonment for five years.

19. (1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required so to do 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 55 (1), shall disclose to any person any information relating to the affairs of the Bank or of any financial institution or other person which he has acquired in the performance of his duties or the exercise of his functions. *Secrecy*

(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 liable to a fine of R5 000 and to imprisonment for five years.

(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 liable to a fine of R20.

PART V. Monetary Unit, Notes and Coins

20. (1) With effect from a date to be appointed by the Minister *Monetary unit* in consultation with the Bank, notice of which shall be published in the Gazette and communicated to the public in such other manner as the Minister may determine, 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 appointed under subsection (1), any reference to an amount of money expressed in terms of previous currency 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 in agreement with the Minister for this purpose, notice of which shall be published in the Gazette and communicated to the public in such other manner as the Minister may determine.

(3) On a date before the date appointed under subsection (1), the Bank shall, in agreement with the Minister, declare the official rate referred to in subsection (2).

Provided that the Minister may, by notice published in the Gazette, specify a period during which the previous currency may continue to circulate alone or jointly with the Pula.

21. (1) The par value of the Pula and any change or suspension Parity thereof may be declared by the President, on the recommendation of the Minister after consultation with the Bank.

(2) Notice of the par value of the Pula and any change or suspension thereof shall be published in the Gazette and communicated to the public in such other manner as the Minister may determine.

22. (1) The Bank shall have the sole right to issue notes and coins Sole right to issue notes and coins denominated in Pula and Thebe.

(2) No person other than 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 contravening subsection (2) shall be guilty of an offence and liable to imprisonment for seven years.

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

- (a) in the case of notes or gold coins, for the payment of any amount;
- (b) in the case of other coins, for the payment of an amount not exceeding P10 but for no greater amount.

(2) The Minister shall, by notice published in the Gazette and communicated to the public in such other manner as he may determine, appoint a date, being a date not earlier than the date appointed under section 20 (1), on which the previous currency shall cease to be legal tender and become foreign currency.

(3) For the avoidance of doubt it is hereby expressly declared that, in the event of the date appointed under subsection (2) being after the date appointed under section 20 (1), the Pula and the previous currency may, during the intervening period, circulate together and both shall be legal tender.

(4) The Minister may, by notice published in the Gazette prior to the date appointed under subsection (2), specify a period within which the previous currency may continue to circulate subject to such conditions and for such purposes as may be specified in such notice.

24. (1) The Bank shall arrange for the printing of notes and the manufacture and characteristics of notes and coins
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 notes and 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.

25. The Bank may, on giving not less than three months' notice 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 and coins shall, on the expiry of such notice and notwithstanding section 23, cease to be legal tender; Power of recall

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.

26. (1) Upon surrender by any person to the Bank or to any agent authorized 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; Exchange of notes and coins

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, save 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 and published in the Gazette.

27. Any person who, without the permission of the Bank, wilfully — Penality for mutilation of notes

(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 liable on conviction to a fine of R500 and to imprisonment for six months.

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; Recovery of lost or stolen 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.

29. A certificate signed by a duly authorized 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.

Certificates
in respect of
counterfeit
currency

PART VI. *International Reserve, Foreign Exchange Operations and Special Reserve Account*

30. The Bank shall establish and maintain, on such terms and conditions as the Board may from time to time determine, an international reserve which shall consist of all or any of the following –

International
reserve

- (a) gold;
- (b) foreign exchange in the form of notes and coins or bank balances held abroad, denominated in such currencies and located in such countries as the Board may, for the purposes of this section, approve;
- (c) any internationally recognized reserve asset, including –
 - (i) the ability of Botswana to make a gold tranche purchase in the General Account of the International Monetary Fund;
 - (ii) Botswana's holdings of special drawing rights;
- (d) bills of exchange and promissory notes denominated in such foreign currencies and payable in such currencies and in such places outside Botswana as the Board may, for the purposes of this section, approve;
- (e) treasury bills and other securities denominated in foreign currencies issued or guaranteed by such foreign governments, denominated in such currencies and payable in such places as the Board may, for the purposes of this section, approve;
- (f) securities issued or guaranteed by international financial institutions specified from time to time by the Board for the purposes of this section; and
- (g) such other assets as the Board, with the agreement of the Minister, may, for the purposes of this section, approve.

31. (1) The Bank shall use its best endeavours to maintain the adequacy of international reserve established under section 30 at a level which is, in its opinion, adequate for the international transactions of Botswana.

Adequacy of
international
reserve

(2) If such international reserve has declined or, in the opinion of the Bank, appears to be in danger of declining to such extent as to jeopardize its adequacy, the Bank 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 it considers necessary to forestall or otherwise remedy the situation.

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

32. (1) The Bank may, subject to such terms and conditions as may from time to time be determined by the Board, –

Operations
in gold and
foreign
exchange

- (a) buy, sell or deal in, gold coins or bullion or other precious metals;

- (b) buy, sell or deal in, foreign currencies using for these purposes any of the instruments commonly used in such transactions;
- (c) buy, sell or deal in, treasury bills and other securities issued or guaranteed by foreign governments or international financial organizations;

- (d) open and maintain accounts with international financial organizations, central banks, monetary authorities and financial organizations outside Botswana;

- (e) open and maintain accounts and act as agent or correspondent for international financial organizations, central banks, monetary authorities and financial organizations outside Botswana, and foreign governments and their agencies.

(2) The Bank shall, from time to time, determine the rates at which it will buy, sell or deal in gold and foreign currencies:

Provided that such rates shall be determined with due regard to the obligations which Botswana has assumed in accordance with the provisions of any international monetary agreement to which it is a party or to which it has adhered.

33. The Bank shall, in connexion with the operations enumerated in section 32, deal only with Government, licensed financial institutions, foreign governments and their agencies, international financial organizations, central banks, monetary authorities and financial organizations outside Botswana:

Provided that, with the approval of the Minister, the Bank may deal with any other person on such terms and conditions as the Board may determine.

34. (1) Any net gains in any financial year of the Bank arising from any change in the valuation of the Bank's assets or liabilities in, or denominated in, gold, special drawing rights or foreign currencies as a result of any change in the values, parities or exchange rates of gold, special drawing rights or foreign currencies in terms of Pula, shall be credited to a special reserve account.

(2) Any net losses in any financial year of the Bank arising from any such change shall be set off against any credit balance in the special reserve account and, notwithstanding the provisions of any other written law, if such balance is insufficient to cover such losses, Government shall cause to be transferred to the ownership of the Bank non-negotiable non-interest bearing securities issued by Government to the extent of the deficiency, which securities shall be a charge on the Consolidated Fund.

(3) Neither net gains referred to in subsection (1) nor net losses referred to in subsection (2) shall be included in the computation of the annual net profits of the Bank.

(4) Any credit balance in the special reserve account at the end of each financial year of the Bank shall be applied first, on behalf of Government, to the redemption of all securities issued and outstanding under subsection (2) or section 5 (5), and one-fifth of any remaining balance shall be paid to the Consolidated Fund:

Provided that, if the remaining balance does not exceed R10 000, it shall be paid in full to the Consolidated Fund.

(5) No credits or debits shall be made to the special reserve account except in accordance with this section or section 7 (2).

PART VII. Relations with Financial Institutions

35. The Bank may open accounts for, and accept deposits from financial institutions, under such terms and conditions as the Board may from time to time determine, and may open accounts for, and accept deposits from, such other persons as may be approved by the Minister for this purpose.

36. (1) For the purpose 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;

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

(a) secured by –

- (i) instruments specified in paragraph (a) or (b) 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 32; 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 an advance is exceptionally necessary to meet the liquidity requirements of the borrower.

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

38. (1) The Bank may, from time to time, require, by publication in the Gazette and by written notice to the principal place of business in Botswana of each financial institution, 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.

(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.

Opening accounts for financial institutions

Operations with account holders

Determination of rates for discounts and advances

Required reserves of banks and other financial institutions

(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% 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 thirty 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 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 other 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 per cent per day on the amount of deficiency in such institution's primary reserves until the deficiency is corrected.

39. (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 –

- Regulation of interest and credit
- (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 thirty 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 liable on conviction to a fine of R5 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 liable -

(aa) in respect of an offence under subparagraph (a) or (b), to a fine of R5 000;

(bb) in respect of an offence under subparagraph (c), to a fine of R500 for every day during which such offence has continued.

40. The Bank may from time to time determine the maximum amount which financial institutions may hold in foreign currencies generally or in any specified currency or currencies.

Maximum amounts in foreign currencies

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

Clearing facilities

PART VIII. Relations with Government

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

Banker,
fiscal agent
of and
adviser to
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 purposes of the Bank and concerning any matter which, in its opinion, is likely to affect the achievement of the purposes of the Bank.

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

Bank
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) The Bank shall receive from Government, and disburse on its behalf, Government monies 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.

44. 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.

Management
of
Government
securities

45. 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.

Agency
functions

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

Banker and
fiscal agent to
Government
boards and
agencies

47. Prior to any borrowing from a source other than the Bank, Government and every statutory or wholly-owned Government 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.

Borrowings
by
Government
and public
bodies, etc.

48. (1) 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.

Advances to
Government

(2) Notwithstanding the provisions of subsection (1), the Bank may grant to Government advances on such terms and conditions as may be agreed in respect of subscriptions and other payments resulting from, or incidental to, the membership of Botswana in any international bank or international monetary authority established under governmental auspices, the participation of Botswana in any account thereof and any transactions and operations in connexion therewith.

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

Transactions
in
Government
securities

50. (1) Except in accordance with sections 5 (4), 34 (2), 36, 48, 49 and 57 (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 agency, or local authority.

Limitation
on lending to
Government

(2) Except as provided in subsection (4), the total of outstanding advances and credit facilities granted by the Bank in accordance with sections 36 (3) and 48 (1) and the Bank's holdings of securities purchased in accordance with section 49 shall at no time exceed 20% 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

53. (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 objects of the Bank set out in section 4, the Minister shall 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 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 fifteen 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 and Statements

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

55. (1) The accounts of the Bank shall be audited by auditors approved by the Minister and appointed annually by the Board.

(2) 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.

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

- (a) a copy of the annual accounts 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 thirty days after their receipt, cause a copy of the annual accounts 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

57. (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;
- (b) acquire by purchase, lease or otherwise any real right in or to immovable property except so far as the Bank shall consider necessary or expedient for the provision of premises for the conduct of its business and for the housing of its staff and similar requirements incidental to the performance of its functions under the provisions of this Act;

Policy directives by President

investment or undertaking by Government from any of its subdivisions or institutions, government agencies, statutory or wholly-owned Government 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) shall threaten 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 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 forthwith shall 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 10% 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 fifteen 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.

51. (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.

Agent for the administration of exchange control

(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.

52. 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.

Depository and fiscal agency for international financial organizations

- (c) make unsecured advances except as provided in section 36 (3) (b) or in subsection (4);
- (d) make advances secured otherwise than as set forth in this Act;
- (e) except as provided in section 36 (3) (b) or in subsection (2), accept shares as security.

(2) Nothing in this section shall prevent the acquisition by the Bank in the course of satisfaction of debts due to it of 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.

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

Bank may call for information

(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 liable to a fine of R5 000 and to imprisonment for two years.

59. The Bank shall not be subject to any of the provisions applicable to financial institutions under the Financial Institutions Act, Exemption from Financial Institutions Act, 1975.

Exemption from Financial Institutions Act, 1975.

60. (1) The Bank shall be exempt from the payment of any taxes, levies and duties other than —

Exemption from taxes, etc.

(a) duties leviable under the Customs, Excise and Sales Duty Act, 1970; and

Act, 1970.

(b) rates levied under the Town Council Regulations, 1966, L.N. 37 of 1966 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.

(2) Part I of the Second Schedule to the Income Tax Act is Cap. 32:01 amended by inserting at the end thereof the new item following —

"(xiii) the Bank of Botswana."

61. 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.

PART XI. *Repeal*

62. The Currency Act is repealed with effect from the date appointed by the Minister under section 23 (2). Repeal of Cap. 34:02

Passed by the National Assembly this 3rd day of April, 1975.

I.P. GONTSE,
Clerk of the National Assembly.

BANK OF BOTSWANA (AMENDMENT) ACT, 1987

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 4 of Cap 74:07
3. Amendment of section 7 of the principal Act
4. Amendment of section 9 of the principal Act
5. Amendment of section 11 of the principal Act
6. Amendment of section 16 of the principal Act
7. Substitution of section 21 of the principal Act
8. Substitution of section 25 of the principal Act
9. Amendment of section 30 of the principal Act
10. Amendment of section 32 of the principal Act
11. Substitution of section 34 of the principal Act
12. Amendment of section 38 of the principal Act
13. Substitution of section 40 of the principal Act
14. Amendment of section 47 of the principal Act

An Act to amend the Bank of Botswana Act

Date of Assent: 22.7.87

Date of Commencement: 31.7.87

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Bank of Botswana (Amendment) Act, 1987.

2. Paragraph (c) of subsection (1) of section 4 of the Bank of Botswana Act (hereinafter referred to as "the principal Act") is amended by the interpolation after the word "economic" appearing therein of the words "and development".

3. Subsection (1) of section 7 of the principal Act is amended by the substitution for the figure "10%" appearing therein of the figure "5%".

4. Subsection (1) of section 9 of the principal Act is amended by the substitution for the word "four" appearing therein of the word "six".

5. Section 11 of the principal Act is amended by —

(a) the substitution for subsection (1) thereof of the following new subsection —

"(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 recognised standing and experience in business, professional or academic matters";

(b) the substitution for the word "two" appearing in subsection (2) thereof of the word "three".

6. Subsection (3) of section 16 is amended by the substitution for the word "three" appearing therein of the word "four".

7. Section 21 of the principal Act is substituted by the following new section —

"21. The manner in which the external value of the Pula is to be calculated shall be determined by the President on the recommendation of the Minister made after consultation with the Bank".

Short title

Amendment
of section 4
of Cap. 74:07

Amendment
of
section 7
of the
principal
Act

Amendment
of
section 9
of the
principal
Act

Amendment
of
section 11
of the
principal
Act

Amendment
of
section 16
of the
principal
Act

Substitution
of
section 21
of the
principal
Act

8. Section 25 of the principal Act is substituted by the following new section —

"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."

9. Paragraph (c) of section 30 is hereby substituted by the following new paragraph —

"(c) any internationally recognised reserve asset, including —

(i) the reserve tranche position of Botswana in the General Department of the International Monetary Fund,

(ii) Botswana's holdings of special drawing rights.".

10. Subsection (2) of section 32 of the principal Act is substituted by the following new subsection —

"(2) The Bank shall, from time to time determine the rates at which it will buy, sell or deal in gold and foreign currencies in conformity with the policy on the external value of the Pula as determined by the President under section 21:

Provided that such rates shall be determined with due regard to the obligations which Botswana has assumed in accordance with the provisions of any international monetary agreement to which it is a party or to which it has adhered."

11. Section 34 of the principal Act is substituted by the following new section —

"34. (1) Any net gains in any financial year of the Bank arising from any change in the valuation of the Bank's external assets or liabilities in, or denominated in, gold, special drawing rights or foreign currencies in terms of Pula shall be credited to a revaluation reserve account.

(2) Any net losses in any financial year of the Bank arising from any such change shall be set off against any credit balance in the revaluation reserve account and, notwithstanding the provisions of any other written law, if such balance is insufficient to cover such losses, Government shall cause to be transferred to the ownership of the Bank non-negotiable non-interest bearing securities issued by Government to the extent of the deficiency, which securities shall be a charge on the Consolidated Fund.

(3) Neither net gains referred to in subsection (1) nor net losses referred to a subsection (2) shall be included in the computation of the annual net profit of the Bank.

Substitution
of
section 25
of the
principal
Act

Amendment
of
section 30
of the
principal
Act

Amendment
of
section 32
of the
principal
Act

Substitution
of
section 34
of the
principal
Act

(4) Any credit balances in the revaluation reserve account at the end of each financial year of the Bank shall be applied first, on behalf of Government, to the redemption of all securities, issued and outstanding under subsection (2) or section 5 (4), and one-tenth of any remaining balance shall be paid to the Consolidated Fund:

Provided that if the remaining balance does not exceed P10 000, it shall be paid in full to the Consolidated Fund.

(5) No credits or debits shall be made to the revaluation reserve account except in accordance with this section or section 7 (2).".

12. Subsection (1) of section 38 of the principal Act is amended by the addition thereto of the following proviso —

"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.".

13. Section 40 of the principal Act is substituted by the following new section —

"40. The Bank may from time to time determine the maximum amount which financial institutions may hold or maximum indebtedness which they may incur in foreign currencies generally or in any specified currency or currencies.".

14. Section 47 of the principal Act is amended by the addition of the following proviso thereto —

"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.".

Amendment
of
section 38
of the
principal
Act

Substitution
of
section 40
of the
principal
Act

Amendment
of
section 47
of the
principal
Act

PASSED by the National Assembly this 19th day of June, 1987.

C.G. MOKOBI,
Clerk of the National Assembly.