

CHAPTER 55:01
BANK OF BOTSWANA

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Act 19, 1996,

Act 19, 1999.

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

[Date of Commencement: 1st January, 1997]

PART I

Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Bank of Botswana Act, 1996.

2. Interpretation

In this Act, unless the context otherwise requires-

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

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

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

"financial institution", "bank" and "licensed" shall have the same meanings ascribed

thereto under the Banking Act;

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

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

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

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

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

PART II

Establishment, Constitution and Objectives (ss 3-4)

3. Establishment of central bank

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

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

4. Principal objectives of Bank

(1) The principal objectives of the Bank shall be-

- (a) first and foremost to promote and maintain monetary stability, an efficient payments mechanism and the liquidity, solvency and proper functioning of a soundly based monetary, credit and financial system in Botswana;
- (b) secondly, in so far as it is not inconsistent with the objectives set out in paragraph (a), to foster monetary, credit and financial conditions conducive to the orderly, balanced and sustained economic development of Botswana; and
- (c) thirdly, to assist insofar as it is not inconsistent with the objectives as set out in paragraphs (a) and (b), in the attainment of national economic development goals.

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

PART III

Capital, Profits and Reserves (ss 5-7)

5. Capital

(1) The authorized capital of the Bank shall be P25 000, 000.

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

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

6. Profits

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

- (a) meeting all expenses for such year;
- (b) making provision for bad and doubtful debts;
- (c) making provision for depreciation of physical assets;
- (d) making provision for pensions, gratuities and other benefits for its officers and employees;
- (e) making provision for such other items as the Board may deem necessary;
- (f) making good the issued capital and General Reserve balances; and
- (g) deducting any amounts due and payable to the Bank by the Government.

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

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

7. General Reserve

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

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

which it maintains.

PART IV

Board, Management and Staff (ss 8-19)

8. Establishment and powers of Board

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

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

9. Membership of Board

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

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

10. Other members of Board

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

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

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

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

11. Vacancy

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

12. Meetings and quorum of Board

(1) The Board shall meet as often as the business of the Bank may require but not less

frequently than once in each quarter of the year.

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

(3) A quorum at any meeting shall consist of 50 per cent of the members excluding the chairman.

13. Governor and Deputy Governors

(1) The President shall appoint a Governor of the Bank and such number of Deputy Governors as he may consider necessary.

(2) The Governor and the Deputy Governors, who shall be persons of recognized experience in financial matters, shall be appointed for a term not exceeding five years, and shall be eligible for re-appointment.

(3) Subject to the provisions of this Act, the Governor and the Deputy Governors 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.

(4) The Governor shall serve as the chief executive officer of the Bank responsible to the Board for the execution of its policies and, on behalf of the Board, shall have the direction and control of the business of the Bank with authority to act in connection 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.

(5) The Deputy Governors shall exercise such powers and carry out such duties as may be delegated or assigned to them by the Governor.

(6) In the event of the Governor having to be absent from his office for a period exceeding 14 days, he shall recommend, to the Minister, which of the Deputy Governors shall act in his absence; and where the Governor is away from his office for less than 14 days, he shall appoint one of the Deputy Governors to act as Governor in his absence and shall promptly notify the Minister thereof.

(7) While holding office, the Governor and the Deputy Governors 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 a nominee of the Bank:

Provided that the Governor or Deputy Governors 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.

14. Ineligibility

(1) No person, while-

- (a) a member of the National Assembly; or
- (b) a director, officer, employee or owner of, or shareholder in, any financial institution, except as an appointee of Government,

shall assume the office of Governor, Deputy Governor or other member.

(2) No minor or other person under a legal disability shall be appointed as Governor, Deputy Governor or other member.

15. Disqualification and removal from office

(1) The appointment of a Governor, Deputy Governor or other member who-

- (a) becomes subject to any of the disqualifications set out in section 14;
- (b) whether in Botswana or elsewhere, becomes 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 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 gross misconduct and shall not be so removed except in accordance with this section.

(3) If the President considers that the question of removing the Governor, a 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, one of whom shall have expertise in banking or financial matters, 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.

16. Resignation

The Governor or Deputy Governors may resign their 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.

17. Appointment of officers, employees, agents and correspondents

(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.

(2) All appointments of agents and correspondents of the Bank shall be made pursuant to the policies 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. Conflicts of interest

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

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

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

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

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

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

exceeding five years, or to both.

19. Secrecy

(1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court of competent jurisdiction or under any written law, or when so required or authorized by the Board, no member, officer or employee of the Bank, or auditor appointed under section 67(1), shall disclose to any person any information relating to the affairs of the Bank or of any bank, financial institution, business or other person which he has acquired in the performance of his duties or the exercise of his functions.

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

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

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

PART V

Monetary Unit, Notes and Coins (ss 20-29)

20. Monetary unit

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

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

- (a) written law of Botswana, including any instrument having effect by virtue of an Act; or
- (b) contract, agreement, sale, payment, bill, note, instrument, and security for money, and any transaction, dealing, matter and thing whatever relating to money, or involving the payment of or the liability to pay any money, existing as of the aforesaid date and which is to be executed or discharged in Botswana,

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

21. Exchange rate

The framework for determining the external value of the Pula shall be determined by the

President on the recommendation of the Minister after consultation with the Bank.

22. Sole right to issue notes and coins

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

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

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

23. Notes and coins to be legal tender

Notes and coins issued by the Bank shall be legal tender within Botswana and shall be valid-

- (a) in the case of notes, for the payment of any amount;
- (b) in the case of coins, for the payment of an amount not exceeding P100.

24. Manufacture and characteristics of notes and coins

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

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

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

25. Power to recall currency

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.

26. Exchange of notes and coins

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

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

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

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

27. Penalty for mutilation of notes

Any person who, without the permission of the Bank, wilfully-

- (a) cuts, tears, perforates, or in any other way whatsoever mutilates any note issued by the Bank;
- (b) writes, prints, stamps or draws anything upon any such note; or
- (c) attaches or affixes any seal or stamp to or upon any such note,

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

28. Recovery of lost or stolen notes and coins

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

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

29. Counterfeiting, forgery, etc.

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

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

PART VI

International Reserve (ss 30-35)

30. Authority to transact foreign exchange business

(1) Subject to subsection (3), no person shall carry on the business of buying and selling foreign exchange (hereinafter referred to as "to transact foreign exchange business") without a licence issued by the Bank in the prescribed form and on such terms and condition as it may determine.

(2) An application to transact foreign exchange business shall be in the prescribed form and shall be accompanied by such documentation, additional information and fees as may be prescribed.

(3) The requirement for a licence to transact foreign exchange business under subsection (1) shall not apply to a-

- (a) bank licensed under the Banking Act;
- (b) hotel licensed under the Tourism Act; or
- (c) person being paid in foreign currency for goods or services rendered.

(4) Any person who contravenes the provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding P1 000 000 or to imprisonment for a term not exceeding seven years or to both.

31. Primary International Reserve

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

- (a) demand or time deposits, money at call, notes and coins, bills of exchange, and commercial paper issued by corporations denominated in such foreign currencies as the Board may, for purposes of this section, approve;
- (b) treasury bills, bonds, and other securities denominated in such foreign currencies issued or guaranteed or *de facto* guaranteed by such foreign governments or corporations, or international financial institutions as the Board may, for the purposes of this section, approve;
- (c) such fully collateralized loans of the assets listed in paragraphs (a) and (b) as the Board may for purposes of this section approve;
- (d) such collective investment funds, including pooled or group trust funds or mutual funds, which invest in any or all of the assets referred to in paragraphs (a), (b) and (c),

as the Board may, for the purposes of this section, approve;

- (e) any internationally recognized reserve asset, including-
 - (i) the reserve tranche position of Botswana in the International Monetary Fund;
 - (ii) Botswana's holdings of Special Drawing Rights;
- (f) such other assets as the Board, with the agreement of the Minister, may, for the purposes of this section, approve.

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

32. Adequacy of Primary International Reserve

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

(2) If such Primary International Reserve has declined or, in the opinion of the Governor, appears to be in danger of declining below the level specified in section 32, the Governor shall submit to the Minister a report on the reserve position and the causes which have led or may lead to such a decline together with recommendations concerning the measures that the Bank considers necessary to forestall or otherwise remedy the situation.

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

33. Operations in foreign exchange

The Bank may, subject to such terms and conditions as may from time to time be determined by the Board, buy, sell or deal in any of the reserve assets listed in section 31 using for these purposes any of the instruments commonly used in such transactions.

34. Limitations

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

35. Long term investment funds

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

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

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

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

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

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

(7) The accounts and auditing for any such long-term investment funds shall be governed by sections 66, 67 and 68.

PART VII

Relations with Financial Institutions (ss 36-43)

36. Opening accounts for domestic financial institutions, etc.

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

37. Opening accounts for other institutions, etc.

The Bank may also open accounts for, and accept deposits from-

- (i) foreign financial institutions, foreign governments, international and regional organizations; and
- (ii) other persons authorized to tender for auctions of Bank of Botswana, Government or other public securities.

38. Operations with account holders

(1) For the purposes of this section, "account holders" means financial institutions and other persons maintaining accounts with the Bank under section 36.

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

determine-

- (a) purchase from, sell to, discount and rediscount for account holders, bills of exchange and promissory notes drawn or made for commercial, industrial or agricultural purposes, bearing two or more good signatures of which at least one shall be that of a bank, and maturing within 184 days from the date of their acquisition by the Bank;
- (b) purchase from, sell to, discount and rediscount for account holders any treasury bills or other securities issued or guaranteed by Government, forming part of a public issue and maturing within 184 days of the date of their acquisition by the Bank;
- (c) sell to, purchase from, discount and rediscount for account holders any securities issued by the Bank of Botswana.

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

- (a) secured by-
 - (i) instruments specified in paragraph (a), (b) or (c) of subsection (2);
 - (ii) other securities issued or guaranteed by Government and forming part of a public issue;
 - (iii) warehouse receipts and documents of title issued in respect of staple commodities or other goods duly insured; or
 - (iv) holdings of any assets which the Bank is permitted to buy, sell or deal in under section 31; or
- (b) unsecured or secured by such other assets, on such special terms and conditions as the Board shall determine when, in its opinion, such a loan or advance is exceptionally necessary to meet the liquidity requirements of the borrower.

39. Determination of rates for discounts and advances

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

40. Primary reserve requirements

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

Provided that the Bank may in the exercise of its functions under this subsection require

different primary reserves for different types of financial institutions as determined by the Bank.

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

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

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

Provided that-

- (i) the Bank shall not, without the prior approval of the Minister, require a financial institution to hold a total amount of primary reserves in excess of 25 per cent of its total deposit and other similar liabilities;
- (ii) the initial fixing of, or any increase in, the required primary reserve ratios shall be effective only after reasonable notice, not less than 30 days, or such shorter period as the Minister may approve, has been given, and shall not relate to a period prior to the initial date of the notice;
- (iii) the Bank may determine that the requirements of this subsection may be met by meeting the required primary reserve ratio on the basis of averages of daily reserve holdings over such averaging period as the Bank may determine;
- (iv) the required primary reserve ratios, the method of their computation, and any averaging period determined under paragraph (iii) shall be uniform for all financial institutions within the same class.

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

41. Regulation of interest and credit

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

- (a) the methods of computation and maximum and minimum rates of interest payable in respect of any class of deposit and similar liabilities;
- (b) the permissible purposes, aggregate ceilings, maximum amounts beyond which the approval of the Bank is necessary, minimum cash margin or security, maximum maturities, and maximum interest rates chargeable in respect of-
 - (i) the making of any class of advances, whether by loans or overdrafts, and

investments;

- (ii) the discounting of any class of bills of exchange, promissory notes and other commercial, industrial, agricultural or financial paper;
- (iii) the issuing of any class of letters of credit;
- (iv) the granting of any class of acceptance and other forms of credit;
- (c) the minimum and maximum commissions, service charges and other fees which may be levied on any class of transactions with the public;
- (d) the manner of disclosure to the public and to-
 - (i) each depositor of the effective annual interest rate payable in respect of deposits made therewith;
 - (ii) each person to whom credit is extended of the terms of obtaining such credit, including the effective annual interest rate payable in respect thereof:

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

- (i) financial institutions or classes thereof; and
- (ii) other creditors referred to in subsection (2), or classes thereof, or members of such classes.

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

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

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

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

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

- (a) fails to comply with a notice issued under subsection (1);
- (b) knowingly supplies false information to the Bank; or
- (c) fails to furnish, within the time prescribed by the Bank, any documents called for by the

Bank under subsection (3), shall be guilty of an offence and shall be liable-

- (i) in respect of an offence under paragraph (a) or (b), to a fine not exceeding P50 000;
- (ii) in respect of an offence under paragraph (c), to a fine not exceeding P5 000 for every day during which such offence has continued.

42. Maximum amounts of foreign currency holdings or loans

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

43. Clearing facilities

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

PART VIII

Regulation of Companies which have Applied for or been Issued with a Tax Certificate (ss 44-53)

44. Interpretation

For purposes of this Part-

"company" means-

- (a) a body corporate constituted under the laws of Botswana or of any other jurisdiction; and
- (b) a collective investment undertaking as defined under the Collective Investment Undertakings Act.

45. Application

(1) This Part shall apply to a company which has applied for or been issued with a tax certificate (hereinafter referred to as "the tax certificate") in accordance with section 138(2) of the Income Tax Act, other than a company which is subject to supervision or is capable of being inspected by virtue of an enactment which for the time being is specified by regulation under section 46, and shall be without prejudice to any powers granted to the Bank in relation to banks and other companies.

(2) The provisions of this Act which relate to examination of books and records and the furnishing of information shall apply to a company to which this Part applies by virtue of subsection (1).

(3) Nothing contained in this Part shall affect any powers, with regard to the grant of authorisations or licences or their revocation, to be exercised by virtue of the existing law or of

any other legislation by the Bank in relation to any bank, credit institution, stock broking, financial futures and options exchange, financial institution or intermediary, fund, collective investment undertaking or any other company.

46. Exemptions

Where the Bank is of the opinion, after consultations with such government ministries as the Bank considers it appropriate to consult with, that there are adequate supervisory and inspection provisions contained in any enactment relating to a company, then the Minister may by regulation specify the enactment concerned and where necessary in the context of that enactment, the company or class or type of company, to which the regulation relates and accordingly the relevant supervisory and inspection provisions of this Part shall not apply to a company to which the regulation relates.

47. Supervisory and inspection powers

(1) The Bank may regulate, inspect and supervise a company to ensure its compliance with this Act in regard to the operations described in its tax certificate.

(2) For the purposes of subsection (1), the Minister, after consultation with the Bank, may make regulations setting out such supervisory and reporting requirements relating to such company as the Bank considers prudent to impose on it from time to time for the purposes of the proper and orderly conduct of a company and the development of a financial services centre.

(3) A company shall comply with the conditions contained in the tax certificate and with regulations issued by virtue of this Part.

(4) The supervisory and inspection requirements and conditions of the Bank shall not-

- (a) constitute a warranty as to the solvency of a company or entity forming part of a company; and
- (b) make the Bank liable in respect of any loss incurred through the insolvency or default of a company.

48. Power to inspect

(1) The Bank may appoint its officer or employee to undertake an on-site inspection of the operation and affairs of a company, and, if the Bank so specifies, any foreign office of such company in order to determine whether or not the company is conducting its business in a lawful and prudent manner.

(2) An officer of the Bank conducting such an inspection under subsection (1) may-

- (a) examine all books, minutes, accounts, cash securities, vouchers, computer records and any other documentation and data whether in electronic form or otherwise; and
- (b) require such information concerning its business or that of its affiliate whether in

Botswana or abroad as considered necessary or desirable.

(3) A company shall comply with the requirements made pursuant to subsection (2).

(4) Where a company fails to produce a document or data, whether in electronic form or otherwise, to the officer of the Bank, within 28 days of the demand, the company shall be guilty of an offence and liable to a fine not exceeding P5, 000.

49. Recommendations of Bank

(1) The Bank may recommend-

(a) to the Minister, the revocation of a tax certificate issued under section 138(2) of the Income Tax Act, where-

- (i) the Bank considers that such a company has failed to comply with an order, directions or regulations made under this Part and the degree of non-compliance is sufficiently serious to warrant revocation;
- (ii) it appears to the Bank that the company is carrying on business in a manner which is contrary to, detrimental to, the interests of the public;
- (iii) a person purporting to act on behalf of the company, is convicted by a court of competent jurisdiction, in Botswana or elsewhere, of an offence relating to the proceeds of a serious crime;
- (iv) the company has contravened a provision of an Act or regulation governing its formation or operations; or

(b) to the appropriate body, the revocation, in accordance with the enactment under which a licence was issued to any company, of such licence.

50. Disclosure of information

The Bank may, under conditions of confidentiality, disclose information to regulatory authorities in foreign jurisdictions for the purpose of assisting them to exercise functions corresponding to those of the Bank under this Part.

51. Levying of fees

The Bank may at its absolute discretion levy administration fees against a company to assist the Bank to recoup the expenses incurred by it in performing its duties under this Part, provided that the amount of such fees shall be established and notified to such a company annually in advance.

52. Offences

Where an offence is committed by a company or a person purporting to act on behalf of a company and is proved to have been committed with the consent of, or to have been facilitated by any wilful neglect on the part of, another person being a director, manager, secretary,

member of a committee of management or other controlling authority of such body or official of such body, that person shall be guilty of an offence and shall be liable to be proceeded against and punished accordingly.

53. Penalty

A person who contravenes any provision, fails to comply with a requirement or condition imposed under this Part, or a direction by the Bank made in accordance with the provisions of this Part, shall be guilty of an offence and liable to a fine not exceeding P2, 500, 000 or to imprisonment for a term not exceeding three years and if the contravention or failure to comply with a requirement, condition or direction is continued after the conviction, the person shall be guilty of a further offence and liable to a fine not exceeding P5 000 for every day on which the offence is so continued.

PART IX

Relations with Government (ss 54-65)

54. Banker, fiscal agent of and adviser to Government

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

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

55. Bank depository of Government funds

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

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

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

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

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

56. Management of Government securities

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.

57. Agency functions

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.

58. Banker and fiscal agent to Government boards and agencies

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

59. Borrowings by Government and public bodies, etc.

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

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

60. Advances to Government

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.

61. Transactions in Government securities

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

62. Limitation on lending to Government

(1) Except in accordance with sections 38, 58, 60, 61 and 69(2), the Bank shall not, directly or indirectly, acquire the securities of, or grant any advances to, Government, or advances or credit facilities to any statutory or wholly-owned Government corporation, Government controlled corporation, Government agency, or local authority.

(2) Except as provided in subsection (4), the total of outstanding advances and credit facilities granted by the Bank in accordance with sections 38(3) and 60(1) and the Bank's holdings of securities purchased in accordance with section 61 shall at no time exceed 5 per cent of Government's average annual ordinary revenue for the three financial years immediately preceding for which accounts are available:

Provided that-

- (i) for the purposes of this section, the ordinary revenue of Government shall include all

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

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

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

(4) In the event that the limitation provided in subsection (2) is, in the opinion of the Bank, in imminent danger of being exceeded, the Bank shall forthwith advise the Minister of the fact and the Minister shall consult with the Bank on the advisability of temporarily permitting a further increase, whether directly or indirectly, in the Bank's total advances, credit facilities and holdings of securities referred to in the said subsection; if the Bank and the Minister agree in writing that it is essential in the national interest that the said limitation be temporarily waived, the said limitation may, for such period not exceeding six months and on such terms and conditions as may be agreed, be increased by an amount not to exceed an additional 5 per cent of the Government's average ordinary revenue for the three financial years immediately preceding:

Provided that-

- (i) before entering into an agreement under this subsection, the Minister shall advise the Bank that Government accepts responsibility for the adoption of the policy so determined;
- (ii) every such agreement shall be published forthwith in the *Gazette*; and
- (iii) the Minister shall cause to be laid before the National Assembly, within 15 sitting days after an agreement under this subsection has been entered into, a copy thereof and statements by the Minister and the Bank in respect thereof.

63. Agent for the administration of exchange control

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

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

64. Depository and fiscal agency for international financial organizations

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.

65. Policy directives by President

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

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

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

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

PART X

Accounts, Financial Statements and Financial Year (ss 66-68)

66. Accounts, financial statements and financial year

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

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

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

67. Audit

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

Provided that no person shall be qualified to be so appointed if he is a member of the Board, an officer or servant of the Bank and unless he holds one or more of the qualifications referred

to in section 128(1) of the Companies Act.

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

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

68. Annual report and monthly return

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

- (a) a copy of the annual financial statements certified by the auditors; and
- (b) a report of its operations and affairs during that year, which accounts and report shall be published by the Bank.

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

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

PART XI **General (ss 69-74)**

69. Prohibited activities

- (1) Except as otherwise provided in this Act, the Bank shall not-
- (a) engage in trade, purchase the shares of any corporation or company, including the shares of any financial institution, or otherwise have an ownership interest in any financial, commercial, agricultural, industrial or other undertaking, except as the Board may deem necessary for the training or welfare of its staff;
 - (b) acquire by purchase, lease or otherwise any real right in or to immovable property except so far as the Bank considers necessary or expedient for the provision of premises for the conduct of its business or housing, welfare facilities for its staff and similar requirements incidental to the performance of its functions under the provisions of this Act;
 - (c) make unsecured advances except as provided in section 38(3)(b) or in subsection (4);

- (d) make advances secured otherwise than as set forth in this Act;
- (e) except as provided in sections 31, 33, 34, and 38(3)(b) or in subsection (2), accept shares as security;
- (f) make loans or issue guarantees of any kind that are not fully and adequately secured.

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

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

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

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

70. Bank may call for information

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

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

71. Exemption from Banking Act

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

72. Exemption from taxes, etc.

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

- (a) duties leviable under the Customs and Excise Duty Act; and
- (b) rates levied under the Town or City Council Regulations but including, without prejudice to the generality of the foregoing, stamp and transfer duty on any of its transactions, operations, property and documents, as the case may be, and any tax or

levy on its income or profits.

73. Regulations

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.

74. Repeal and saving

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

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

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