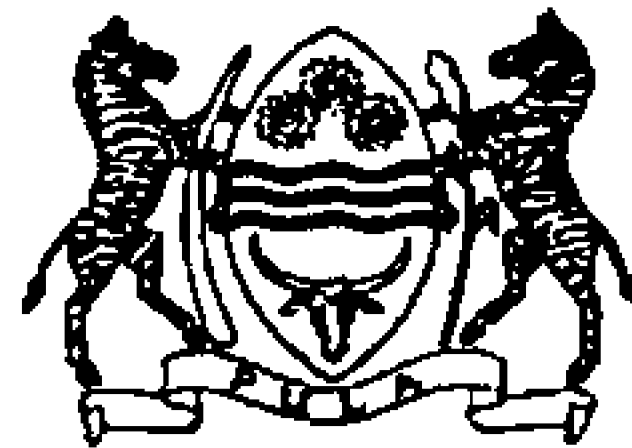


BANKING ACT, 1995

No. 13



of 1995

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**An Act to provide for the licensing, control and regulation of banks,
and for matters incidental thereto**

Date of Assent: 22nd June, 1995.

Date of Commencement: 6th November, 1995.

Enacted by the National Assembly of Botswana.

PART I — Preliminary

Short title
and com-
mencement

1. This Act may be cited as the Banking Act, 1995, and shall come into operation on such date or dates as the Minister may, by notice published in the Gazette, appoint.

Interpretation

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

“affiliate”, in respect of any bank, means any entity, corporate or incorporate, where 20 percent or more of any class of its voting shares or other voting participation is directly or indirectly owned or controlled by such bank, or is held by it with power to vote;

“bank” means a company, incorporated in accordance with the provisions of the Companies Act, which is licensed under this Act to conduct banking business;

“banking business” means —

- (i) the business of accepting deposits of money repayable on demand or after fixed periods or after notice, as the case may be, by cheque or otherwise; and/or
 - (ii) the employment of deposits in the making or giving of loans, advances, overdrafts or other similar facilities, and in the making of investments or engagement in other operations authorized by law or under customary banking practice, for the account of, and at the risk of, the person or persons accepting such deposits, and includes the discounting of commercial paper, securities and other negotiable instruments, for the purpose of extending loans or other credit facilities;
- “Central Bank” means the Bank of Botswana established under the Bank of Botswana Act;
- “demand liabilities”, means the deposits held by a bank which must be repaid on demand;
- “director” in relation to a bank includes any person, by whatever name called, who performs or is empowered to perform, substantially the same functions, in respect of that bank, as those performed by the director of a company;
- “foreign bank” means an institution incorporated in a country other than Botswana, and subject to a foreign jurisdiction, which is licensed to do banking business according to the laws of that country;
- “place of business” means any branch, office or agency (including a mobile agency) of a bank in Botswana, open to the public for the transaction of banking business;
- “principal officer” in relation to a bank in Botswana, means the chief executive officer, or other person, by whatever title he may be referred to, who is, subject to the directions of the board of directors, responsible for the day to day management of the affairs of the bank;
- “unsecured”, in relation to loans, advances or credit facilities, means loans, advances or credit facilities granted without security; or, in relation to loans, advances or credit facilities granted against security, means any part of such loans advances or credit facilities which at any given time exceeds the market value of the assets comprising the security given, or which exceeds the valuation approved by the Central Bank whenever it deems that no market value exists for such assets.

PART II — *Licensing of Banks*

3. (1) No person shall transact banking business in Botswana without a valid licence issued by the Central Bank.
- (2) No person, other than a bank licensed under this Act, shall, without the prior approval of the Central Bank —

Authority to
transact
banking
business

- (a) use, in any language, the word “bank”, “finance”, “loan”, “credit” or “savings”, or any of its derivatives as part of the name, description or title under which he carries on his activities;
- (b) use, as part of the name, description or title under which he carries on his activities, any word or term likely to indicate the nature of his activities to be those of a bank;
- (c) make any representation, or use any word or term in any billboard, letterhead, notice or advertisement, indicating in any manner that he is carrying on the activities of a bank.

(3) The provisions of subsection (2) shall not apply where the use of such word —

- (a) is for the sole purpose of forming and incorporating a company with a view of applying for a licence under this Act;
- (b) is included in the title of a staff association or similar organizations representing bank employees.

(4) Subject to subsection (3) any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine of P 2 500 for each day on which the offence occurs or continues to occur, and to imprisonment for five years.

(5) Subject to subsection (3), any person who contravenes the provisions of subsection (2) shall be guilty of an offence and liable to a fine of P 1 000 for each day on which the offence occurs or continues to occur, and to imprisonment for two years.

Representative
office

4. (1) No foreign bank, shall, without the written authority of the Central Bank, establish a representative office in Botswana.

(2) Subject to the provisions of sections 3 and 6, no representative office shall conduct any banking business in Botswana.

(3) Any bank or representative office which contravenes the provisions of subsection (1) or (2) shall be guilty of an offence and liable to a fine of P 2 000 for each day on which the offence occurs or continues to occur.

(4) The Central Bank may at any time request information from a representative office concerning its operations in Botswana, and any representative office which fails, without good reason, to provide the information requested within a period of twenty one days from the date of receiving the request shall be guilty of an offence and liable to a fine of P 5 000.

(5) For the purposes of this section “representative office” in relation to a foreign bank means the office providing any financial or banking activities in Botswana on behalf of such foreign bank.

Investigation
of unlicensed
banking

5. (1) Where the Central Bank has reason to believe that a person is advertising for or soliciting deposits of money, or is transacting business in violation of section 3, it may, in order to ascertain whether that section is being or has been violated, immediately call for and inspect, or cause to be inspected, all books, minutes, records, cash, securities and any other documents in such person’s possession or custody.

(2) The Central Bank may retain any such books, minutes, records, cash, securities or other documents, giving to the custodian thereof a duly authorized receipt therefor.

(3) At the earliest reasonable opportunity, the Central Bank shall notify the Minister of any action taken pursuant to subsections (1) and (2), stating the reasons therefor, and shall, not later than ten days after the completion of its investigation and review, report its findings to the Minister.

(4) Any person who, without good reason, fails or refuses to comply with any request of, or instructions duly given by the Central Bank under this section, or who destroys or defaces records or otherwise supplies false or misleading information, or who makes any false entry or omits any statement or entry in such records, with the intention to deceive, shall be guilty of an offence and liable to a fine of P 10 000 and to imprisonment for three years.

(5) Where, upon investigation, the Central Bank determines that banking business is being transacted in violation of section 3, the Central Bank shall order such activities to be suspended forthwith.

(6) Any person who contravenes any order of suspension given pursuant to subsection (5) shall be guilty of an offence and liable to a fine of P2 000 for each day on which the contravention occurs or continues to occur, and to imprisonment for three years.

(7) The Central Bank shall make application to the High Court for directions in respect of the disposition of all monies, securities and other assets in the possession of an unlicensed person and obtained by him whilst transacting banking business in violation of section 3 or this section.

(8) In giving directions under subsection (7), the High Court shall be concerned to ensure the speedy and efficient return of all assets to their respective owner or owners, and may, without prejudice to the generality of the foregoing, direct that such assets be transferred to the Central Bank for distribution to the depositors or owners concerned.

(9) The provisions of subsection (7) shall be in addition to and not in derogation of any criminal liability of such person in accordance with this Act or any other written law.

6. (1) Every application for a licence to transact banking business in Botswana shall —

- (a) be made in writing to the Central Bank in such form as shall be determined by the Bank, and accompanied by such processing fee as may be prescribed; and the Central Bank shall cause such application to be published in the Gazette;
- (b) be accompanied by certified copies of the applicant's certificate of incorporation in Botswana, the applicant's memorandum and articles of association, and such other corporate documents, financial documents and data, in English, as the Central Bank may require.

Application
for banking
licence

(2) Within 30 days after it has received the application, the Central Bank shall inform the Minister that it has been received, and that it is being duly processed.

(3) The Central Bank may call for such supplementary information as it may require, and shall conduct such investigation as it may deem necessary for the purpose of ascertaining compliance by the applicant with all applicable laws and regulations, including the provisions of this Act.

(4) Every document and statement provided to the Central Bank as part of the application, including the supplementary information, shall be kept and treated by the Central Bank and any other authority or body concerned in the application process, in strictest confidence.

(5) The applicant may appoint a representative in Botswana for the purpose of communicating with the Central Bank as part of the application procedure.

(6) Within six months after receipt of the application, the Central Bank may reject it, or, subject to the provisions of this Act, and on payment of such fee as may be prescribed, grant to the applicant a licence to transact banking business in Botswana, in either case giving written notice thereof to the applicant.

(7) A licence issued under this section shall be renewable from year to year on payment of the annual prescribed fee.

(8) Where the Central Bank issues an initial licence to a new bank it shall give notice thereof in the Gazette and at least two newspapers circulating in Botswana.

Appeal to
the Minister

7. (1) The applicant for a banking licence may, upon receipt of notice of refusal of such application, and within six weeks thereof, appeal to the Minister, in such manner and form, and on payment of such fee, as may be prescribed.

(2) Where the Minister considers it desirable, and before reaching his own decision, he may ask the Central Bank to review its decision, and the Central Bank shall do so within a period of one month from the date of the Minister's request.

(3) Within three months after the lodging of such appeal, and where necessary after considering any review by the Central Bank, the Minister shall decide whether the appeal should be upheld or rejected, and his decision shall be final and not subject to review or further appeal.

Conditions
for issuing
banking
licence

8. (1) No applicant shall be granted a licence unless it is incorporated under the Companies Act and limited by share capital, and the Central Bank is satisfied that it is a fit and proper recipient of a banking licence, and complies with such requirements as may be prescribed.

(2) The Central Bank may refuse to grant a licence where the applicant intends to operate under a name which —

(a) so resembles that of an existing bank as to be likely or calculated to deceive the public;

(b) is so calculated as to suggest falsely a connexion with a person or authority outside Botswana; or

(c) is calculated to suggest falsely a special status in relation to the Government or any public body in or outside Botswana, or that the applicant enjoys the official support or patronage thereof.

(3) The Central Bank may, after consultation with the Minister, determine different minimum prudential requirements for different classes of banks, and shall impose such restrictions as it may deem necessary on the structure of business, operations and banking services to be provided by any such class of banks.

9. (1) A licence issued by the Central Bank shall be subject to such conditions as the Central Bank may, from time to time, determine.

General
conditions

(2) No licence granted by the Central Bank under this Act shall be transferable, in any way, without the prior written approval of the Central Bank.

(3) Every bank licensed under this Act shall at all times display, in a conspicuous place in the public part of its principal place of business, and in any other office or branch or site, including a mobile site, a certified copy of the licence granted by the Central Bank.

(4) No bank shall carry on banking business in any office or branch or site, including a mobile site, other than its principal place of business, without the prior written approval of the Central Bank.

(5) No bank shall open or keep open or close or keep closed an existing place of business, or change its location, without the prior written approval of the Central Bank.

(6) No bank shall establish a subsidiary in Botswana without the prior written approval of the Central Bank.

(7) No bank shall, without the prior written approval of the Central Bank, establish a subsidiary, a branch or a representative office outside Botswana.

(8) No bank shall, without the prior written approval of the Central Bank, use or refer to itself as, or transact business under, a name other than that under which it is licensed.

(9) The Central Bank may draw up guide-lines covering certain corporate aspects of banks licensed under this Act, including corporate amalgamation and certain transfers of property, other than in the normal course of business of such banks.

(10) Any bank that contravenes or fails to comply with any of the provisions of subsections (2) to (7) shall be guilty of an offence and liable to a fine of P 5 000 .

10. (1) The Central Bank may, by notice in writing to a bank, inform the bank that it proposes to impose, amend, add to, vary or cancel any condition attaching to the licence of the bank.

Power to vary
conditions of
licences

(2) The bank may, within seven days of receipt of the notice specified in subsection (1), make representations in writing to the Central Bank.

Revocation
and surrender
of licences

(3) The Central Bank may, after giving due consideration to any representation made under subsection (2), take such action in accordance with its proposals notified in accordance with subsection (1), and shall so notify the bank in writing.

(4) The bank may, within fifteen days of receipt of the notice from the Central Bank, appeal to the Minister, in such manner and form as may be prescribed for the purposes of section 7.

11. (1) (a) The Central Bank may revoke the licence of a bank where the bank in question —

- (i) without the written consent of the Central Bank, fails to engage in the business authorized by the licence, within a period of twelve months from the grant of the licence;
 - (ii) is found to have ceased to transact the business authorized by the licence;
 - (iii) goes into liquidation or is wound up or is otherwise dissolved;
 - (iv) appears to the Central Bank to be carrying on banking business in a manner which is contrary to, or detrimental to, the interests of its depositors or the public;
 - (v) appears to the Central Bank to have insufficient assets to cover its liabilities to its depositors or the public;
 - (vi) has been convicted by any court of competent jurisdiction, in Botswana or elsewhere, of an offence related to the use or laundering, in any manner, of illegal proceeds, or is the affiliate or subsidiary or parent company of a bank which has so been convicted, and such conviction is not overturned on appeal;
 - (vii) has supplied false or misleading information in its application for a banking licence;
 - (viii) has contravened any provision of this Act.
- (b) Before revoking a licence under this section, the Central Bank shall serve on the bank in question, written notice of its intention so to do, specifying a date, being not less than ninety days after the date of service of the notice, upon which the revocation shall take effect.
- (c) The bank in question may, within ten days of service of the notice of revocation, make representations to the Central Bank giving reasons why the licence should not be revoked.
- (d) The Central Bank shall, after taking into consideration any representations made by the bank in question, make a final decision whether or not to revoke the licence, and shall notify the bank, in writing, accordingly.
- (e) The bank in question may, within ten days of the communication to it of the final decision of the Central Bank, appeal to the Minister, in such manner and form as may be prescribed for the purposes of section 7.

(2) A bank may, with the permission of the Central Bank, and in such manner and form as may be prescribed, surrender its licence at any time, and such surrender shall take effect after the notice of surrender has been published in accordance with subsection (4), and not less than ninety days after the granting of the permission by the Central Bank.

(3) The Central Bank may, before or after the revocation or surrender of a licence, make such inquiry and give such directions as it thinks fit, so as to ensure to the fullest extent possible that the interests of depositors and of the public are preserved.

(4) The Central Bank shall give notice to the public of all surrenders and revocations of licences by publishing notice thereof in the Gazette and in at least two newspapers circulating in Botswana.

12. (1) Notwithstanding the provisions with regard to the giving of notice in sections 10 and 11, the Central Bank may, in cases of urgency and in the public interest

Procedure in
case of
urgency

(a) revoke the licence of a bank; or

(b) amend, add to or vary the conditions attaching to the licence, or impose special conditions thereon.

(2) Any revocation, amendment, addition to or variation of a licence as provided in subsection (1) shall, on communication thereof to the bank in question, have immediate effect and shall bind the bank accordingly.

(3) The bank in question may, within thirty days of the communication of the decision of the Central Bank, make representations to the Central Bank, giving reasons why the revocation or order concerned should not continue.

(4) The Central Bank shall, within ten days of any representations made to it under subsection (3), and after taking into consideration any representations so made, review the action taken by it, uphold it, revoke it or amend it as it considers proper, and shall inform the bank, in writing, accordingly.

(5) The bank may, within ten days of the notification of the decision of the Central Bank as specified in subsection (1) or in subsection (4), as the case may be, appeal to the Minister in such manner and form as may be prescribed for the purposes of section 7.

(6) Subject to, and subsequent to the Minister's decision on an appeal under subsection (5), the Central Bank shall give public notice in the Gazette and in at least two newspapers circulating in Botswana of the revocation of the licence.

PART III — *Capital Structure, Financial Requirements and Limitations*

13. (1) Every bank shall maintain paid up unimpaired capital at least equal to such percentage of such bank's total assets as may be prescribed for the purpose.

Capital
requirements

(2) Where a bank fails to maintain its unimpaired capital at the level required in accordance with subsection (1), the Central Bank may impose on and collect from it a levy not exceeding 0,1% of the amount by which such unimpaired capital falls short of the amount prescribed.

(3) Capital, in relation to a bank, means the bank owner's equity, and includes —

- (i) issued and paid-up ordinary shares of the bank;
- (ii) issued and paid-up non-redeemable, non-cumulative preference shares of the bank;
- (iii) such other issued and paid-up preference shares of the bank, or debentures which the Central Bank may approve in accordance with specified conditions;
- (iv) undivided profits, retained income and other reserves which are disclosed in the bank's annual accounts and which are freely available for the purpose of meeting losses;
- (v) undivided profits, retained income and other reserves which are freely available for meeting losses but which are not disclosed in the bank's financial statements;
- (vi) such percentage of reserves of the bank resulting from the revaluation of certain fixed assets as may be prescribed;
- (vii) general provisions held against unidentified and unforeseen losses which may arise from the bank's assets.

(4) "Unimpaired" in relation to the capital of a bank means the absence of any legal or technical covenant, term, restriction or encumbrance which would otherwise render such capital not to be freely available for distribution to depositors or other creditors in the event of the liquidation or dissolution of the bank, and the absence of any condition or arrangement which would, in the opinion of the Central Bank, diminish the value of the whole or any portion of the capital of the bank.

(5) The Central Bank shall, from time to time, determine which of the funds identified under subsection (3) shall constitute core capital, and which shall constitute supplementary capital.

(6) The core capital of any bank shall constitute a minimum of fifty percent of the total capital of such bank as determined by the Central Bank.

(7) The unimpaired capital and liabilities of any bank shall be of such kinds, and computed in such manner, as may be determined by the Central Bank.

(8) The Minister may, after consultation with the Central Bank, and upon good cause shown by a bank, exempt such bank from the capital requirements specified by or under this Act for a period not exceeding twelve months, on the basis of a schedule agreed between such bank and the Central Bank specifying the progressive compliance by such bank with the said capital requirements.

(9) The minimum capital required in respect of any bank shall be the greater of such amount as may be prescribed, or such percentage of its assets, or groups of assets, and other risk exposures as may, from time to time, be determined by the Central Bank.

14. (1) In making any calculations necessary to ascertain whether or not the capital of a bank is adequate for the purpose of complying with the requirements of section 13, account shall be taken, to the satisfaction of the Central Bank, and in accordance with generally accepted accounting standards applicable in Botswana, of the following items —

Provision to
be made for
certain items

- (i) general and specific provisions for bad and doubtful debts;
- (ii) depreciation of assets (to be calculated at least once in each financial year);
- (iii) operating and accumulated losses;
- (iv) preliminary expenses representing expenses relating to the organization or extension of the purchase of any business or goodwill; and
- (iv) such other items as may be prescribed.

(2) Every bank shall either —

- (a) maintain a special reserve account which is, in the opinion of the Central Bank, adequate, and which is reserved exclusively for the purpose of making good any loss resulting from the negligence or dishonesty of any director, principal officer or any other officer or employee of the bank; or
- (b) insure itself against any loss, to such an amount and in such terms, as the Central Bank deems adequate, with a person approved by the Central Bank and carrying on insurance business, or the business of guaranteeing against such loss as aforesaid.

15. (1) The Minister may, by notice published in the Gazette, direct that every bank of a specified class, or of specified classes, shall maintain in Botswana such investments as may be specified in such notice, of an amount to be determined as a percentage, not exceeding 10 per cent, and as specified in such notice, of its deposit and similar liabilities to the public as shown in its last preceding monthly statement furnished to the Central Bank in accordance with the provisions of section 20:

Specified
investments
to be
maintained

Provided that every such notice shall afford every bank required to maintain such specified investments a reasonable period, not being less than three months, in which to comply.

(2) For the purposes of subsection (1), the Minister shall specify only those securities that are issued or guaranteed by the Government, or securities issued by a statutory corporation, or a corporation wholly owned by the Government, and are approved by the Central Bank for the purposes of this section.

16. (1) Every bank shall maintain in Botswana, on a daily basis, liquid assets in accordance with the requirements of subsection (2), and shall report to the Central Bank in such manner and as often as may be prescribed.

Minimum
liquid assets
to be
maintained

(2) The amount of liquid assets to be maintained by every bank in accordance with the requirements of subsection (1) shall, in relation to each such bank, be expressed as such percentage of the bank's deposits and other similar liabilities, as the Central Bank may determine, computed on a basis to be fixed, from time to time, by the Central Bank.

(3) The percentage determined in accordance with subsection (2) shall be the same for all such banks, but when the percentage is altered by the Central Bank, every bank thereby affected shall be allowed a reasonable time, being not less than one month from the date of alteration, to comply with subsection (1).

(4) For any period permitted under subsection (3) during which the liquid assets of a bank are less than the amount determined by the Central Bank, a bank shall not grant or permit any increase in its outstanding loans, new overdraft commitments or investments.

(5) For the purposes of this section, liquid assets shall mean freely transferable assets, unencumbered by any charge or lien whatsoever, including Treasury bills and other securities issued by the Government or the Central Bank itself and maturing within 370 days, negotiable instruments of such types as the Central Bank may approve and payable within a period of 184 days, and generally such other assets as the Central Bank may, from time to time, approve.

(6) Where a bank fails to maintain liquid assets in accordance with the requirements of this section, the Central Bank may impose on and collect from it a levy not exceeding 0,1% of the amount by which such assets fall short of the amount required in accordance with this section.

17. (1) No bank shall grant to any person, directly or indirectly, any accommodation exceeding such percentage of its unimpaired capital as may, from time to time, be prescribed, without having first obtained the permission of such bank's board of directors, or a duly authorized sub-committee thereof.

(2) Every bank shall report, at such regular intervals as may be determined by the Central Bank, the level of its exposure to any person or group of related persons which is equal to or exceeds such percentage of its unimpaired capital which results from extending the accommodation referred to in subsection (1).

(3) No bank shall, without the prior written approval of the Central Bank, grant to any person, directly or indirectly, an aggregate accommodation which exceeds such percentage of its unimpaired capital as may be prescribed.

(4) Where a bank grants accommodation in excess of that permitted in accordance with the provisions of subsections (1) and (3) the Central Bank shall have power to order the bank in question to deduct any excess amount lent in violation of subsection (3) from such bank's core capital, and in addition shall have power to take any other measures deemed necessary and appropriate to rectify the situation.

(5) If the Central Bank determines that the interest of a group of two or more persons are so inter-related that they should be considered as a unit, then for the purposes of subsections (1) and (3), the total indebtedness of that group shall be combined and shall be deemed to be in respect of a single person:

Provided that where the Central Bank makes a determination under this subsection whereby the combined indebtedness exceeds the limitation provided in subsections (1) and (3), the bank concerned shall be permitted to dispose of the excess of such indebtedness within such reasonable period as the Central Bank shall determine.

(6) No bank shall, except with the prior approval in writing of the Central Bank, directly or indirectly, grant any loans, advances or credit facilities against the security of its own shares, or those of any other bank.

(7) No bank shall, directly or indirectly, except with the prior approval in writing of the Central Bank, grant or permit to be outstanding unsecured loans, overdrafts, or any other advances or credit facilities of an aggregate amount in excess of such percentage of its unimpaired capital as may be prescribed from time to time —

- (a) to its directors, or any of them, whether severally or jointly together with any other person;
- (b) to any person in which it or any one or more of its directors is interested as owner, shareholder, director, partner, manager, agent or member; and
- (c) to any person of whom or of which it or any one or more of its directors is a guarantor:

Provided that the Central Bank may determine a percentage of the unimpaired capital of a bank as being the maximum exposure to any direct or indirect interest permitted for a member or members of the bank's board of directors.

(8) No bank shall, directly or indirectly, grant to, or permit to be outstanding by any of its officers or employees (other than a director) unsecured loans, advances or credit facilities the amount of which, in aggregate, exceeds one year's emoluments of such officer or employee.

(9) No bank shall, directly or indirectly, whether on its own account or on the basis of a commission, and except in the course of satisfying any debts due to it, engage in the wholesale or retail trade, including the import or the export trade, or in any business for which such bank is not licensed under this Act, except as may be approved by the Central Bank.

(10) No bank shall, directly or indirectly, acquire or hold any part of the share capital of any financial, commercial, agricultural, industrial or other undertaking, except such share holdings as may be acquired in the course of the satisfaction of debts due to it, which share holdings shall, however, be disposed of at the earliest suitable moment:

Provided that this subsection —

- (i) shall not prevent the purchase and sale of shares or stock for a trust account or upon the order and for the account of a customer without recourse; and
- (ii) shall not apply —
 - (a) to any share holding in any company approved by the Central Bank and set up for the purpose of insuring deposits, or of promoting the development of a money market or securities market in Botswana, or of improving the financial mechanism for the financing of economic development;
 - (b) to any share holdings in other undertakings the aggregate amount of which does not at any time exceed such percentage of the sum of its unimpaired capital as may be determined by the Central Bank; or
 - (c) to any share holdings acquired in the course of the administration of the estate of a deceased person.

(11) No bank shall, directly or indirectly, purchase, acquire or take a lease on immovable property, except as may be necessary for the purpose of conducting its business, including provision for any future expansion or for housing its staff, or in such other circumstances as the Central Bank may determine.

(12) A bank may secure an accommodation on any immovable property and, in default of repayment, may acquire such property for resale as soon as possible, and in any event within four years of acquisition.

(13) No bank shall, without the written permission of the Central Bank, encumber its assets in any way, and every bank shall hold its assets in its own name.

(14) For the purposes of this section “accommodation” means a loan, advance or other credit facility, financial guarantee or other liability granted or incurred by a bank to or on behalf of any person.

PART IV — *Financial Statements, Audit and Supervision*

Financial records

18. (1) Every bank shall keep such records in Botswana as are necessary to exhibit clearly and accurately the state of its affairs and to explain its transactions and financial position so as to enable the Central Bank to determine whether the bank concerned has complied with the provisions of this Act, and it shall preserve every such record for a period of at least five years as from the date of the last entry therein.

(2) The Central Bank may, from time to time, issue directives as to the minimum standards applicable to the financial records referred to in subsection (1), and all banks shall comply with such directives.

(3) Any bank that contravenes or fails to comply with the provisions of this section, or which fails to comply with any directive issued under subsection (2), shall be guilty of an offence and liable to a fine of P1 000 for each day on which the offence occurs or continues to occur.

19. (1) Not later than three months after the expiration of its financial year, every bank shall prepare, in respect of all business transacted by it in that year, a balance sheet and profit and loss account, as of the last working day of that year, in accordance with generally accepted accounting practices in Botswana and in such form as the Central Bank may approve, audited in accordance with the provisions of section 22, and under the joint signatures of the principal officer of the bank and two of its directors.

**Annual
accounts**

(2) Every bank shall —

- (a)** within fifteen days after the preparation of a balance sheet and profit and loss account in accordance with the provisions of subsection (1) —
 - (i)** send copies thereof to the Central Bank;
 - (ii)** publish a copy of such balance sheet in such manner as the Central Bank may direct; and
- (b)** exhibit at all times throughout the year in a conspicuous position in each of its places of business in Botswana, other than mobile sites, a copy of its latest balance sheet and a statement of income and expenditure for its most recent financial year, as the Central Bank may direct.

20. (1) Every bank shall, not later than twenty-one days after the last day of each calendar month, submit to the Central Bank, in accordance with generally accepted accounting practices in Botswana, in duplicate and in such form as the Central Bank may determine, a statement of its assets and liabilities established in such manner as the Central Bank may determine, together with such other information as the Central Bank may require in respect of its places of business in Botswana and abroad, as the case may be.

Returns

(2) The Central Bank may issue directions to any bank requiring that specified returns must be audited before submission pursuant to subsection (1).

(3) Any bank which fails to submit returns in accordance with subsection (1), or which supplies incorrect or misleading information, shall be guilty of an offence and liable to a fine of P 10 000.

21. (1) The Central Bank may, for the purpose of the administration of this Act, call for any information which it may require, from any bank, concerning its operations in Botswana or those of its affiliates in Botswana and subsidiaries abroad, if any.

**Central Bank
may call for
information**

(2) The Central Bank may direct that all or any part of the information submitted pursuant to this section shall be audited, either by the bank's own external auditors or by an auditor appointed by the Central Bank, at such bank's own expense.

(3) Where, under this Act, any information or document is required to be supplied to the Central Bank within a specified period, the Central Bank may, at the request of the bank concerned, extend such period.

Audit

(4) A bank shall notify the Central Bank of any transaction by any of its customers which it suspects to be money laundering.

(5) Any bank that fails to supply any information called for by the Central Bank under subsection (1), or fails to supply it within the time, or extended time, stipulated by the Central Bank, or that supplies false or misleading information, or that fails to notify the Central Bank of any suspicious transaction under subsection (4), shall be guilty of an offence and liable to a fine of P 10 000.

22. (1) Every bank shall appoint, annually, and at its own expense, an independent auditor, acceptable to the Central Bank, who shall make a report to the bank's shareholders on the annual balance sheet and profit and loss account, in accordance with the requirements in the Companies Act relating to the auditing of company accounts, and with generally accepted accounting standards in Botswana, and such other directives and guidelines as the Central Bank may, from time to time, issue.

(2) Every auditor appointed under subsection (1) or (4) shall have the right of access at all times to the books, accounts, vouchers and securities of such bank, and those of its affiliates in Botswana, or its subsidiaries abroad, if any, and shall be entitled to require from the officers, or agents of such bank's affiliates or subsidiaries thereof, such information and explanations as he may require in order to perform his duties properly as an auditor under this section.

(3) (a) The report of the auditor of any bank appointed under subsection (1) or (4) shall be read together with the report of the Board of Directors at the annual meeting of the shareholders of such bank.

(b) A copy of every such auditor's report shall be sent to the Central Bank as soon as practicable, and in any event not later than one month after it is made.

(4) If a bank fails to appoint an auditor in accordance with subsection (1), or the Central Bank is not satisfied with the report of the auditor appointed by the bank, the Central Bank may itself appoint an auditor whose remuneration shall be paid by the bank, or as determined by the Central Bank.

(5) None of the following persons shall be qualified for appointment under this section as auditor of a bank —

- (a) a director or officer of that bank, or any affiliate or subsidiary thereof;
- (b) a person who is a partner of a director or officer of that bank, or any affiliate or subsidiary thereof;
- (c) a person who is an employee or employer of a director or officer of that bank or any affiliate or subsidiary thereof;
- (d) a body corporate;
- (e) a person who, by himself, or his partner or his employee, regularly performs the duties of secretary or book-keeper to that bank or any of its affiliates or subsidiaries; or
- (f) a person, who either directly or indirectly, has any interest in that bank otherwise than as a depositor or borrower in the ordinary course of business.

(6) The Central Bank may impose all or any of the following duties on an auditor, in addition to those provided under subsections (1) and (2) —

- (a) a duty to submit such additional information in relation to his audit as the Central Bank considers necessary;
- (b) a duty to carry out any other investigation or establish any procedure in any particular case; and
- (c) a duty to submit a report on any of the matters referred to in paragraphs (a) and (b), and the bank concerned shall remunerate the auditor in respect of the discharge by him of all or any of these additional duties.

(7) An auditor shall report to the Central Bank, and the Central Bank shall thereafter take all necessary actions pursuant to this Act if an auditor, in the course of the performance of his duties as auditor of a bank, is satisfied that —

- (a) there has been a serious breach of, or non-compliance with, the provisions of this Act, the Bank of Botswana Act, the Companies Act, or any regulations issued under those Acts, or any directions or guidelines issued by the Central Bank;
- (b) a criminal offence involving fraud or other dishonesty has been committed;
- (c) losses have been incurred which reduce the paid up capital of the bank by fifty per cent or more;
- (d) serious irregularities have occurred in the affairs of the bank, particularly such irregularities that jeopardize the security of depositors and creditors; or
- (e) he is unable to confirm that the claims of depositors and creditors are still covered by the assets of the bank.

(8) The Central Bank may, if it considers it necessary, from time to time, being at least once a year, arrange trilateral meetings with each bank and its auditors, to discuss matters relevant to the Central Bank's supervisory responsibilities which have arisen in the course of the statutory audit of that bank, including relevant aspects of the bank's business, its accounting and internal control systems, and its annual balance sheet and profit and loss accounts.

(9) The Central Bank may, if it considers it desirable or necessary in the interests of depositors, from time to time arrange bilateral meetings with auditors of banks.

(10) No duty of confidentiality to which an auditor may be subject shall be regarded as contravened by reason of the auditor's communication, in good faith, to the Central Bank, whether or not in response to a request made by it, any information or opinion which is relevant to the Central Bank's functions under this Act.

23. (1) Subject to the provisions of subsection (3), the board of directors of a bank shall appoint at least three of its members to form an audit committee.

Audit
committee

- (2) The functions of an audit committee shall be to —
- (a) assist the board of directors in its evaluation of the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing processes applied within the bank concerned in the day-to-day management of its business;
 - (b) facilitate and promote communication, regarding the matters referred to in paragraph (a), risk management or any other related matters, between the board of directors and the executive officers of the bank concerned and the auditor appointed under section 22, and the employee charged with the internal auditing of the transactions of the bank; and
 - (c) introduce such measures as in the audit committee's opinion may serve to enhance the credibility and objectivity of financial statements and reports prepared with reference to the affairs of the bank concerned.
- (3) The majority of the members of the audit committee of a bank shall be, and all of such members may be, appointed from persons who are not officers or employees of the bank.

**Examination
of banks**

24. (1) The Central Bank shall cause regular on-site examinations of the operations and affairs of every bank, and, where the Central Bank so specifies, foreign branches, if any, of such banks, to be made by officers of the Central Bank so appointed to conduct such examinations.

(2) The purpose of an examination under subsection (1) shall be to determine whether the bank concerned is in a sound financial condition, whether the requirements of this Act are being observed by the bank, and whether its business is being operated in a lawful and prudent manner.

(3) The Central Bank shall conduct an examination in accordance with this section where application to do so is made by one fifth of the total number of depositors, or by any number of depositors holding not less than one third of the liabilities to the public in Botswana, of the bank concerned.

**Powers of
examiners**

25. (1) Any person conducting an examination in accordance with the provisions of section 24 shall, in relation to the bank in respect of which the examination is to be conducted, be entitled to examine all books, minutes, accounts, cash, securities, vouchers and any other documents in the possession or custody of the bank or any of its affiliates, and to require such information concerning its business or that of its affiliates in Botswana or abroad, if any, as is considered necessary or desirable, and the bank concerned shall comply with all requests made pursuant to this subsection.

(2) Where any bank or any of its affiliates fails to produce any document requested pursuant to subsection (1) it shall be guilty of an offence and liable to a fine of P 1 000 for each day on which the offence occurs or continues to occur.

(3) If any bank wilfully supplies information required of it in accordance with the provisions of subsection (1) which is false in any material particular or misleading, it shall be guilty of an offence and liable to a fine of P 10 000.

(4) As soon as possible after the conclusion of an examination, the Central Bank shall forward a summary of the examiner's report containing its salient points to the bank or affiliate concerned.

(5) All expenses of and incidental to an examination shall be paid by the bank concerned in such manner as the Central Bank may determine.

26. Any principal officer or any other officer, employee, agent or the representative of, a bank or affiliate who —

- (a) in any way obstructs an auditor in the proper performance of his duties in accordance with the provisions of this Act;
- (b) in any way obstructs an examiner in his lawful examination of such bank or affiliate, as duly authorized by the Central Bank; or
- (c) with intent to deceive, makes any false or misleading statement or entry in, or omits any statement or entry that should be made in, any book, account, report or statement of such bank or affiliate, shall be guilty of an offence and liable to a fine of P 5 000 and to imprisonment for two years.

Offences by
principal
officers etc.
and penalties

27. If, in the opinion of the Central Bank, an examination shows that the bank or affiliate concerned is conducting its business in an unlawful or unsound manner, or that it is in an unsound financial condition, the Central Bank may, in addition to any other course of action open to it, including the power to vary licensing conditions or to revoke the licence pursuant to this Act —

Powers of
Central Bank
after
examination

- (a) require the bank to take such measures as it may consider necessary to rectify the situation;
- (b) appoint a person, who in the opinion of the Central Bank has the requisite training and experience to advise the bank or affiliate concerned, on measures to be taken to rectify its situation, and shall fix the remuneration to be paid to him by such bank or affiliate.

28. The Central Bank shall, annually, not later than the 30th of June of each year, submit to the Minister a report on the business affairs of all banks, and of all persons or institutions whose affairs have been examined by the Central Bank pursuant to this Act, and all other matters pertinent thereto with which the Central Bank has dealt during the year under review.

Annual report

PART V — Responsibilities of Directors and Other Officers of Banks

29. (1) No person shall become the principal officer, by whatever name called, of any bank, unless upon the determination of the board of directors of such bank he is a fit and proper person, for such position, having regard to —

Fit and proper
persons

- (i) his probity and competence;
- (ii) the diligence with which he is likely to fulfil his responsibilities;
and
- (iii) his previous conduct and activities in business, particularly whether he has been guilty of any fraud or other act of dishonesty.

(2) Where the Central Bank has reason to believe that any person, by virtue of his share holding in a bank or otherwise, is in a position to influence the principal officer, or the board of directors of that bank, and is exercising his influence in a manner which is likely to be detrimental to the interests of depositors, the Central Bank may request the bank to remedy the situation.

(3) Where a bank fails to comply with the instructions of the Central Bank following a request made under subsection (2), the Central Bank may, with the approval of the Minister, revoke the licence of such bank in accordance with section 11 of this Act.

(4) No person shall become a director of a bank unless he is a fit and proper person in accordance with such criteria as may be determined by the Central Bank.

Disquali-
fication

30. (1) Without prejudice to anything contained in the Companies Act, any person who is a director, a principal officer or other officer concerned with the management of a bank, shall cease to hold office if he is —

- (a) declared bankrupt or makes a composition with his creditors; or
- (b) convicted of an offence involving fraud or any other act of dishonesty.

(2) No person who has been a director of, or indirectly concerned in the management of, a bank that has been liquidated shall, without the written authorization of the Central Bank, act or continue to act as a director of, or be directly or indirectly concerned in the management of, a bank.

(3) Any person who acts in breach of this section shall be guilty of an offence and liable to a fine of P 5 000 and to imprisonment for two years.

Disclosure of
interest by a
director

31. (1) Any director of a bank who is in any manner, directly or indirectly, interested in any advance, loan or credit facility from the bank shall, as soon as is reasonably practicable, declare the nature of his interest to the board of directors of the bank, and the board shall cause the declaration to be circulated forthwith to all the directors individually.

(2) For the purposes of subsection (1), a notice given to the board of directors of a bank by a director to the effect that he is a creditor of, or has an interest in, a concern specified in the notice, and that he is to be regarded as interested in any advance, loan or credit facility which may, after the date of the notice, be made to that concern, shall be deemed to be a sufficient declaration of interest in relation to any advance, loan or credit facility made to the concern, if —

- (a) the notice specifies the nature and extent of his interest in the concern specified;
- (b) the interest is not different in nature from, or greater in extent than, the interest specified in the notice at the time any advance, loan or credit facility is made to the concern so specified; and
- (c) the notice is given to the board of directors at the earliest opportunity.

(3) Where a director of a bank who holds any office or acquires any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as director of the bank, he shall make, at a meeting of the board of directors of the bank, a declaration as to the fact, nature and extent of the conflict.

(4) The declaration referred to in subsection (3) shall be made at the first meeting of the board of directors held after the declarant becomes a director of the bank, or, if he is already a director, after he commences to hold the office concerned, or comes into possession of the property concerned, as the case may be.

(5) Any director who makes a declaration under subsection (3) shall cause the declaration to be given at a meeting of the board of directors at the earliest opportunity, and to be recorded in the minutes of the meeting at which it is given.

(6) Any director who fails to comply with the requirements of this section, shall be guilty of an offence and liable to a fine of P 10 000 and to imprisonment for three years.

32. Any person who, being a director, a principal officer, officer, employee or agent of a bank —

- (a) with intent to deceive, makes any false or misleading statement or entry in, or omits any statement or entry from, any book, account, report or statement of the bank;
- (b) obstructs any audit, or examination of the affairs of the bank under this Act;
- (c) fails to take all reasonable steps to ensure compliance by the bank with the provisions of this Act;
- (d) reveals to a customer that he is being investigated for money laundering activities; or
- (e) is privy to any offence committed under this section and fails to report it to the board of directors,

shall be guilty of an offence and liable to a fine of P 15 000 and to imprisonment for five years.

Offences by
directors and
penalties

PART VI — *Temporary Management by Central Bank*

33. (1) When the Central Bank is satisfied, or has reasonable cause to believe, in respect of any bank that —

Conditions and
procedure for
temporary
management

- (a) its unimpaired capital does not meet the requirements of section 13;
- (b) its business is being conducted in an unlawful or imprudent manner, or that it is otherwise in an unsound financial condition;
- (c) the continuation of its activities is not in the best interest of its depositors;
- (d) it has refused or refuses to permit an examination; or
- (e) it has been served with notice of intention to revoke its licence under section 11,

it may, after consultation with the Minister, serve on the principal officer of such bank at its registered office, a notice announcing its intention of temporarily managing the bank with effect from such date and time as may be specified in the notice.

(2) A copy of the notice referred to in subsection (1) shall be sent to the High Court, and a copy shall be posted at each place of business of the bank in Botswana.

(3) Upon the date and time specified in the notice referred to in subsection (1), there shall vest in the Central Bank full and exclusive powers of management and control of the bank concerned, either directly or through a representative duly appointed by the Central Bank, and, without prejudice to the generality of the foregoing, such powers shall include power to continue or discontinue the operations of the bank, to stop or limit the payment of its obligations, to employ any necessary officers or employees, to execute any instrument in the name of the bank and to initiate, defend and conduct in its name any action or proceedings to which the bank may be a party.

(4) As soon as possible after the Central Bank has assumed temporary management of a bank, the Central Bank shall prepare an inventory of the assets vested in, belonging to or held by such bank, and shall send a copy thereof to the High Court, where it shall be available for examination by interested parties.

(5) All expenses of and incidental to the temporary management of a bank shall be paid by such bank in such manner as the Central Bank may determine.

(6) Upon the date and time specified in the notice, and subject to any appeal to the High Court, any term, statutory, contractual or otherwise, on the expiry of which a right of action of the bank would cease or be extinguished, shall be extended by six months, or until fifteen days after the Central Bank restores the bank to its board of management or its owners, as the case may be, whichever event shall first occur.

(7) A bank on which notice has been served under this section may, within a period of ten days after the date of such service, appeal to the High Court therefrom:

Provided that the High Court may, on sufficient cause being shown, extend such period of ten days.

(8) No execution shall be returned against the property of a bank during any period during which it is managed by the Central Bank under the provisions of this section.

34. When the Central Bank has served notice on a bank under section 33, it shall, within a period of ninety days from the date specified in such notice, or within such longer period as may be permitted by the High Court —

Duration of
temporary
management

- (a) restore the bank to its board of management or owners, as the case may be;
- (b) arrange for the sale of the bank;
- (c) propose a compromise or arrangement between the bank and its creditors, or a reconstruction of such bank, in accordance with the relevant provisions of the Companies Act; or
- (d) petition the High Court for a winding-up order or a judicial management order in respect of the bank.

PART VII —*Winding-up and Judicial Management*

35. (1) Except as may be otherwise provided in this Part, the provisions of the Companies Act relating to the winding-up and judicial management of companies shall be applicable to banks within the meaning of the said Act:

Winding up
or judicial
management
of banks

Provided that —

- (i) the powers and functions assigned to the Master under the Companies Act, shall be exercised by the Central Bank or by a person approved by the Central Bank; and
- (ii) the provisions of sections 217 to 220 inclusive of the Companies Act shall not apply to banks.

(2) Before the commencement of any winding-up of a bank, whether voluntary or by the court, or of any judicial management of a bank, fourteen days prior notice in writing shall be given to the Central Bank, and the Central Bank may —

- (a) take action under section 33;
- (b) in the case of a voluntary winding-up, permit the winding-up to proceed on such terms and conditions as the Central Bank may determine; or
- (c) in the case of a winding-up by the court or a judicial management, accept the petition and shall be entitled to appear before the court and make representations.

(3) For the purposes of any winding-up, and notwithstanding anything to the contrary in section 187 (2) and 226 (2) of the Companies Act, or in the Insolvency Act, the provisions of section 34 of this Act shall apply.

(4) For the purposes of sections 236 and 269 of the Companies Act, when the Central Bank has, under Part VII of this Act, taken over the temporary management of a bank which is subsequently wound-up or which is placed under judicial management and becomes insolvent, the take-over shall be deemed to be and to correspond with a sequestration order under the Insolvency Act.

Priority of
deposit
liabilities

36. Subject to the provisions of section 37, where a bank becomes unable to meet its obligations, or becomes insolvent or suspends payment, that bank's assets shall be made available to meet all deposit liabilities of such bank in Botswana, and those deposit liabilities shall have priority over all unsecured liabilities of the bank, other than those expenses and debts specified in the Companies Act to have priority of claim over all other liabilities of the bank in the event of a winding-up.

Priority of
different
classes of
deposit and
other
liabilities

37. (1) Notwithstanding the provisions of any other enactment, in the event of a winding-up of a bank all assets of the bank shall, subject to subsection (3), be made available to meet all deposit liabilities of the bank in the following order of priority —

- (a) insured deposit liabilities incurred by the bank with non-bank customers, in accordance with a deposit insurance scheme established under the laws of Botswana;
- (b) deposit liabilities incurred by the bank with non-bank customers;
- (c) deposit liabilities incurred by the bank with other banks.

(2) The deposit or other liabilities in each class specified in subsection (1) shall rank in the order specified therein, but as between deposit or other liabilities of the same class they shall rank equally between themselves and shall be paid in full unless the assets of the bank are insufficient to meet them, in which case they shall be settled in equal proportions between themselves.

(3) In the event of a winding-up, the domestic assets of a bank shall not be used to meet any deficiency which occurs in the offshore assets of the bank.

(4) For the purposes of this section and section 36 —

- (a) "bank" means a bank and a foreign bank as defined in section 2;
- (b) "deposit liabilities" means any sums of money paid on terms —
 - (i) under which they will be repaid, with or without interest, or at a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the persons making the payments and the bank receiving them;
 - (ii) which are not referable to the provision of property or services or the giving of security.

(5) For the purposes of subsection (4) (b) (ii), money is paid on terms which are referable to the provision of property or services or to the giving of security if, and only if —

- (a) it is paid by way of advance or part-payment for the sale, hire or other provision of property or services of any kind and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided;
- (b) it is paid by way of security for payment for the provision of property or services of any kind provided or to be provided by the bank by whom or on whose behalf the money is accepted; or
- (c) it is paid by way of security for the delivery or return of any property, whether in a particular state of repair or otherwise.

38. (1) Any sums of money remaining unclaimed after the winding-up of a bank shall be deposited in the Guardian's Fund established or continued under the Administration of Estates Act.

Unclaimed
monies or
property after
winding-up

(2) Any other property held by the bank as a trustee, fiduciary, lessor of a safe deposit box or bailee, which has not been returned to its rightful owners in the course of the winding-up of such a bank, shall, together with the inventories pertaining thereto, be placed in the custody of the Central Bank and, if unclaimed after a period of not less than two years, shall be disposed of in such way as the Central Bank may, with the consent of the Minister, determine.

PART VIII — *Miscellaneous Provisions*

39. (1) Where a customer's deposit, or money lodged with a bank for any purpose, has been left untouched and not reclaimed for ten years or more, and the customer has not responded within six months to a letter from the bank concerning the dormant deposit or money, and sent to the customer's last known address by registered post, the deposit or money, as the case may be, shall be deemed to have been abandoned and shall, without further formality, be transferred forthwith by the bank concerned to the Central Bank to be dealt with as may be decided by the Central Bank.

Abandoned
funds

(2) The Central Bank shall maintain such records of deposits or monies which have been abandoned, as shall enable it to refund to the owner or his heirs or assigns any such deposits or monies to which a rightful claim is established to the satisfaction of the Central Bank.

(3) No refund made pursuant to subsection (2) shall carry any interest.

40. (1) Notwithstanding any other enactment, a copy of any entry in a banker's books shall be prima facie evidence of such entry and of the matters, transactions and accounts recorded therein if —

Evidence in
relation to
banker's
books

(a) the books were, at the time the entry was made, one of the ordinary books of the bank concerned;

(b) the entry was made in the usual course of banking business;

(c) the book is in the custody of the bank; and

(d) the copy of the entry is certified by a responsible officer of the bank to have been compared with, and is an accurate copy of, the original entry.

(2) No officer, employee or agent of a bank shall, in any proceedings to which the bank is not a party, be compelled to produce any banker's book the contents of which can be proved under subsection (1), or to appear as a witness to prove the matters, transactions and accounts recorded, except by order of a court of competent jurisdiction, and on good cause shown.

(3) A court of competent jurisdiction may, on the application of any party to legal proceedings, order that such party be permitted to obtain copies of any entry in a banker's book where such entry is material to the proceedings.

(4) A copy of any application made under subsection (3) shall be served on the bank in respect of whose banker's books the application is made.

(5) For the purposes of this section, "banker's books" include ledgers, day books, cash books, account books, registers and all other books and records, including electronic and computer records, used in the ordinary course of banking business.

Methods of
identification

41. (1) In all transactions connected with the opening of, deposit into or withdrawal from, a savings bank account, the finger print of a depositor who is unable to sign his name shall, if affixed in the presence of two officers of the bank, have the same legal effect as if the depositor had signed his name.

(2) Regulations made under section 51 may provide for certain other methods of identification in relation to certain transactions, including transactions that are electronically processed.

Control of
advertisements

42. (1) If an advertisement made on behalf of any bank is, in the view of the Central Bank, false or misleading, the Central Bank may direct the bank, or other person responsible for the dissemination of such advertisement to withdraw or modify it in such manner as the Central Bank may direct, and the bank shall comply with any such direction.

(2) Any bank or person who fails to comply with a direction given by the Central Bank in accordance with the provisions of subsection (1) shall be guilty of an offence and liable to a fine of P 5 000.

Confidentiality of
information

43. (1) Subject to the provisions of this Act, no director, principal officer, officer, employee or agent of a bank or any other person who by virtue of his professional relationship with a bank has access to the records of the bank (each such person being jointly hereinafter referred to as a "banker") shall, during or after his relationship with the bank, directly or indirectly disclose any information he may acquire in the course of his duties as a banker concerning any customer's deposits, borrowings or transactions, or other personal, financial or business affairs, without the written and freely given permission of the customer concerned, or his personal representative.

(2) The duty of confidentiality imposed on a banker in accordance with subsection (1) shall not apply in the following circumstances —

- (a) the customer is declared bankrupt in Botswana, or, if a company, is being wound up, and the information is required in connexion with bankruptcy or winding-up proceedings;
- (b) civil or criminal proceedings arise involving the bank and the customer or his account;
- (c) the bank has been served with a garnishee order attaching monies in the account of the customer;
- (d) a banker is summoned to appear before a court of competent jurisdiction in Botswana and the court orders the disclosure of the information;
- (e) the information is required by an officer in the employment of the same bank in Botswana, or by an auditor or legal representative of that bank, who requires and is entitled to know the information in the course of his professional duties;

- (f) the information is required by another bank for the purpose of assessing the credit-worthiness of a customer, and is being sought for commercial reasons only, and is of a general nature;
 - (g) the information is required by the Directorate on Corruption and Economic Crime in connexion with an investigation carried out under the authority of the Director thereof in accordance with the provisions of section 7 of the Corruption and Economic Crime Act, 1994.
- (3) Notwithstanding the duty of confidentiality imposed under subsection (1), information may be disclosed —
- (a) by an affiliate operating in Botswana to its parent bank concerning any transaction of the affiliate with another bank inside or outside Botswana;
 - (b) by a representative office established in Botswana in accordance with the provisions of section 4, to its head office concerning any transaction of that office with a bank in Botswana:
- Provided that —
- (i) where the information relates to a transaction with a customer other than a bank, no information other than that concerning credit facilities granted to, or foreign exchange transactions with, the customer shall be disclosed;
 - (ii) no information relating to deposits taken from, or foreign exchange dealings with a central bank, or with any other entity, by whatever name called, which performs the functions of a central bank, shall be disclosed.
- (4) An official of a foreign bank or an official of a foreign central bank, or any other entity or agency, by whatever name called, which performs the functions of a central bank, who has the responsibility of supervising that bank, who wishes to conduct an audit or examination or inspection of an affiliate of that bank in Botswana, shall not do so without obtaining the prior written authorization of the Central Bank, and in any event shall be subject to the duty of confidentiality imposed under subsection (1) and to any conditions that the Central Bank may impose.
- (5) (a) Where a police officer, other than an officer of the Directorate on Corruption and Economic Crime acting in accordance with the provisions of subsection (2) (g) or a duly authorized representative of the Commissioner of Taxes requires any information from a bank relating to the transactions and accounts of any person, he may apply to a court of competent jurisdiction for an order of disclosure of such transactions and accounts or such part thereof as may be necessary.
- (b) The court shall not make an order of disclosure under this subsection unless it is satisfied that the applicant is acting in the discharge of his duties, that the information is material to any civil or criminal proceedings, whether pending or contemplated in Botswana, and that the disclosure is necessary, in all the circumstances.
- (6) Notice of an application to the court made under subsection (5) shall be served on both the bank and the person in question.

(7) Subject to this Act, neither the Central Bank nor any person conducting an examination for it under this Act shall reveal any information in relation to the affairs of a customer obtained in the course of such examination to any person, unless required by a court of competent jurisdiction so to do.

(8) Notwithstanding subsection (7), the Central Bank may disclose to the auditor of a bank any information received under or for the purpose of this Act, if it considers that disclosing such information would enable or assist it in the discharge of its supervisory responsibilities.

(9) The Central Bank may publish, in whole or in part, and at such times as it may determine, information or data furnished to it under this Act provided that in doing so it does not disclose the particular financial situation of any bank or customer, unless the consent of the bank or the customer, as the case may be, has been previously specifically obtained.

(10) Nothing in this section shall preclude the disclosure of information by the Central Bank, under conditions of confidentiality, to a central bank in a foreign country for the purpose of assisting it in exercising functions corresponding to those of the Central Bank under this Act.

(11) For the purpose of subsection (1), "professional relationship" includes a relationship between a bank and a computer bureau or a printer, being a relationship that has been approved by the Central Bank.

(12) Any person who acts in breach of the provisions of subsection (1) shall be guilty of an offence and liable to a fine of P10 000 and to imprisonment for three years.

Identity of
customers

44. (1) Banks may only open bank accounts and accept security deposits, or rent out safe deposit boxes, when they are satisfied, having acted with due diligence and with reasonableness, that they have established the identity of the person in whose name the funds or securities are to be credited or deposited or the identity of the lessee of the safe deposit box, as the case may be.

(2) In the case of bank accounts and security deposits which have been opened, and safe deposit boxes which have been rented out, prior to the coming into force of this Act, and where the true identity of the customer has not been satisfactorily established, the bank concerned shall, by writing to the customer in question or otherwise, take steps forthwith to establish his true identity.

(3) If the steps taken under subsection (2) fail to satisfy the bank concerned that they have established beyond reasonable doubt the true identity of the customer within twelve months of the coming into force of this Act, the bank shall forthwith close the account or security deposit, or terminate the lease of the safe deposit box, as the case may be, and report the matter to the Central Bank.

(4) Any records used by a bank in order to identify a customer shall be kept by the bank for at least 5 years after closure of the bank account concerned.

(5) Any bank which acts in breach of the requirements of this section shall be guilty of an offence and liable to a fine of P10 000.

45. (1) The Central Bank may, with the approval of the Minister, by notice published in the Gazette, declare any day to be a bank holiday.

Bank holidays

(2) Except with the permission of the Central Bank, no bank may transact business with the public on any bank holiday or any public holiday.

(3) Any obligation which is required to be fulfilled at a bank and which falls due on any bank holiday or public holiday shall be deemed to fall due on the day next following the bank holiday or public holiday, as the case may be.

46. (1) Every bank shall determine its own hours of business, and shall remain open for the transaction of business with the public during those hours, subject to the provisions of subsection (2).

Hours of
business

(2) Every bank shall notify the Central Bank, in writing, of any change in its hours of business, one week prior to the entry into force of the new proposed banking hours.

(3) Every bank shall post, in a conspicuous place at each office where it transacts business with the public, the hours the office is open for business.

(4) Notwithstanding the provisions in this section and section 4% relating to hours of business and bank holidays, banking business may be conducted through automated teller machines, or similar devices as approved by the Central Bank, on a twenty four hour basis.

47. Any bank which wilfully receives any deposit while it is insolvent shall be guilty of an offence and liable to a fine of P 20 000, and any director, principal officer or other officer or employee of such bank who knows of, or ought to have known of the insolvency of the bank, and who receives, causes, or authorizes or knowingly permits the acceptance of, a deposit during the period of the insolvency, shall be guilty of an offence and liable to a fine of P 10 000 and to imprisonment for five years.

Acceptance of
deposits by
insolvent
banks

48. The Central Bank may publish in whole or in part, in such form and at such time as it may determine, any information or data furnished or collected under this Act:

Publication of
information

Provided that no information or data shall be published which might disclose the affairs of a bank or customer, unless the prior consent of that bank or customer as the case may be, has been properly obtained.

49. (1) Except as may be otherwise expressly provided by this Act, nothing in this Act shall be construed so as to relieve a bank from compliance with the provisions of the Companies Act or any other applicable laws.

Application of
other laws

(2) The issue of a licence under this Act shall not be deemed to exempt a bank from the necessity of obtaining any other licence, permit or authority under any other written law, in respect of any activity carried on by such bank.

**Personal
liability of
bank officers**

50. No act or thing done by any officer of the Central Bank, or by any person acting under the direction of the Central Bank shall, if the act or thing done was bona fide for the purpose of carrying into effect the provisions of this Act, subject such officer or person to any liability, action, claim or demand whatsoever.

Regulations

51. The Minister may, after consultation with the Central Bank, make regulations for the better carrying out of the provisions and purposes of this Act, including the prescribing of anything required by this Act to be prescribed.

**General
penalties**

52. Any person who contravenes or fails to comply with any provision of this Act, or any requirement of the Central Bank under this Act, with which it is his duty to comply, and for which no penalty has been otherwise provided, shall be guilty of an offence and liable to a fine of P3 000.

**Exemptions
and exclusions**

53. (1) The provisions of this Act shall not apply to the Central Bank, except in so far as this Act confers upon the Central Bank powers to perform the functions specified herein.

(2) Where certain institutions are authorized to engage in banking business under powers conferred by any other legislation, then, unless otherwise prescribed, and notwithstanding such other legislation, the provisions of this Act governing the examination of banks and, more generally, those provisions ensuring prudence in banking, shall apply to such institutions.

**Repeal
Cap. 46:04**

54. The Financial Institutions Act is hereby repealed.

PASSED by the National Assembly this 11th day of April, 1995.

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