BANK OF BOTSWANA (AMENDMENT) ACT, 1999

No. 19 **of 1999**

ARRANGEMENT OF SECTIONS

An Act to amend the Bank of Botswana

Date of Assent: 31/12/1999.

Date of Commencement: 31/12/1999.

ENACTED by the Parliament of Botswana.

Short title

1. This Act may be cited as the Bank of Botswana (Amendment). Act, 1999.

Insertion of section 29A in Act No. 19 of 1996

2. The Bank of Botswana Act (hereinafter referred to as "the Act") is amended by inserting, immediately after section 29 thereof, the following new section —

Authority to transact foreign exchange business

29A. (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 —

Act No. 13 of 1995

(*a*) bank licensed under the Banking Act;

Act No. 22 of 1992

(*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.

Insertion of Part VIIA

3. The Act is amended by inserting, immediately after Part VII thereof, the following new Part VIIA —

"PART VIIA — *Regulation of companies which have applied for or been issued with a tax certificate*

Interpretation

42.A 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.

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Application

42.B (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 137 (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 42.C, and shall be without prejudice to any powers granted to the Bank in relation to banks and other companies.

Act No.12 of 1995

(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.

Exemptions

42.C 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.

Supervisory and inspection powers

42.D (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.

Power to inspect

42.E (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.

Recommendations of Bank

42.F (1) The Bank may recommend —

(*a*) to the Minister, the revocation of a tax certificate issued under section 137 (2) of the Income Tax Act; where —

Act No. 12 of 1995

(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.

Disclosure of information

42.G 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.

Levying of fees

42.H 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.

Offences

42.I 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.

Penalty

42.J 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.

PASSED by the National Assembly this 16th day of December, 1999.

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