BANKING ACT, 2023

No. 8 **of 2023**

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An Act to provide for the licensing, regulation and supervision of banks and deposit-taking institutions and to promote safety and soundness of banks and for matters incidental thereto.

Date of Assent: 24.05.2023
Date of Commencement: ON NOTICE
ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

Short title and commencement

1. This Act may be cited as the Banking Act, 2023, and shall come into operation on such a date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

2. Unless the context otherwise provides —

"affiliate" means any person owning or having the power to vote 20 percent or more of any of the outstanding shares of any class of the voting shares or other voting participation, or having the power to exercise influence over the management, policies and day to day operation, of another person;

Cap. 08:07

"Agency" has the same meaning assigned to it under the Financial Intelligence Act;

"agent" in relation to a bank or deposit-taking institution, means a right granted to a person by that bank or deposit-taking institution to receive on its behalf from its clients any deposits, money due to it or applications for loans or advances, or to make payments to such clients on its behalf or to perform any function or activity as may be approved by the Central Bank;

"bail-in" means a resolution measure that empowers an official administrator to help a bank on the brink of non-viability, by requiring cancellation of debts owed to creditors and unsecured depositors, or converting debt instruments to equity;

"bank" means a person, including a subsidiary of a foreign bank, which is licensed under this Act to engage in banking business, and does not include the Central Bank;

"banking business" means the business of —

(*a*) accepting deposits of money from members of the public withdrawable or payable, by cheque or otherwise, upon demand or after a fixed period or after notice;

(*b*) using those monies, in whole or in part, to fund credits or investments for the account and at the risk of the person accepting those deposits, including discounting of commercial paper, securities and other negotiable instruments, whether or not such business is conducted in a home office, a branch of a bank or an agency; or

(*c*) the soliciting of or advertising for deposits;

"banking group" means a bank, its affiliates, and any other entities that the Central Bank determines by, regulation or directive, for the purpose of consolidated supervision;

"beneficial owner" has the same meaning assigned to it under the Financial Intelligence Act;

"board of directors" in relation to a bank or deposit-taking institution, means the highest body of authority in a bank or deposit-taking institution responsible for the governance and setting the operating strategy for the bank or deposit-taking institution, effectively monitoring management and properly accounting to shareholders;

"branch" means any premises that form a legally dependent arm of a bank that is not separately incorporated, at which a bank transacts banking business in or outside Botswana;

"bridge bank" means a bank established under section 68 (5) to take over and continue viable operations of a bank in official administration;

"capital" means a bank or deposit-taking institution's own funds, paid in by owners, shareholders, retained earnings and such other funds freely available to absorb losses, as shown in the books of the bank or deposit-taking institution, determined in accordance with International Financial Reporting Standards, after deducting the amount thereof attributable to capital instruments, including stock that are subject to —

(*a*) a legal or technical covenant, term, restriction or encumbrance that would cause the amounts attributable to those capital instruments not to be freely available for distribution to depositors or other creditors in the event of the liquidation or dissolution of the bank or deposit-taking institution; or

(*b*) 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 or deposit-taking institution;

"Central Bank" means the Bank of Botswana, as established under the Bank of Botswana Act; Cap. 55:01

"close relative" in relation to any person, means —

(*a*) a spouse;

(*b*) a brother, a sister, a child, a stepchild, a parent or stepparent; or

(*c*) the spouse of any of the persons mentioned in paragraph (*b*) above;

"company" has the same meaning assigned to it under the Companies Act; Cap. 42:01

"conglomerate" means a group of companies whose members include a bank;

"consolidated supervision" means a quantitative and qualitative assessment of the overall strength of a group or conglomerate to which a bank belongs, to evaluate the potential impact of other companies in the group on the bank;

"control" means a relationship where a person or group of persons acting in concert, as determined by the Central Bank by order, directly or indirectly —

(*a*) owns a majority of the shares of a bank, deposit-taking institution, a banking group or an affiliate of a banking group;

(*b*) has the power to appoint or remove the majority of the board of directors of a bank, deposit-taking institution or a member of a banking group; or

(*c*) has the ability to exert a controlling influence on the management or policies or day-to-day operations of a bank, deposit-taking institution or a member of a banking group;

"controlling company" means a company that has control over a bank or deposit-taking institution licensed under this Act;

"controlling interest" means an interest that permits the holder or owner to elect, name or place into office a majority of the directors or senior managers of a bank or deposit-taking institution;

"core capital" of a bank means permanent shareholders' equity in the form of issued and fully paid-up shares of common shares, share premium, eligible revenue reserves audited retained earnings and such other funds as the Central Bank may, by regulation, permit a bank to treat as core capital;

"correspondent banking services" means the provision of banking services by one bank to another bank, where neither of the banks is a shell bank or has a relationship with a shell bank;

"credit" means any disbursement or commitment to disburse a sum of money supported by a right to repayment of the amount disbursed and outstanding and to payment of interest or other charges on such amount, whether designated as an advance, loan, financial guarantee, assumption of liabilities, a bond or commitments of similar nature;

"credit bureau" has the same meaning assigned to it under the Credit Information Act; Act No.17 of 2021

"deposit" means a sum of money —

(*a*) paid by one person to another person denominated in Botswana Pula or any other recognised currency; and

(*b*) subject to an agreement in terms of which an equal amount or any part thereof may be conditionally or unconditionally repaid by the person to whom the money has been paid —

(i) with or without interest or premium,

(ii) either on demand or at specified or unspecified time, and

(iii) in circumstances agreed by or on behalf of the persons making the payments and the person receiving such payment,

and such deposit is not referable to the provisions of property or services, other than the transmission of money by mobile telephone or electronic system or other giving of security to be rendered;

"deposit-taking institution" means a company, other than a bank which is licensed under this Act to engage in the business of accepting deposits from members of the public;

"director" means an individual who is a member of the board of directors of a bank or deposit-taking institution;

"eligible financial contract" means any type of financial contract from time to time specified by the Central Bank for such purpose;

"foreign bank" means a bank that is incorporated or head office of which resides outside Botswana and authorised and regulated as a bank under the laws of the country in which it is incorporated or has its head office;

"independent director" means an individual who is neither a shareholder, a representative of a shareholder, an employee of a bank or deposit-taking institution or its related entity or a bank holding company;

"liquid assets" means 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, negotiable instruments of such types as the Central Bank may approve;

"major acquisition" means where a bank or deposit-taking institution acquires 10 percent and above of the issued common share capital of an entity;

"money laundering" has the meaning assigned to it under the Proceeds and Instruments of Crime Act; Cap. 08:03

"net termination value" means the net amount obtained after setting off the mutual obligations between the parties to an eligible financial contract in accordance with its provisions;

"netting clause" means a clause that enables the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant or participants, whether or not on a settlement system, either issues to, or receives from, one or more other participants in that system with the result that only a net claim or a net obligation remains; and

"official administrator" means a person appointed by the Central Bank under section 65;

"physical presence" means the presence of board members of a bank or deposit-taking institution and staff comprising of senior management of a bank or deposit-taking institution within a country:

Provided that the existence of a local agent acting on behalf of a bank or deposit-taking institution or the presence of any employees who are not in management positions shall not constitute physical presence;

"place of business" means any branch, office or agency, including a mobile agency, of a bank or deposit-taking institution in Botswana, open to the public for the transaction of banking business or deposit-taking activities;

"principal officer" in relation to a bank or deposit-taking institution in Botswana, means the chief executive officer, or other person, by whatever title he or she 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 or deposit-taking institution and participating in major policy making function of the bank or deposit-taking institution;

"related party" means any person that maintains with a bank or deposit-taking institution at least one of the following relationships —

(*a*) any director, principal officer, senior manager, or significant shareholder of the bank or deposit-taking institution or of any affiliate of the bank or deposit-taking institution;

(*b*) any close relative of a director, principal officer, senior manager or significant shareholder of the bank or deposit-taking institution or of any affiliate of the bank or deposit-taking institution;

(*c*) any legal person in which a director, principal officer, senior manager, or significant shareholder of the bank or deposit-taking institution or of any affiliate of the bank or deposit-taking institution is also a director, principal officer, senior manager or significant shareholder or has a significant interest;

(*d*) any person who has a significant interest in a legal person in which the bank or deposit-taking institution or of any affiliate of the bank or deposit-taking institution has a significant interest;

(*e*) any affiliate of the bank or deposit-taking institution; or

(*f*) any other person who exercises control or influence over the management or policies of the bank or deposit-taking institution, or is otherwise involved in a relationship which the Central Bank may, by regulation or order, determine to be a related party of the bank or deposit-taking institution;

"representative office" means an office of a foreign bank that is not engaged in banking business and does not accept deposits;

"senior manager" means the chief financial officer, chief operating officer, chief accountant and chief risk officer of the bank or deposit-taking institution and any person, other than a non-executive director, who reports directly to the board and principal officer or participates or has authority to participate in major policymaking functions of the bank or deposit-taking institution or exerts influence in the granting or denial of credit and other accommodation by the bank or deposit-taking institution;

"shell bank" means a bank which has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial group that is subject to effective supervision;

"significant interest" means a direct or indirect holding of an interest in a legal person, alone or in concert with another person —

(*a*) that represents five percent or more of its outstanding voting shares; or

(*b*) the exercise of a significant influence, as determined by the Central Bank, over that legal person;

"significant shareholder" means a person that owns, directly or indirectly, including but not by way of limitation, legal and beneficial owners, alone or in concert with another person, a significant interest in a legal person;

"solo" in relation to financial accounts, means books of a single company;

"subsidiary" means a legal person in which another person or group of persons acting in concert owns, directly or indirectly —

(*a*) 50 percent or more of the outstanding voting shares, or any class; or

(*b*) a significant interest which enables such person or group of persons to exercise control over the legal person;

"supervisory authority" has the meaning assigned to it under the Financial Intelligence Act;

"supplementary capital" means capital of a bank or deposit-taking institution maintained in accordance with the principles established by the Central Bank in regulation in excess of core capital;

"systemically important bank" means a bank, as determined by a methodology determined by the Central Bank, whose failure may result in significant disruption to the essential services provided to the banking system and the overall economy, due to its size, cross-jurisdictional activities, complexity and lack of substitute and interconnection;

"tier" in relation to a bank, means a class or category of banks based on their relative size to the overall banking market and nature of permissible business;

"unimpaired" in relation to the capital of a bank or deposit-taking institution, 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 a liquidation or dissolution of the bank or deposit-taking institution, 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 or deposit-taking institution;

"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; and

"write-down" means the reduction of the value of an asset for the purposes of off-setting a loss or expense.

Application of the Act

3. (1) The provisions of this Act shall apply to a bank, banking group and deposit-taking institution.

(2) Notwithstanding subsection (1), where a certain institution is authorised 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 safety and soundness in banking, apply to such institution.

(3) 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.

PART II – *Licensing Banks and Deposit-Taking Institutions*

Authority to transact banking business or deposit-taking activities

4. (1) A person shall not transact banking business or engage in deposit-taking activities without a valid licence issued by the Central Bank.

(2) Any person who transacts banking business or engages in deposit-taking activities without a licence commits an offence and is liable to a fine not exceeding P1 000 000 or an imprisonment term not exceeding five years or to both.

Restriction on use of the word "bank"

5. (1) No person, other than a bank licensed under this Act, shall, without the prior approval of the Central Bank —

(*a*) use, in any language, the word "bank", or any translation of its derivatives, as part of the name, description or title under which he or she conducts his or her activities;

(*b*) use, as part of the name, description or title under which he or she carries on his or her activities, any word or term indicating that the nature of his or her activities are those of a bank or deposit-taking institution; or

(*c*) make any representation, or use any word or term in any billboard, letterhead, notice or advertisement, indicating in any manner that he or she is carrying on the activities of a bank or deposit-taking institution:

Provided that a person who has not been granted a licence, may on approval of the Central Bank, use the word "bank" for the sole purpose of forming and incorporating a company with a view to applying for a licence under this Act within six months of incorporating such company.

(2) A person who fails to submit an application for a licence after being granted approval under subsection (1) shall de-register the company.

(3) The provisions of subsection (1) shall not apply where the use of word "bank" —

(*a*) is included in the title of a staff association or similar organisation representing bank employees, or a recognised association of banks licensed under this Act; or

(*b*) is composed of other words as part of a place-name or a personal name.

(4) Any person who contravenes this section commits an offence and is liable to a fine not exceeding P50 000 for each day that the offence continues up to a maximum of P1 000 000 or to imprisonment for a term not exceeding five years, or to both.

Foreign Bank representative office

6. (1) A foreign bank shall not establish a representative office in Botswana without a licence issued by the Central Bank.

(2) A licence to establish a representative office may be granted to a foreign bank only if such a bank is subject to consolidated supervision by a supervisory authority in the home jurisdiction of the foreign bank, which supervision is in the opinion of the Central Bank adequate.

(3) A representative office licensed in accordance with this section shall be restricted to the following activities —

(*a*) advertising, marketing and promotion business on behalf of the foreign bank; or

(*b*) agency services aimed at facilitating business transactions between domestic entities and the foreign bank.

(4) Any bank or a representative office which contravenes subsection (1) or (3) commits an offence and is liable to a fine not exceeding P1 000 000 or to imprisonment for a term not exceeding five years, or to both.

(5) 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 21 days from the date of receiving the request commits an offence and is liable to a fine of P250 000 or to an imprisonment term not exceeding three years or to both.

Investigation of unlicensed banking or deposit-taking

7. (1) Where the Central Bank has reason to believe that a person is advertising for or soliciting deposits or is transacting banking business in violation of this Act, the Central Bank may, in order to ascertain whether the Act is being or has been violated, immediately request for and examine, or cause to be examined, all books, minutes, records, cash, securities and any other documents and items in such person's possession or custody.

(2) The Central Bank shall retain and preserve any such books, minutes, records, cash, securities or other documents, giving to the custodian thereof a duly authorised receipt:

Provided that where cash is held in a bank account, the Central Bank may order the freezing of such an account.

(3) The Bank shall, at the earliest reasonable opportunity, notify the Minister of any action taken pursuant to subsections (1) and (2) stating the reasons therefor.

(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, commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding five years, or to both.

(5) Where, upon investigation, the Central Bank determines that banking business or a deposit-taking activity is being transacted in violation of section 4, the Central Bank shall order such a person to cease and desist from such illegal activities forthwith.

(6) Any person who contravenes any order of cease and desist given pursuant to subsection (5) commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding five years, or to both.

(7) The Central Bank shall make an 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 or her whilst transacting banking business or deposit-taking activities in violation of this section.

(8) The provisions of this section 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.

(9) The Central Bank shall not later than 10 working days after the completion of its investigation and review, report its findings to the Minister.

Application for banking or deposit-taking licence

8. (1) An application for a licence to transact banking business or to engage in deposit-taking activities in Botswana shall be made to the Central Bank in such manner as may be prescribed.

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

(3) For the purposes of this section, an application for a licence shall be considered to be complete when the Central Bank determines it to be so, and the Central Bank shall give the applicant a written acknowledgement of receipt of the application.

(4) The Central Bank shall, within 30 days of receipt of an application for a licence, inform the Minister of such receipt and that it is duly being processed and the Central Bank shall cause such application to be published in the *Gazette*, on the Central Bank's website and in at least two newspapers circulating in Botswana.

(5) The Central Bank may request 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.

(6) Where the applicant fails to submit additional or supplementary information as required by the Central Bank, within six months period commencing on the date that the first documents as specified in subsection (1) were submitted to the Central Bank, the Central Bank may declare the application to have been abandoned and the processing fee forfeited.

(7) In the event of any material change in the information provided by the applicant, before the issue of a licence, the applicant shall without delay notify the Central Bank of such a change.

(8) Every document and statement provided to the Central Bank as part of the application, including the supplementary information, other than documents, statements and information that are otherwise public or available to the public, shall be kept and treated by the Central Bank in strict confidence pursuant to the terms of the Bank of Botswana Act.

Cap. 55:01

(9) The Central Bank shall not grant a licence to an applicant unless the applicant is incorporated under the Companies Act and limited by share capital.

(10) The Central Bank shall not licence a shell bank or a non-trading company or any company as a bank, where such a company does not have physical presence in the country or any country and is not regulated or supervised by a financial regulator within its country of origin.

(11) Any person who, in connection with any application for a licence filed under this section, wilfully makes any statement to the Central Bank that is misleading or that he or she knows to be untrue in any respect, or provides any document that is materially misleading or false, commits an offence, and is liable to a fine not exceeding P5 000 000 or to imprisonment for a term not exceeding seven years or to both.

Processing of applications

9. (1) The Central Bank shall, in assessing an application satisfy itself —

(*a*) with regard to the financial history and status of the applicant, its proposed significant shareholders and beneficial owners;

(*b*) that the principal officer, directors, senior managers, beneficial owners and significant shareholders are fit and proper persons as provided for in this Act;

(*c*) with regard to the adequacy of its proposed staffing, its capital structure, its operational and financial resources to cover obligations and liabilities that are likely to be incurred in the conduct of the activities sought to be licensed;

(*d*) with regard to the adequacy of proposed risk management policies and systems, internal controls, audit procedures and corporate governance practices;

(*e*) that the ownership structure of the applicant will not hinder effective supervision; and

(*f*) with regard to the viability of its business plan and soundness of its proposed operations.

(2) Where an applicant wishes to withdraw an application before a decision is made, it shall do so in writing to the Central Bank, stating reasons therefor.

(3) Upon receipt of the notice of withdrawal, the Central Bank shall notify the Minister and the Minister shall cause the notice to be published in the *Gazette*, at least two newspapers of general circulation in Botswana and on the Central Bank's website.

Grant of licence

10. (1) Where the Central Bank is satisfied that the applicant meets the requirements set out in sections 8 and 9, the Central Bank shall, by written notice to the applicant, and on payment of such licence fee by the applicant as may be prescribed, grant to the applicant a licence to transact banking business or to engage in deposit-taking activities in Botswana.

(2) Where the Central Bank grants a licence to an applicant under subsection (1) it shall give notice thereof in the *Gazette*, and at least two newspapers of general circulation in Botswana and on the Central Bank's website.

(3) A licence issued under this section shall be perpetual, subject to such conditions as may be imposed by the Central Bank and payment of an annual fee as may be prescribed.

Refusal to grant licence

11. (1) The Central Bank may refuse to grant a licence where —

(*a*) the applicant does not meet the requirements set out in sections 8 and 9; or

(*b*) it is in the public interest in order to advance the Central Bank's objectives.

(2) Where the Central Bank refuses an application for a licence, the Central Bank shall notify the applicant of such rejection in writing providing reasons therefor and shall at the earliest opportunity, notify the Minister of the refusal.

(3) Where the Central Bank refuses an application for a licence under this section, the Minister shall cause for a notice of refusal to be published in the *Gazette*, and in at least two newspapers of general circulation in Botswana and on the Central Bank's website.

(4) An applicant for a licence may, within six weeks after receipt of notice of refusal of such application, appeal the decision of such denial to the Appeals Tribunal established under section 93 of the Act.

(5) An applicant for a licence may, within six months of refusal to grant a licence by the Central Bank or denial of an appeal by the Appeals Tribunal, re-submit an application for the licence, failing which the applicant shall de-register the company bearing the name "bank".

(6) Any person who fails to de-register a company bearing the name "bank" commits an offence and is liable to a fine not exceeding P50 000 for each day that the offence continues up to a maximum of P5 000 000 or to imprisonment for a term not exceeding seven years, or to both.

Display of licence

12. A bank or a deposit-taking institution shall at all times display, in a conspicuous place of its principal place of business, and in any other office, branch or site, including a mobile site, a certified copy of the licence granted by the Central Bank.

Conditions of licence

13. (1) The Central Bank may impose such conditions as it considers necessary to a licence issued under this Act.

(2) Notwithstanding the generality of subsection (1), a bank or a deposit-taking institution shall not —

(*a*) 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;

(*b*) without the prior written approval of the Central Bank, engage in any business other than the activity or business for which it is licensed; or

(*c*) transfer a licence.

(3) Any bank or a deposit-taking institution that contravenes the provisions of subsections (1) and (2) commits an offence and is liable to a fine not exceeding P5 000 000 or to imprisonment for a term not exceeding seven years, or to both.

Power to vary conditions of licence

14. (1) The Central Bank may, by notice in writing inform a bank or a deposit-taking institution, that it intends to impose, amend, add to, vary or cancel any condition attaching to the licence of the bank or deposit-taking institution.

(2) A bank or a deposit-taking institution may, within seven working days of receipt of the notice specified in subsection (1), make representations in writing to the Central Bank.

(3) The Central Bank may, after giving due consideration to any representations made under subsection (2), take such action in accordance with its intention notified in accordance with subsection (1), and shall so notify the bank or deposit-taking institution in writing.

(4) A bank or a deposit-taking institution may, within 15 working days of receipt of the notice from the Central Bank, appeal to the Appeals Tribunal.

Revocation and surrender of licence

15. (1) The Central Bank may revoke a licence of a bank or a deposit-taking institution where the bank or deposit-taking institution —

(*a*) without the written approval of the Central Bank, fails to commence the business authorised by the licence, within a period of 12 months from the grant of the licence;

(*b*) is found to have ceased to transact the business authorised by the licence;

(*c*) appears to the Central Bank to be carrying on business in a manner which is contrary to, or detrimental to the interests of its depositors or the public;

(*d*) is found to engage in money laundering, the financing of terrorism or the financing of the proliferation of arms of war or nuclear, biological and chemical weapons;

(*e*) operates in an unsafe and unsound manner;

(*f*) is wound up or is otherwise dissolved;

(*g*) is insolvent or fails to meet the minimum capital requirements as may be prescribed;

(*h*) has been convicted, or the principal officer, director, senior manager, significant shareholder or beneficial owner 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 that is an affiliate or subsidiary of a bank or deposit-taking institution which has so been convicted, and such conviction is final and can no longer be appealed;

(*i*) has supplied false or misleading information in the application for a licence; or

(*j*) has contravened any provisions of this Act.

(2) Where the Central Bank makes a decision to revoke a licence, the revocation shall take effect immediately.

(3) A bank or deposit-taking institution may, within 10 working days of receipt of the decision to revoke the licence, by the Central Bank, appeal to the High Court, with legal remedies restricted to monetary compensation.

(4) A bank or deposit-taking institution 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 (6), and not less than 90 calendar days after the granting of the permission by the Central Bank.

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

(6) The Central Bank shall give notice to the public of any surrender or revocation of a licence by publishing notice in the *Gazette*, at least two newspapers of general circulation in Botswana and on the Central Bank's website.

Procedure in case of urgency

16. (1) The Central Bank may, in cases of urgency and in the public interest —

(*a*) revoke the licence of a bank or deposit-taking institution; 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 notification to the bank or deposit-taking institution in question, have immediate effect and shall bind the bank or deposit-taking institution.

(3) A bank or deposit-taking institution may, within 10 working days of receipt of the decision of the Central Bank as specified under subsection (1) —

(*a*) appeal to the High Court, where the decision relates to revocation of a licence provided that the remedy shall be limited to monetary compensation; or

(*b*) appeal to the Appeals Tribunal where the decision relates to an amendment, addition to or variation of licence conditions.

Branches and subsidiaries

17. (1) A bank or a deposit-taking institution shall not carry on banking business or deposit-taking activities 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.

(2) A bank or deposit-taking institution shall not open or keep open a new place of business, close or keep closed an existing place of business, or change its location, without the prior written approval of the Central Bank.

(3) A bank or deposit-taking institution shall not establish a subsidiary in Botswana without the prior written approval of the Central Bank.

(4) Any bank or a deposit-taking institution that contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding P2 000 000 as may be imposed by the Central Bank.

Prohibition of branches of foreign banks

18. A foreign bank shall not establish branches in Botswana.

Permissible activities

19. A bank or a deposit-taking institution may engage in any activities, either directly or through a subsidiary subject to any limitation in the licence issued to such bank or deposit-taking institution, as may be prescribed.

Mergers, acquisitions and registration of controlling companies

20. (1) A bank or a deposit-taking institution that proposes to merge with or acquire another bank or a deposit-taking institution, shall notify the Central Bank in writing of the intention to do so not less than 30 days prior to submitting an application to merge with or acquire another bank or a deposit-taking institution.

(2) Where the Central Bank considers that the proposed merger or acquisition will not be contrary to the Act or public interest it shall, within 14 days of receipt of the notification, advise the bank or a deposit-taking institution to submit the application for assessment by the Central Bank.

(3) An application to merge or acquire shall be made to the Central Bank in such form as may be prescribed.

(4) The Central Bank shall, within 30 days after receipt of the application to merge with or acquire another bank, notify the Minister in writing, and the Central Bank shall cause the publication of the application to merge or acquire in the *Gazette*, and in at least two newspapers of general circulation in Botswana and on the Central Bank's website.

(5) The Central Bank shall assess applications and determine major acquisitions or mergers concerning a bank or deposit-taking institution against criteria set by the Central Bank, including the establishment of cross-border operations, and confirming that corporate affiliations and structures do not expose the bank or a deposit-taking institution to undue risks or hinder effective supervision.

(6) A bank or a deposit-taking institution shall not, without prior written approval of the Central Bank —

(*a*) effect any voluntary merger, consolidation or other re-organisation of its business or affairs with another bank or deposit-taking institution;

(*b*) transfer to any other institution the whole or any of its assets or liabilities in Botswana;

(*c*) effect a reduction in its paid-up capital;

(*d*) alter its name; or

(*e*) amend the instrument under which it is established.

Transfer of significant or controlling interest

21. (1) A bank or a deposit-taking institution that proposes to hold or transfer significant or controlling interests, including a beneficial interest, or the exercise of voting rights over a significant interest or a controlling interest, shall make a written application to the Central Bank for approval.

(2) The Central Bank shall not approve an application made under subsection (1), unless the Central Bank is satisfied that —

(*a*) the proposed acquirer of the significant interest or a controlling interest is a fit and proper person as provided for under this Act;

(*b*) the bank or deposit-taking institution will be able to and continue to comply with the prudential requirements prescribed under this Act;

(*c*) where the acquisition or transfer of significant or controlling interest results in the bank or deposit-taking institution becoming a part of a group, that such structure makes it possible to exercise effective supervision; and

(*d*) there are no reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

(3) The Central Bank shall have the power to reject any proposal for a change in significant ownership, including a beneficial interest or prevent the exercise of voting rights in respect of such investments.

(4) Where a bank or deposit-taking institution effects a change of control or significant shareholding without the approval of the Central Bank, the Central Bank shall take appropriate action to modify, reverse or otherwise redress the change of control or significant shareholding.

(5) A bank or a deposit-taking institution that contravenes subsection (1) commits an offence and shall be liable to a fine not exceeding P1 000 000 as may be imposed by the Central Bank.

PART III— *Capital Structures*

Capital requirements

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

(2) The minimum unimpaired capital required in respect of any bank or deposit-taking institution shall be in such manner as may be prescribed.

(3) The Central Bank may, by directive or in a licence, determine a higher capital adequacy ratio with respect to a particular bank, class or category of banks specified by the Central Bank in accordance with the risks that the bank, class or category of banks is exposed to, or to all banks for any period that the Central Bank may specify.

(4) The Central Bank may exempt a bank from the provisions of subsection (3) for a period to be specified by the Central Bank upon good cause shown by the bank and on the basis of a schedule agreed between such bank and the Central Bank, specifying progressive compliance by the bank with the said capital requirements.

(5) A deposit-taking institution shall maintain minimum capital as may be prescribed:

Provided that —

(i) such prescription shall not be less than the greater of the amount prescribed by way of start-up capital or five percent of its liabilities to the public in Botswana in terms of the most recent financial statements prepared,

(ii) any deposit-taking institution that is required to augment its capital shall be afforded a reasonable period of time, being not less than 12 months, in which to comply therewith, and

(iii) the deposit-taking institution shall transfer in each year, to its Reserve Account, a sum equal to not less than 25 percent of its net profits until the balance in such Reserve Account is equal to its minimum required capital.

(6) The Central Bank may, by directive increase the percentages specified in paragraph (i) of the proviso to subsection (5).

(7) Where the minimum capital of a deposit-taking institution, prescribed in reference to its liabilities, exceeds the amount of its unimpaired capital, such deposit-taking institution may, provisionally and subject to the approval of the Central Bank for such period as it may approve, include in the computation of its capital any unimpaired balance in its Reserve Account.

(8) Notwithstanding the provisions of subsection (2), where a bank or deposit-taking institution fails to maintain its unimpaired capital at the level required in accordance with this section, the Central Bank may —

(*a*) impose on and collect from the bank or deposit-taking institution, a levy not exceeding 0.1 per cent of the amount by which such unimpaired capital falls short of the prescribed amount; and

(*b*) agree to a schedule with the bank or deposit-taking institution, specifying progressive compliance with the said capital requirements within such time as may be specified by the Central Bank.

(9) Notwithstanding the provisions of subsection (8), for any period during which the minimum unimpaired capital requirements of a bank or deposit-taking institution are less than those prescribed under this section, a bank or deposit-taking institution shall not grant or permit any increase in outstanding loans, new overdraft commitments or investments, or pay or declare a dividend or make a distribution, or pay a performance bonus to senior management or other employees of the bank or deposit-taking institution.

Restriction on payment of dividends

23. (1) A bank or a deposit-taking institution shall not, declare, credit or pay, or transfer abroad, any dividend or make any other transfer from profits, without the approval of the Central Bank.

(2) The Central Bank shall not grant an approval under subsection (1), unless —

(*a*) the Central Bank is satisfied that the payment of dividends or any other transfer from profits will not cause the bank or deposit-taking institution to be in contravention of the capital adequacy requirements or liquidity requirements or likely to impair the future capital adequacy or liquidity of the bank or deposit-taking institution;

(*b*) any impairment on the stated capital or assigned capital has been made good; or

(*c*) adequate provision, to the satisfaction of the Central Bank, has been made in respect of impaired credits, investments or other assets of the bank or deposit-taking institution.

(3) For purposes of this section, an issue of bonus shares out of profits shall be deemed as payment of dividends.

(4) Any bank or deposit-taking institution that contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding P100 000 as may be imposed by the Central Bank.

Provision to be made for certain items

24. (1) In making any calculations necessary to ascertain whether the capital of a bank is adequate, account shall be taken, to the satisfaction of the Central Bank, and in accordance with International Financial Reporting Standards, of the following items —

(*a*) collectively and individually assessed impairments on loans, credits and any assets;

(*b*) depreciation of assets, to be calculated at least once in each financial year;

(*c*) operating and accumulated losses;

(*d*) preliminary expenses relating to the organisation or extension of the purchase of any business or goodwill; or

(*e*) such other items as may be determined by the Central Bank.

(2) A bank shall either —

(*a*) maintain a special reserve account that 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.

(3) Subject to the minimum provisioning requirements set by the Central Bank and provisioning methodology adopted by a bank, examiners shall assess the level and adequacy of provisions for impairments based on performance status of loans and advances using a methodology determined by the Central Bank.

(4) If the Central Bank concludes, based on its review of the reports of a bank or the results of an examination of a bank, that the bank's provisions for losses and impairments and other items identified are inadequate to provide for the probability of loss or reduction, the Central Bank may order the bank to establish additional provisions for such losses and other items identified under this Act.

Liquidity management in banks and deposit-taking institutions

25. (1) A bank or deposit-taking institution shall maintain a minimum holding of liquid assets as the Central Bank may from time to time determine in accordance with liquidity measurements and standards.

(2) A bank or deposit-taking institution shall maintain a liquidity management framework in accordance with requirements as maybe determined by the Central Bank.

(3) A bank or deposit-taking institution shall prepare and submit to the Central Bank liquidity reports, on a monthly basis or such shorter period as the Central Bank may determine, showing a bank or deposit-taking institution's liquidity position based on which the Central Bank may institute remedial or supervisory action if there are any liquidity problems at the bank or deposit-taking institution.

(4) For any period during which the liquid assets of a bank or deposit-taking institution are less than the amount determined by the Central Bank under subsection (3), a bank or deposit-taking institution shall not grant or permit any increase in outstanding loans, new overdraft commitments or investments, or pay or declare a dividend or make a distribution, or pay a performance bonus to senior management or other employees of the bank or deposit-taking institution.

(5) Where a bank or deposit-taking institution fails to maintain liquid assets in accordance with the requirements of this section, the Central Bank may impose on and collect from the bank or deposit-taking institution, a levy not exceeding 0.1 per cent of the amount by which such assets fall short of the amount required in accordance with this section for each day that the assets fall short of the required amount.

(6) A bank or deposit-taking institution shall not pledge or otherwise encumber any portion of its liquid assets without the prior authorisation of the Central Bank:

Provided that the Central Bank may grant the authorisation on such conditions and to such an extent and for such a period as the Central Bank may determine.

Prudential requirements

26. The Central Bank may establish different minimum prudential requirements for different classes of banks or deposit-taking institutions, 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 or deposit-taking institutions.

PART IV — *Limitations on Specified Operations and Activities*

Maximum amounts of foreign currency holdings or loans

27. (1) The maximum amount that a bank may hold or maximum indebtedness which it may incur in foreign currencies generally or in any specified currency shall be as may be determined by the Central Bank, through directives.

(2) The Central Bank may determine by directive or guidelines, a method for computing foreign currency exposure and set a prudential limit for such foreign currency exposure.

(3) Each bank shall prepare and submit to the Central Bank, foreign currency exposure reports in such a manner, and as often as the Central Bank may determine.

Limitations on large exposures and concentration of risks

28. (1) A bank shall not grant to any person, directly or indirectly, any unsecured or secured credit 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 authorised 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 parties which is equal to or exceeds such percentage of its unimpaired capital which results from extending the credit referred to in subsection (1):

Provided that the maximum exposure of the bank shall not exceed such percentage of its unimpaired capital as may be prescribed.

(3) A bank shall not without the prior written approval of the Central Bank, grant to any person, directly or indirectly, or any affiliated group of persons an aggregate credit which exceeds such percentage of its unimpaired capital as may be prescribed.

(4) Where a bank grants credit in excess of the amount permitted in subsections (1) and (3), the Central Bank shall order the bank in question to deduct any excess amount granted in violation of subsections (1) and (3) from such bank's core capital, and in addition shall take any other measures deemed necessary and appropriate to rectify the situation.

(5) If the Central Bank determines that the interests of a group of connected persons are so inter-related that such interests should be considered as a single exposure, then for the purposes of subsections (1) and (3), the total indebtedness of that group shall be combined for purposes of determining limits on exposures.

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

(7) The Central Bank may determine guidelines or directives limiting the amount of exposures provided by any bank or any class of banks in relation to any financial measure applicable to such banks, where, in the view of the Central Bank, such limitation is appropriate to avoid undue concentrations of credit.

Limitations on advances or credit

29. (1) A bank shall not, directly or indirectly, grant any credit against the security of its own shares, or those of any other bank.

(2) A bank shall not, directly or indirectly, except with the prior approval in writing of the Central Bank, grant or permit to be outstanding, unsecured or secured credit of an aggregate amount in excess of such percentage of its unimpaired capital as may be determined from time to time by the Central Bank, to any related party.

(3) Any credit to a related party shall —

(*a*) be made on an arms-length basis;

(*b*) be extended on the same terms on which comparable credit is granted by the bank to persons that are not related parties; and

(*c*) not contain any preferential interest rate or repayment terms.

(4) Each bank shall maintain and apply in its provision of credit such monitoring and review mechanisms as are necessary to permit the bank to determine whether a person is a related party of the bank and to limit any such credit, as may be determined, from time to time, by the Central Bank.

(5) The board of directors shall have the sole authority in the bank to approve or sanction any financial exposure of or credit by the bank that is subject to subsection (2), provided that the Central Bank may also determine a percentage of the unimpaired capital of a bank as a maximum exposure to any direct or indirect interest permitted for a member or members of the board.

(6) A bank shall not, directly or indirectly, grant to, or permit to be outstanding by any of its officers or employees, other than a director, unsecured loans, overdrafts or any other credit which, in aggregate, exceeds one year's emoluments of such officer or employee.

Limitations on investments in non-banking operations

30. (1) A bank shall not, 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 any business or activity for which such bank is not licensed under this Act, except as may be approved by the Central Bank.

(2) A bank shall not, directly or indirectly, acquire or hold any part of the share capital or other similar equity interest in any enterprise or company, except such shareholdings or other financial interests as may be acquired in the course of the satisfaction of debts due to it, which shareholdings or other financial interest shall, however, be disposed of at the earliest suitable moment:

Provided that this subsection (2) —

(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 —

(*aa*) to any shareholding in any company approved by the Central Bank and set up for the purpose 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,

(*bb*) to any shareholdings acquired in the course of administration of an estate of a deceased person provided it is for financial undertaking, or

(cc) to any shareholdings approved by the Central Bank of a company that qualifies as a subsidiary of the bank, and that conducts activities that are permitted for the bank.

(3) A bank shall not, 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.

(4) A bank may secure a credit 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.

(5) A bank shall not, 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.

(6) Any bank that contravenes the provisions of this section shall be liable to a fine not exceeding P100 000 as may be imposed by the Central Bank, and may be subject to any other remedial measures that the Central Bank considers necessary.

PART V — *Financial Statements, Audit of Accounts*

Financial records

31. (1) A bank or a deposit-taking institution shall keep records as are necessary to exhibit clearly and accurately the state of its affairs on a solo and consolidated basis and to explain its transactions and financial position so as to enable the Central Bank to determine whether the bank or deposit-taking institution has complied with the provisions of this Act, and it shall preserve every such record for a period of at least 20 years from the date of the last entry.

(2) Any bank or a deposit-taking institution that contravenes subsection (1) shall be liable to a fine not exceeding P500 000 as may be imposed by the Central Bank.

Annual accounts

32. (1) A bank or a deposit-taking institution shall not later than three months after the expiration of the financial year, prepare, on a solo and consolidated basis, in respect of all business transacted by it in that year, audited financial statements:

Provided that the statements shall be prepared as of the last working day of that year, and in accordance with International Financial Reporting Standards and in such form as the Central Bank may determine.

(2) The financial statements referred to in subsection (1) shall be audited in accordance with the provisions of section 37, and under the joint signatures of the principal officer of the entity and two of its directors in case of an entity incorporated in Botswana, and for a bank incorporated outside Botswana and having a representative office in Botswana, its principal officer and the next most senior officer of the principal office of the bank in Botswana.

(3) A bank or a deposit-taking institution shall, within 15 calendar days after the preparation of financial statements as provided for under subsection (1) —

(*a*) submit the audited financial statements to the Central Bank;

(*b*) publish on its website and in at least two newspapers of general circulation in Botswana, the audited financial statements together with full names of the board of directors in such manner as the Central Bank may direct; and

(*c*) exhibit, throughout the year, in a conspicuous position in each of its places of business in Botswana, other than mobile sites, a copy of its last audited Statement of Financial Position and a Statement of Comprehensive Income which shall be in conformity with the minimum financial disclosure requirements and as the Central Bank may direct from time to time.

Supervisory reporting

33. (1) For purposes of compiling statutory returns, the reporting period of a bank, banking group or a deposit-taking institution shall be from the 1st day of January to the 31st day of December of that year.

(2) A bank, banking group or deposit-taking institution shall, on a solo and consolidated basis, prepare returns and shall, not later than 10 calendar days after the last day of each calendar month, submit such returns to the Central Bank, in accordance with International Financial Reporting Standards, and in such form as the Central Bank may determine, in duplicate together with such other information as the Central Bank may require in respect of its places of business in and outside Botswana, as the case may be.

(3) The statutory returns shall include the following information —

(*a*) on and off-balance sheet items;

(*b*) profit and loss;

(*c*) capital adequacy;

(*d*) liquidity;

(*e*) large exposures and risk concentrations;

(*f*) asset quality and loan loss provisioning;

(*g*) related party transactions;

(*h*) interest rate risk and market risk; and

(*i*) any additional information which the Central Bank may require for the purpose of administration of this Act from any entity about its operations.

(4) The Central Bank may issue directions to any bank, banking group or deposit-taking institution requiring that specified returns must be audited at such bank, banking group or deposit-taking institution's expense before submission pursuant to subsection (2).

(5) Any bank, banking group or deposit-taking institution which fails to submit returns in accordance with subsection (2), shall be liable to a fine not exceeding P100 000 as may be imposed by the Central Bank.

(6) Any person who wilfully submits incorrect or misleading information commits an offence and is liable to a fine not exceeding P5 000 000 or to imprisonment for a term not exceeding seven years or to both.

Request for information by Central Bank

34. (1) The Central Bank may, for the purpose of the administration of this Act, request for any information which it may require, from any bank, banking group, or deposit-taking institution, concerning its operations in Botswana or those of its affiliates in Botswana and subsidiaries outside Botswana, if any.

(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, banking group or deposit-taking institution's own external auditors or by an auditor appointed by the Central Bank, at such bank, banking group or deposit-taking institution'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 written request of the bank, banking group or deposit-taking institution concerned, extend such period.

(4) Any bank, banking group or deposit-taking institution that fails to supply any information requested for by the Central Bank under subsection (1), or fails to supply it within the time, or extended time, stipulated by the Central Bank shall be liable to a fine not exceeding P100 000 as may be imposed by the Central Bank.

(5) Any person who wilfully submits incorrect or misleading information commits an offence and is liable to a fine not exceeding P5 000 000 or to imprisonment for a term not exceeding seven years or to both.

Appointment of independent external auditor

35. (1) A bank or a deposit-taking institution shall appoint, annually, upon recommendation of the audit committee of the board and at its own expense, an independent external auditor identified from a list of auditors approved by the Botswana Accountancy Oversight Authority and acceptable to the Central Bank.

(2) An auditor shall be acceptable to the Central Bank where such auditor —

(*a*) is a member of the relevant professional body and in good standing;

(*b*) has relevant experience and competence;

(*c*) is subject to a quality assurance programme by the relevant professional body;

(*d*) demonstrates objectivity and impartiality; and

(*e*) complies with the relevant international auditing and accounting standards and such other standard as may be prescribed by the Botswana Accountancy Oversight Authority.

(3) If a bank or deposit-taking institution fails to appoint an auditor in accordance with subsection (1), or the Central Bank is not satisfied with the report of the independent external auditor appointed by the bank or deposit-taking institution, the Central Bank may itself appoint an independent external auditor whose remuneration shall be paid by the bank or deposit-taking institution.

(4) The Central Bank may direct a bank or deposit-taking institution to remove from office an auditor of a bank or deposit-taking institution who does not meet the requirements set out in subsection (2) or who is conflicted in his or her duties as an auditor of a bank or deposit-taking institution.

(5) An independent external auditor shall not be an auditor of a bank or deposit-taking institution for a continuous period of more than 10 years:

Provided that the lead audit partner shall be changed by the bank every five years.

Disqualification of independent external auditor

36. (1) An independent external auditor shall not have any direct interest in the bank or deposit-taking institution other than as a depositor or borrower in the ordinary course of business.

(2) A person shall not qualify to be appointed as an independent external auditor, if the —

(*a*) person is a body corporate;

(*b*) person is an employee or employer of a director or principal officer of the bank or deposit-taking institution or any affiliate or subsidiary thereof;

(*c*) person's partner or his or her employee, regularly performs the duties of secretary or bookkeeper to the bank or deposit-taking institution or any of its affiliates or subsidiaries; or

(*d*) person is related to a person working for the bank or deposit-taking institution.

Duties of independent external auditor

37. (1) An independent external auditor shall make a report to the bank, banking group or deposit-taking institution's shareholders on the audited financial statements in accordance with the requirements in the Companies Act relating to the auditing of company accounts, and in accordance with international auditing and accounting standards and such other directives as the Central Bank may issue.

(2) An auditor appointed under section 35 shall have the right of access at all times to the books, accounts, vouchers and securities of such bank, banking group or deposit-taking institution, and those of its affiliates in Botswana, and its subsidiaries outside Botswana, if any, and shall be entitled to require from the officers, or agents of such bank, banking group or deposit-taking institution's affiliates or subsidiaries thereof, such information and explanations as he or she may require in order to perform his or her duties properly as an auditor under this section.

(3) A copy of the independent external 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) Subject to subsections (1) and (2), the Central Bank may impose the following duties on an independent external auditor —

(*a*) a duty to submit such additional information in relation to the audit as the Central Bank considers necessary;

(*b*) a duty to carry out any other investigation or establish any procedure in any particular case; or

(*c*) a duty to submit a report on any of the matters referred to in paragraphs (*a*) and (*b*),

and the bank, banking group or deposit-taking institution concerned shall remunerate the independent external auditor in respect of the discharge by him or her of all or any of the additional duties.

(5) An independent external auditor shall report to the Central Bank, and the Central Bank shall thereafter take all necessary actions pursuant to this Act if the independent external auditor, in the course of the performance of his or her duties as auditor of a bank, banking group or deposit-taking institution is satisfied that —

(*a*) there has been a serious breach of or non-compliance with the provisions of this Act, any other law 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 or deposit-taking institution by 50 per cent or more;

(*d*) serious irregularities have occurred in the affairs of the bank or deposit-taking institution, particularly such irregularities that jeopardise the safety and soundness of the bank or deposit-taking institution; or

(*e*) he or she is unable to confirm that the claims of depositors and creditors continue to be covered by the assets of the bank or deposit-taking institution.

(6) The Central Bank may if it considers it necessary but in any case at least once a year, arrange a meeting with each bank or deposit-taking institution 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 or deposit-taking institution, including relevant aspects of the institution's business, its accounting and internal control systems, and its statement of financial position and statement of comprehensive income.

(7) The Central Bank may if it considers it desirable or necessary in the interests of depositors but in any case, at least once a year, arrange meetings with the independent external auditors of a bank or deposit-taking institution.

(8) The Central Bank shall, at least once a year, meet with a bank or deposit-taking institution's management to discuss any matter relevant to the Central Bank's supervisory role and interest of the bank or deposit-taking institution such as strategy, group structures, financial performance, corporate governance, risk management systems and internal controls.

(9) No duty of confidentiality to which an independent external auditor may be subject shall be regarded as contravened by reason of the independent external auditor's communication, in good faith, to the Central Bank, whether or not in response to a request made by the Central Bank in accordance with this Act.

PART VI — *Supervision of Banks, Banking Groups, Deposit-Taking Institutions and Conglomerates*

Examination of banks and deposit-taking institutions

38. (1) The Central Bank shall conduct regular on-site examinations of the operations and affairs of every bank or deposit-taking institution and where the Central Bank so specifies, foreign branches, if any, of such bank or deposit-taking institution to be made by officers of the Central Bank or independent experts appointed to conduct such examinations.

(2) A regular on-site examination can either be carried out by the officers of the Central Bank or by independent experts such as external auditors and other qualified persons and entities appointed by the Central Bank with appropriate mandate and subject to appropriate confidentiality and other restrictions.

(3) The purpose of an examination under subsection (1) shall be to —

(*a*) determine whether the bank or deposit-taking institution concerned is in a safe and sound financial condition;

(*b*) determine whether the bank or deposit-taking institution complies with the requirements of this Act and that the bank or deposit-taking institution's business is operated in a lawful and prudent manner;

(*c*) determine whether information provided by the bank or deposit-taking institution is accurate and reliable;

(*d*) provide independent verification whether adequate corporate governance, including risk management and internal controls systems, exist at individual bank or deposit-taking institution;

(*e*) monitor the bank or deposit-taking institution's follow-ups on supervisory concerns;

(*f*) obtain additional information on the bank or deposit-taking institution and its related companies required for the assessment of whether the bank or deposit-taking institution is a safe and sound entity, the existence of safe and sound practices, the evaluation of material risks and the identification of necessary remedial actions and supervisory actions including enhanced off-site monitoring; and

(g) assess the adequacy and effectiveness of the bank or deposit-taking institution's measures relating to anti-money laundering and combating the financing of terrorism in accordance with the Financial Intelligence Act.

(4) The Central Bank may conduct a special examination of a bank or deposit-taking institution at any time that the Central Bank considers appropriate, with respect to the aspects it considers necessary.

(5) The Central Bank shall conduct an examination in accordance with this section where an 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 or deposit-taking institution concerned.

(6) An independent expert appointed by the Central Bank to conduct an examination shall promptly bring to the attention of the Central Bank, any material deficiencies identified during the course of any work undertaken by him or her for supervisory purposes.

(7) A person shall not have any claim against an independent expert for or with respect to any oral or written statement or report made by the independent expert in good faith, in the performance of the independent experts' functions as directed by the Central Bank.

(8) The Central Bank shall communicate the findings of an on-site examination in a timely manner, by means of written report addressed to the chairperson of the board of directors and copied to the principal officer and through meetings with the Board and senior management of a bank or deposit-taking institution.

(9) All expenses of and incidental to an examination shall be paid for by the bank or deposit-taking institution concerned in such manner as the Central Bank may determine.

(10) Any person appointed by the Central Bank under this section shall comply with the provisions of confidentiality.

Powers of bank examiners

39. (1) Any person conducting an examination in accordance with the provisions of section 38 shall, in relation to the bank or deposit-taking institution 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 deposit-taking institution 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 or deposit-taking institution concerned shall comply with all requests made under this section.

(2) Any bank or deposit-taking institution or any of its affiliates, or any person who fails to produce any document requested under subsection (1) shall be liable to a fine not exceeding P100 000 as may be imposed by the Central Bank.

(3) A bank or deposit-taking institution which knowingly or wilfully supplies information required in accordance with the provisions of subsection (1) which is false or misleading in any manner, commits an offence and shall be liable to a fine not exceeding P5 000 000 or to imprisonment for a term not exceeding seven years, or to both.

Power of Central Bank after examination

40. (1) If, in the opinion of the Central Bank, an examination shows that a bank or deposit-taking institution, or affiliate concerned is conducting 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 —

(*a*) require the bank or deposit-taking institution concerned to take such measures as may be necessary to rectify the situation; or

(*b*) appoint a person, who in the opinion of the Central Bank has the requisite training and experience to advise the bank or deposit-taking institution, or affiliate concerned, on measures to be taken to rectify the situation, and shall determine the remuneration to be paid to him or her by such bank or deposit-taking institution or affiliate.

(2) Subsection (1) shall not preclude the Central Bank from adopting any of the measures contemplated under the Act, and in particular, an examination shall not be necessary for or predicate any action taken or proposed to be taken by the Central Bank under the Act.

Banking supervision annual report

41. The Central Bank shall, annually, not later than the 30th of June of each year, submit to the Minister a report on the discharge of its supervisory functions and the extent to which, in the Central Bank's opinion, its supervisory objectives have been fulfilled.

Consolidated supervision

42. (1) The Central Bank shall conduct supervision of a banking group or conglomerate on a consolidated basis by —

(*a*) analysing consolidated financial statements of the banking group or conglomerate;

(*b*) carrying out on-site examination of the banking group or conglomerate and its members for the purpose of verifying the data from the consolidated financial statements, as well as risks to which the bank is exposed as a member of the group and the group as a whole; and

(*c*) assessing the significant aspects of the banking group or conglomerate's operations that have a bearing on safety and soundness of the banking group or conglomerate.

(2) The Central Bank shall, in conducting consolidated supervision of a banking group or conglomerate, consider in relation to the banking group or conglomerate, the following, in order to assess the risks to which the bank is subject —

(*a*) financial position;

(*b*) governance, including the limits of shareholding;

(*c*) any group management policy;

(*d*) organisational and internal control systems;
(*e*) the group companies' influence on other companies in the group; and
(*f*) any other issue which the Central Bank may consider necessary.
(3) The Central Bank may from time to time review —
(*a*) the adequacy of supervision over the operation of the bank or banking group abroad by the management of the parent institution or holding company;
(*b*) the possibility for the parent institution to access data on foreign branches and subsidiaries in host countries;
(*c*) the expertise of the local management; and
(*d*) the efficiency of supervision in host countries.
(4) The Central Bank may visit an institution referred to above and meet the host supervisors outside Botswana.
(5) The Central Bank may specify the scope of consolidation, methods of supervision on a consolidated basis and rules governing the consolidated financial position, whether the information in question applies to a bank, to subsidiaries or to other companies within the group that is considered to be consolidated, as well as the rights and methods of access to information.
(6) The Central Bank shall, if it deems it necessary for the safety and soundness of a bank, or for the safety of the depositors' funds or to determine whether the provisions of this Act are being duly complied with, require by notice in writing, any banking group entities to provide the Central Bank with such information or documents as may be necessary, including the financial records of that affiliate, controlling company, holding company or subsidiary company within the period specified in the notice.
(7) The Central Bank may conduct, or appoint a competent person to conduct an examination of the operations and affairs of the affiliate, controlling company, holding company or subsidiary company of a bank, or of any person who exercises control over a bank, in order to satisfy itself that the operations and affairs of the affiliate, controlling, holding or subsidiary companies or of the person who exercises control over a bank are not detrimental to the safety and soundness of the bank concerned.
(8) The Central Bank may restrict the activities of the banking group and the location of the activity if –
(*a*) the bank or the group is exposed to excessive risks or it is not managed appropriately; or
(*b*) supervision in the host country is inadequate or obstacles arise in the course of consolidated supervision.
(9) The supervision of members of banking groups under this Act shall be conducted by the regulatory authority of the home country of the holding company, if —

(*a*) the head office of the holding company is outside Botswana;
(*b*) the regulatory body of the home country of the group conducts supervision on a consolidated basis in a manner that meets the requirements of the Central Bank; and
(*c*) there is appropriate cooperation between the Central Bank and the regulatory body.

(10) The Central Bank may, notwithstanding any confidential provisions to the contrary deliver to any governmental body or supervisory entity, within or outside Botswana, which has regulatory or supervisory authority over any person or entity specified in subsection (3) above, on such basis as maybe necessary for the conduct of consolidated supervision, such information as may be in the possession of the Central Bank regarding the —
(*a*) existence;
(*b*) business affairs;
(*c*) assets and liabilities; or
(*d*) management,
of any affiliates, controlling companies, holding or subsidiary companies or any person who controls a bank:

Provided that such governmental body or supervisory entity shall hold and maintain that information consistently with the provisions of this Act concerning confidentiality of information.

(11) The Central Bank may request from and receive from any governmental body, or supervisory entity within or outside Botswana, under subsection (10) claiming regulatory or supervisory authority over any person or entity specified in subsection (3) above, any information that such governmental body may have regarding any such entity:

Provided that the Central Bank shall hold and maintain that information in compliance with the provisions of law regarding the confidentiality of that information.

(12) Any significant shareholder or director of a bank who —
(*a*) being a natural person fails, refuses, omits or neglects to provide information requested under subsection (1) or (2) of this section or is party to such failure, refusal, omission or neglect; or
(*b*) being a company fails, refuses, omits or neglects to provide information requested under subsection (1) or (2) of this section or is party to such failure, refusal, omission or neglect,
shall, if a natural person, cease to be a fit and proper person, and shall, if a director, be required to resign from the position of a director, and if a significant shareholder, shall be required to reduce his, her or its ownership of shares of the bank to less than five percent of the outstanding shares of the bank, such reduction to be accomplished within one year or such other time frame as the Central Bank shall specify.

(13) A director who fails to resign or a significant shareholder who refuses to reduce shareholding when required to do so under subsection (1), commits an offence and shall be liable to penalties under this Act.

(14) Any person who fails, refuses, omits or neglects to provide information requested under this section or who provides false information responding to a request under this section commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding five years, or to both.

Bank recovery plans

43. (1) A bank shall develop and maintain plans to facilitate its recovery from adverse events and to restore itself to financial soundness.

(2) For purposes of subsection (1), the Central Bank may, by directive or guideline, specify the requirements in relation to each bank's recovery plan.

(3) Where a bank contravenes this section, it shall be liable to a fine not exceeding P1 000 000 as may be imposed by the Central Bank.

Corrective measures

44. (1) The Central Bank may take any measure stipulated in this section in cases where it determines or has reason to believe that a bank or deposit-taking institution has —

(*a*) conducted business in a manner which could, if left unchecked, lead to the rise of an unsafe and unsound situation; or

(*b*) violated the provisions of this Act or of any regulation, condition of licensing, instruction or order issued by the Central Bank.

(2) If any of the violations stipulated in subsection (1) occurs, has occurred, or the Central Bank has reason to believe that it will occur, the Central Bank may take one or more of the following measures —

(*a*) send a written warning to the bank or deposit-taking institution;

(*b*) enter into a formal agreement with the board of directors of the bank or deposit-taking institution regarding measures to be taken to correct violations and unsafe and unsound practices, and establish a timetable for accomplishing such action;

(*c*) require that the bank or deposit-taking institution submit a programme of remedial measures that it intends to take or a detailed description of measures that it has taken to eliminate the violation and correct the situation; or

(*d*) order the bank or deposit-taking institution to cease and desist from particular actions, or require the bank or deposit-taking institution to take affirmative action to correct the violations or unsafe and unsound practices.

(3) In addition to the measures indicated in subsection (2), where the Central Bank determines that any of the violations or unsafe practices has occurred, it may impose a fine not exceeding P500 000 on the bank or deposit-taking institution.

(4) The Central Bank may order a bank or deposit-taking institution to remove a principal officer, senior manager, or other employee of the bank or deposit-taking institution from office or employment, or prohibit a significant shareholder or other persons from participating in the affairs of the bank or deposit-taking institution if the Central Bank determines that —

(*a*) the person intentionally committed or participated in the commission of an act referred to in subsection (1) of this section, or intentionally violated a directive of the Central Bank issued in response to the same or a similar act;

(*b*) as a result of these actions, the bank or deposit-taking institution has suffered, or will likely suffer financial loss or other damage, or the person has received financial gain or other benefit as a result of the action; or

(*c*) the action involves personal dishonesty on the part of the person or demonstrates a wilful or continuing disregard for the safety and soundness of the bank or deposit-taking institution.

(5) The Central Bank may issue directions to a bank or deposit-taking institution to take actions where the Central Bank is of the view that such directions will assist in achieving timely and effective corrective action.

Early intervention measures

45. (1) The Central Bank may take any measure provided in subsection (2) where it determines or has reason to believe that —

(*a*) a bank or deposit-taking institution engaged in unsafe and unsound practices or activities that endanger the solidity of the bank or deposit-taking institution and the interests of the depositors;

(*b*) a bank or deposit-taking institution has a level of capital and profitability that endangers the bank or deposit-taking institution's medium-to-long term viability;

(*c*) a bank or deposit-taking institution is subject to strains on its liquidity as illustrated by the bank or deposit-taking institution's repeated recourse to general or special Central Bank credit facilities;

(*d*) a bank or deposit-taking institution infringed, or is likely in the near future to infringe, the prudential requirements established pursuant to this Act, in a way that endangers the financial soundness of the bank or deposit-taking institution and the interests of the depositors;

(*e*) a bank or deposit-taking institution failed to comply with a directive of the Central Bank;

(*f*) a bank or deposit-taking institution demonstrated serious weaknesses with regard to its corporate governance, risk management, internal controls or audit and accounting practices; or

(*g*) a bank is subject to risks of spill-overs in a banking group or conglomerate.

(2) If an event indicated in subsection (1) occurs, has occurred, or the Central Bank has reason to believe that it will occur, the Central Bank may take one or more of the following measures —

(*a*) require the board of directors to obtain additional capital funds within a time period acceptable to the Central Bank, or in the alternative, require the board of directors to submit a plan acceptable to the Central Bank to increase the capital to a level specified by the Central Bank;

(*b*) require that the bank or deposit-taking institution cease some identified portion of its operations;
(*c*) bar the bank or deposit-taking institution from declaring or paying any dividends or distributing profits;
(*d*) impose any restriction on the granting of credit, receiving of new deposits or renewing existing deposits, expansion of operations and physical developments;
(*e*) require the bank or deposit-taking institution to submit a restructuring plan;
(*f*) require the bank or deposit-taking institution to hire, for a period of time and under conditions to be specified by the Central Bank, an advisor who shall have authority to disapprove actions proposed to be taken by the bank or deposit-taking institution regarding the —
  (i) sale, disposition or transfer of the bank or deposit-taking institution's assets,
  (ii) loan or investment of the bank or deposit-taking institution's funds,
  (iii) undertaking of any debt, obligation or liability, or
  (iv) payment of dividends;
(*g*) suspend from office the principal officer, or any senior manager depending on the seriousness of the violation;
(*h*) require that the bank or deposit-taking institution remove the principal officer, any senior manager or any of the members of the bank or deposit-taking institution's board of directors; or
(i) ring-fencing of the bank from the actions of parent companies, subsidiaries, parallel-owned banking structures and other related entities in matters that could impair the safety and soundness of the bank or deposit-taking institution.

(3) The Central Bank shall establish and maintain policies and guidelines, which shall include triggers for undertaking early intervention measures.

PART VII – *Corporate Governance of Banks and Deposit-Taking Institutions*

Corporate governance oversight

45A. (1) The board of directors and senior management of a bank or a deposit-taking institution shall be responsible for —
(*a*) ensuring sound corporate governance of the bank or a deposit- taking institution; and
(*b*) promoting corporate culture and values through the issuance of a code of conduct, conflict of interest policies and such other relevant policies as may be determined by the Central Bank from time to time.

(2) The Central Bank shall, from time to time, assess the effectiveness of the directors including the entire board of directors of a bank or deposit-taking institution against such criteria as may be determined by the Central Bank.

Board composition and conduct of directors

46. (1) A bank or deposit-taking institution shall have such number of board members as shall be commensurate with the nature, size, complexity, risk profile and systemic importance of that bank or deposit-taking institution:

Provided that a systemically important bank shall have a minimum of seven board members while any other bank or deposit-taking institution shall have a minimum of five board members.

(2) A bank or a deposit-taking institution shall appoint members to the board based on merit, experience, qualifications, integrity and competence.

(3) Notwithstanding the provisions of the Companies Act, the majority of directors of a bank or a deposit-taking institution shall be resident in Botswana or reasonably able to attend board meetings.

(4) The board of a bank or a deposit-taking institution shall ensure that not more than one third of the members are related parties.

(5) The Central Bank may order a bank or deposit-taking institution to remove from office, a board member or the entire board of the bank or deposit-taking institution where the board did not execute its responsibilities effectively or is deemed to not operate in the best interests of the bank or deposit-taking institution.

Fit and proper person

47. (1) A person shall not be appointed a principal officer or a senior manager of a bank or a deposit-taking institution unless, upon the determination of the board of directors of the bank or deposit-taking institution, he or she is a fit and proper person in accordance with standards and principles as determined by the Central Bank, which standards and principles shall include that the person —

(*a*) is qualified and competent in terms of having relevant work experience and academic qualification, to reasonably conclude that he or she will be able to discharge the duties and responsibilities of the proposed position;

(*b*) is of sound mind and able to perform the duties and responsibilities of the proposed position;

(*c*) is financially sound;

(*d*) has not been and is not being, removed or suspended, as a principal officer, director, senior manager or significant shareholder of any institution licensed to operate in Botswana or in a foreign country, unless such suspension does not relate to his or her performance, conduct or competency as a director, officer or significant shareholder of a licensed institution;

(*e*) has not violated this Act and has not been found guilty of gross negligence or misconduct;

(*f*) is not and has not been a principal officer, senior manager, director or significant shareholder of a bank or deposit-taking institution licensed under this Act or licensed in a foreign country and which bank or deposit-taking institution has been, or is being, wound up or liquidated compulsorily;

(*g*) is not a principal officer, senior manager, director or significant shareholder of a bank or deposit-taking institution operating in Botswana or in a foreign country which is competing with but not a subsidiary or associate of the institution in which the person is or will be a principal officer, senior manager or director or significant shareholder;

(*h*) has not been censured or disciplined for misconduct within the last 10 years;

(*i*) has not been convicted of or imprisoned in or outside Botswana for any offence involving fraud or any other offence of dishonesty;

(*j*) has not had an administrative order served on him or her within the last 10 years;

(*k*) is not subject to an investigation by or at the instigation of any governmental department or agency, or professional association, or other regulatory body;

(*l*) has not engaged or is not expecting to be engaged in litigation that may have a material adverse effect on the resources of the bank or deposit-taking institution;

(*m*) has not failed, within the last 10 years, to satisfy within one year, a judgment debt against him or her under a court order;

(*n*) has not been judged by a court to be civilly liable for fraud, malfeasance, or any other misconduct;

(*o*) has not been judged to be bankrupt by a court, or has failed to satisfy his or her creditors in full within the last 10 years;

(*p*) has satisfied all undisputed obligations for taxes that are due and payable;

(*q*) is not a government official who heads a government ministry or holds a cabinet position, or heads a parastatal;

(*r*) is not a partner or other senior auditor of an audit firm (public auditing firms); or

(*s*) is not a director or senior manager of an oversight authority.

(2) A person shall not become a director of a bank or deposit-taking institution unless, upon the determination of the Central Bank, he or she is a fit and proper person in accordance with the criteria set out in subsection (1).

(3) A bank or deposit-taking institution shall notify the Central Bank as soon as the bank or deposit-taking institution becomes aware of any material information that may negatively affect the fitness and probity of a bank or deposit-taking institution's director, principal officer, or senior manager, in which case the Central Bank shall, notwithstanding the provisions of subsection (2), conduct a fit and proper test on the director or require the board of the bank or deposit-taking institution to conduct the fit and proper test on the concerned senior manager.

(4) Where the Central Bank has reason to believe that any person, by virtue of his or her shareholding in a bank or deposit-taking institution or otherwise, is in a position to influence a principal officer, senior manager or the board of directors of that bank or deposit-taking institution, and is exercising his or her influence in a manner which is likely to be detrimental to the interests of depositors, the Central Bank may instruct the bank or deposit-taking institution to sever its connection with that person.

(5) A bank or deposit-taking institution shall not appoint or reappoint any person as a principal officer, director or senior manager without approval by the Central Bank in the case of a director, or without a "no objection" from the Central Bank, in the case of a senior manager.

(6) An application for approval of appointment of a director or for a no objection to the appointment of a principal officer or senior manager shall be made in such manner as may be determined by the Central Bank.

(7) A bank or deposit-taking institution that contravenes the provisions of this section, or provides false or misleading information in the application for approval shall be liable to a fine not exceeding P1 000 000 as may be imposed by the Central Bank, and the appointment of the director, principal officer or senior manager shall be considered null and void.

Disqualification to hold office

48. (1) Without prejudice to the provisions of the Companies Act, or section 47, any person who is a principal officer, director or senior manager concerned with the management of a bank or deposit-taking institution, or any person involved in its policy making decisions, shall cease to be eligible to hold office if he or she is no longer determined to be a fit and proper person.

(2) A person shall not serve as a principal officer, senior manager or director of a bank or deposit-taking institution, if the person is —

(*a*) under the age of 18 years or above the age of 75 years; or

(*b*) not resident in Botswana and such person is not reasonably able to attend board meetings.

(3) A person who has served on the board of directors of a bank or deposit-taking institution shall not be eligible for appointment as director to the board of directors of another bank or deposit-taking institution, unless a cooling-off period of at least 12 months has lapsed.

Disclosure of interest by director

49. (1) Any director of a bank or deposit-taking institution who is in any manner, directly or indirectly, interested in any credit from the bank or deposit-taking institution shall, as soon as is reasonably practicable disclose in writing the nature of his or her interest to the board of directors of the bank or deposit-taking institution; and the board of directors shall cause the disclosure to be circulated forthwith to all the directors individually.

(2) A director who is directly or indirectly interested in the credit shall not take part in any deliberation or any decision-making process in relation to that credit.

(3) For purposes of subsection (1), a notice given to the board of directors of a bank or deposit-taking institution by a director to the effect that he or she is a creditor of or has an interest in a concern specified in the notice, and that he or she is to be regarded as interested in any credit 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 credit 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 credit is made to the concern so specified; or

(*c*) the notice is given to the board of directors at the earliest opportunity.

(4) Where a director of a bank or deposit-taking institution who holds any office or acquires any property or holds or represents interests whereby, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as director, he shall disclose, in writing to the board of directors, the fact, nature and extent of the conflict.

(5) Where the director is in a situation of conflict of interest, he or she shall abstain from taking part in any decision or vote taken by the board of directors on the matter.

(6) 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 or, if he or she is already a director, after he or she commences to hold the office concerned or comes into possession of the property concerned, as the case may be.

(7) 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.

(8) Every disclosure under subsections (1) and (3) shall be chronologically recorded by the bank or deposit-taking institution in a separate register which, as and when required, shall be produced for examination by officers or other persons duly authorised by the Central Bank.

(9) Where a director fails to disclose his interest in accordance with this section the bank or deposit-taking institution may suspend or terminate the appointment of the director and shall notify the Central Bank of the decision.

(10) Any director who contravenes this section commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding three years, or to both.

Offences by directors, senior management, employees and agents

50. Any principal officer, director, senior manager, employee, agent or a representative of a bank, deposit-taking institution or affiliate who —

(*a*) 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, deposit-taking institution or affiliate;

(*b*) obstructs any audit, or examination of the affairs of the bank or deposit-taking institution under this Act;

(*c*) fails to take all reasonable steps to ensure compliance by the bank or deposit-taking institution with the provisions of this Act; or

(*d*) is privy to any offence committed under this section and fails to report it to the board of directors,

commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding five years, or to both.

Composition of committees

51. (1) The board of a bank or deposit-taking institution shall establish such committees as are necessary to carry out its functions, which committees shall include an audit committee, risk committee, remuneration committee, credit committee and nomination committee.

(2) The majority of members of committees established by the board of directors of a bank or deposit-taking institution under this Act, with the exception of the audit committee, shall be non-executive.

(3) The committees established by the board of directors shall be chaired by a non-executive director.

Audit Committee

52. (1) The board of directors of a bank or deposit-taking institution shall appoint at least three of its members to form an audit committee.

(2) The functions of an audit committee shall be to —

(*a*) recommend to the board of directors appropriate accounting policies, standards and controls for the bank or deposit-taking institution and supervise compliance with the accounting policies and standards;

(*b*) assist the board of directors in its evaluation of the adequacy, efficiency and effectiveness of the internal control systems, accounting practices, information systems and auditing processes applied within the bank or deposit-taking institution concerned in the day-to-day management of its business;

(*c*) facilitate and promote communication regarding the matters referred to in paragraph (*b*), risk management or any other related matters between the board of directors and the executive officers of the bank or deposit-taking institution concerned and the independent external auditor appointed under this Act, and the employee charged with the internal auditing of the transactions of the bank or deposit-taking institution;

(*d*) provide oversight of internal and external auditors and take appropriate measures to enhance their independence by ensuring that the auditor's report is submitted directly to the audit committee;

(*e*) introduce such measures as in the audit committee's opinion may serve to enhance the credibility and objectivity of financial statements including appropriateness, relevance and reliability of the operational control environment, financial disclosures and, in general, financial reporting;

(*f*) review and approve the audit scope;

(*g*) receive and review internal and external audit reports including the management letter ensuring that senior managers take appropriate and timely action to correct weaknesses in internal controls, non-compliance with policies, laws, regulations and directions, and other issues uncovered by the auditor;

(*h*) receive and review the audited financial statements and recommend approval of the financial statements to the board of directors;

(*i*) recommend to the board of directors the appointment, dismissal and compensation of independent external auditors; and

(*j*) establish procedures for confidential submissions by employees regarding inappropriate accounting and other business matters.

(3) A member of an audit committee of a bank or deposit-taking institution shall be an independent non-executive director.

(4) The chairperson of the audit committee shall be a professional accountant knowledgeable in international auditing standards and the banking industry.

(5) A member of an audit committee shall have at a minimum, relevant experience and possess a balance of skills and expert knowledge commensurate with the complexity of the banking industry, including, duties performed in financial reporting, accounting and auditing.

(6) Every member of an audit committee shall keep confidential and not disclose to any third party any information obtained in the course of his or her functions under this Act.

(7) An internal auditor and a representative of the independent external auditor shall be notified of and shall attend, all audit committee meetings.

Risk Committee

53. (1) The board of directors of a bank or deposit-taking institution shall establish a risk committee, consisting of a majority of independent non-executive directors who have experience in risk management issues and practices.

(2) A risk committee shall be chaired by an independent director who shall not be the chair of the board of directors or any other committee of the bank or deposit-taking institution.

(3) The functions of a risk committee shall be to —

(*a*) discuss risk strategies and risk appetite and make recommendations to the board of directors thereon;

(*b*) on annual basis, review the bank or deposit-taking institution's risk management policies;

(*c*) ensure that the management of the bank or deposit-taking institution has in place processes to promote the bank or deposit-taking institution's adherence to the approved risk management policies;

(*d*) advise the board of directors on the bank or deposit-taking institution's overall current and future risk appetite, oversee senior management's implementation of the Risk Assessment Systems, report on the risk culture and to interact with and oversee the Chief Risk Officer in the performance of his functions; and

(*e*) oversee the strategies for capital and liquidity management as well as for all relevant risks of the bank or deposit-taking institution to ensure they are consistent with the stated risk appetite.

Remuneration Committee

54. (1) The board of directors of a bank or deposit- taking institution shall establish a remuneration committee, consisting of majority of independent non-executive directors.

(2) The functions of the remuneration committee shall be to assist the board of directors to —

(*a*) oversee the design and operation of the rewards and compensation system;

(*b*) exercise competent and independent judgment on rewards and compensation policies, processes and practices and the incentives created for managing risk, capital and liquidity;

(*c*) evaluate practices by which rewards are granted and compensation is paid for potential future revenues in respect of which the timing and likelihood of realisation remain uncertain;

(*d*) ensure that all relevant decisions are consistent with an assessment of the bank, deposit-taking institution or controlling company's financial condition and future prospects;

(*e*) work closely with the bank or deposit-taking institution's risk committee in the evaluation of the incentives created by the rewards and compensation system;

(*f*) ensure that the bank, deposit-taking institution or controlling company's rewards and compensation policy, processes and procedures are in compliance with the relevant requirements specified by the Central Bank by guidelines;

(*g*) conduct an annual compensation review independently of management, which review shall, among other things, assess the bank or deposit-taking institution's compliance with the guidelines and such further requirements as may be specified in writing by the Central Bank;

(*h*) ensure that the remuneration of employees in the risk control and compliance functions is determined independently of all relevant business areas, and is adequate to attract and retain qualified and experienced staff;

(*i*) ensure that performance measures are based principally on the achievement of the board of directors approved objectives of the bank, deposit-taking institution or controlling company and its relevant functions; and

(*j*) consult shareholders.

Credit Committee

55. (1) The board of directors of a bank or deposit-taking institution shall establish a credit committee, consisting of a majority of independent non-executive directors.

(2) A credit committee shall be chaired by an independent non-executive director.

(3) The functions of a credit committee shall be to oversee the credit and lending strategies and policies of a bank or deposit-taking institution and shall, in that regard —

(*a*) review and provide oversight of the overall lending policy of a bank or deposit-taking institution;

(*b*) direct the formulation of, review and monitor the credit policies and procedures of a bank or deposit-taking institution;

(*c*) ensure the existence of effective procedures and resources to identify and manage non-performing loans;

(*d*) direct, monitor, review and consider all issues that may materially impact on the present and future quality of a bank or deposit-taking institution's credit risk management; and

(*e*) delegate and review lending limits set for the respective senior management officials of a bank or deposit-taking institution.

Nomination Committee

55A. (1) The board of directors of a bank or a deposit-taking institution shall establish a nomination committee, consisting of a majority of independent non-executive directors.

(2) The functions of the nomination committee shall be to assist the board of directors to —

(*a*) develop and enforce the process for nominating, electing and appointing members of the board of directors;

(*b*) develop succession planning in respect of the board of directors; and

(*c*) evaluate the performance of the board of directors.

Internal audit function

56. (1) A bank or deposit-taking institution shall establish an independent and effective internal audit function to ensure a properly controlled operating environment for the conduct of its business, as approved by the board of directors.

(2) The internal audit function shall be headed by an internal auditor who is a professional accountant or who holds equivalent qualifications.

(3) The internal audit function shall, among other things, be responsible for —

(*a*) reviewing the bank or deposit-taking institution's functions to ensure that they are carried out efficiently and effectively in accordance with established objectives, policies, procedures, practices and standards;

(*b*) assessing the soundness, adequacy, effectiveness and application of financial, information technology, and other management systems and internal controls;

(*c*) reviewing the reliability, integrity and usefulness of financial, technical, operational and management information and the means used to identify, measure, classify and report such information;

(*d*) reviewing established systems to ensure compliance with those policies, plans, targets, procedures, laws, and regulations, which could have a significant impact on operations;

(*e*) determining and evaluating the adequacy of the systems which safeguard the bank or deposit-taking institution's assets and interests from losses of all kinds, including waste, extravagance, inefficient administration, and commercially deficient practices or any other cause;

(*f*) appraising the economy and efficiency with which resources are employed as well as the quality of performance in carrying out assigned responsibilities;

(*g*) reviewing, appraising and reporting on operations, plans or programmes to ascertain whether results are consistent with established objectives and goals and whether the operations, plans or programmes are being carried out as directed by the senior management and the board of directors;

(*h*) reviewing compliance with the bank's guidelines for ethical business conduct and ensuring that the highest personal and corporate standards are met;

(*i*) ensuring that actions to be taken by management to correct audit findings are satisfactorily implemented, if actions are considered unsatisfactory that follow-up is made at an appropriate level;

(*j*) conducting special audits and investigations requested by the principal officer, any other senior manager, or a director;

(*k*) coordinating the activities of the bank or deposit-taking institution's independent external auditors with regard to the audit of the bank or deposit-taking institution's annual financial statements; and

(*l*) performing such other function as may be necessary to ensure a properly controlled operating environment for the conduct of the business of the bank or deposit-taking institution.

(4) The internal audit function shall operate in accordance with the Internal Audit Charter and in such manner as may be determined by the board of directors and shall have a direct reporting line to the board of directors.

(5) The Central Bank may, upon written application of a bank or deposit-taking institution, permit such bank or deposit-taking institution to outsource the internal audit function:

Provided that a systemically important bank shall not outsource its internal audit function.

Internal compliance function

57. (1) A bank or deposit-taking institution shall establish an independent compliance function which shall be commensurate with the size, volume and complexity of operations of the bank or deposit-taking institution.

(2) A bank or deposit-taking institution shall designate a compliance officer, who shall report directly to the principal officer.

(3) The compliance function shall be responsible for identifying and monitoring the risk occurring as a result of the bank or deposit-taking institution's failure to align its operations with laws and other regulations, regulatory requirements and professional standards, and other internal bye-laws, as well as the management of such risks.

Risk manngement function

58. (1) A bank, banking group or deposit-taking institution shall establish an independent risk management function and shall in that regard designate a chief risk officer, who shall report directly to the principal officer.

(2) A bank or deposit-taking institution shall, in proportion to the size, type, volume and complexity of operations performed and the risks inherent in its business model, adopt and put in place comprehensive and effective risk management strategies, policies, processes and limits for each of the material banking risks and these shall include —

(*a*) a clear organizational structure with well-defined, transparent and consistent reporting lines within the bank, banking group or deposit-taking institution to avoid conflict of interest;

(*b*) efficient management of all risks to which the bank, banking group or deposit-taking institution is or may be exposed to in its operations;

(*c*) adequate systems of internal controls, which include appropriate administrative and accounting procedures;

(*d*) remuneration policies that are consistent with and promote sound and effective risk management; and

(*e*) procedure for internal capital adequacy assessment of the bank, banking group or deposit-taking institution, its internal assessment of the adequacy of liquidity:

Provided that the risk management processes shall be properly documented, regularly reviewed and appropriately adjusted to reflect changing risk appetites, risk profiles, market and macroeconomic conditions, and shall be adequately communicated to staff and other policy or decision makers within the bank or deposit-taking institution.

(3) The risk management strategies, policies and processes adopted by the bank or deposit-taking institution under subsection (2) shall be reviewed and approved by the bank, banking group or deposit-taking institution's board of directors at least once a year.

(4) The Central Bank shall have the power to review and set minimum standards for such material banking risks, risk management policies and practices, proportionate to the nature and scale of the bank, banking group or deposit-taking institution's operations.

(5) For purposes of this section, "material banking risks" include but are not limited to money laundering, terrorist financing, proliferation financing risk, terrorist financing risk, credit risk, compliance risk, liquidity risk, market risk, operational risk, reputational risk, solvency risk and strategic risk.

PART VIII — *Resolution Measures*

Resolution authority

59. The Central Bank shall be the resolution authority and shall have resolution powers as provided for in this Act.

Bank resolvability assessment

60. (1) The Central Bank shall regularly undertake a resolvability assessment of a bank to evaluate the feasibility of resolution strategies and credibility of such strategies in light of the likely impact of that bank's failure on the financial system and the overall economy.

(2) The Central Bank may, for the purpose of undertaking such assessment, request for any information which it may require from a bank.

(3) The Central Bank may require that the information under subsection (2) be audited or reviewed at the expense of the bank, by an independent expert approved by the Central Bank.

Bank resolution planning

61. (1) The Central Bank shall prepare resolution plans for each systemically important bank and any bank, whose failure would, in the opinion of the Central Bank, be disruptive to financial stability:

Provided that resolution plans for other banks may be prepared on a need basis.

(2) The resolution plans prepared in accordance with subsection (1) shall be reviewed on an annual basis.

(3) The Central Bank may require a bank to make specific changes to its operations or organisational structure to facilitate resolution in accordance with the bank's resolution plan.

(4) A bank shall provide the Central Bank with any information required to enable resolution plans to be prepared by the Central Bank.

(5) The Central Bank may require the information under subsection (4) to be audited or reviewed at the expense of the bank by an independent expert that has been approved by the Central Bank.

Resolution funding

62. (1) The Central Bank may establish a resolution fund, financed through levies on banks, for the purpose of facilitating bank resolutions.

(2) For the purpose of meeting expenses of the Central Bank, in the absence of a resolution fund, the Minister may, by regulation —

(*a*) enable the Central Bank to obtain claims against a bank under official administration or compulsory liquidation; or

(*b*) impose levies on any class of banks.

Commencement of bank resolution

63. (1) The Central Bank shall provide, by directives, for the implementation of resolution measures whenever necessary.

(2) The Central Bank may commence the resolution of a systemically important bank or any bank, whose failure would be disruptive to financial stability, by assuming control and appointing an official administrator in accordance with section 65, if the Central Bank determines that the bank is non-viable, which may be indicated by one or more of the following —

(*a*) the bank not paying its liabilities in full on a timely basis or likely to be unable to pay its liabilities in full as they fall due;

(*b*) the value of the liabilities of the bank exceeding or likely to exceed the value of the assets of the bank;

(*c*) the bank having incurred or likely to incur losses that will deplete all or substantially all of its total capital;

(*d*) the bank having or likely to have regulatory capital less than 50 percent of the required minimum regulatory requirement, as determined by the Central Bank;

(*e*) the principal officer, directors or senior managers of the bank having committed a material violation of the law or regulation or a directive of the Central Bank that is detrimental to depositors or financial markets; or

(*f*) the bank being otherwise non-viable, and not in a position to restore itself to viability within the timeframe regarded as necessary by the Central Bank.

Objectives and tasks under resolution

64. (1) The primary objective of a bank resolution shall be to —

(*a*) protect the safety, soundness and stability of the financial system;

(*b*) prevent contagion;

(*c*) ensure the continuity of systemically important financial services;

(*d*) provide for speed, transparency, and procedural clarity in resolution;

(*e*) provide creditor, shareholder and depositor protection; and

(*f*) promote effective domestic and cross-border coordination and facilitate market-based resolution processes, where possible, and to avoid reliance on the use of public funds by applying resolution measures or other measures prescribed under this Act, while taking into account the following principles —

(i) shareholders of the bank shall bear the first losses recognised pursuant to a resolution,

(ii) creditors in respect of their debts, but not in respect of their deposits, shall bear the next losses recognised pursuant to a resolution, in a manner similar to their treatment of bankruptcy under the Companies Act, but as modified by the provisions of this Act,

(iii) management of the bank is replaced by the official administrator, but provides required assistance to the official administrator,

(iv) claims and debts of the same class are treated in the same manner, and

(v) a creditor, depositor or shareholder's losses in connection with the resolution are intended not to exceed losses that would be suffered in liquidation.

(2) In order to achieve the objective under subsection (1), an official administrator shall —

(*a*) take control of and preserve the value of the bank's assets and ensure continuation of its operations;

(*b*) assess the true financial situation of the bank;

(*c*) develop and manage a restructuring plan; and

(*d*) if resolution measures are not feasible, recommend liquidation of the bank and termination of the official administration.

Appointment of official administrator

65. (1) The Central Bank may appoint an official administrator to perform resolution functions and apply resolution actions and measures.

(2) An official administrator shall be a person from the private sector or an official of the Central Bank who meets the qualifications specified by the Central Bank.

(3) The term of appointment of an official administrator shall be for a period specified by the Central Bank, which period shall not exceed one year, and may be extended by the Central Bank for a period not exceeding six months if, in the opinion of the Central Bank, such extension is necessary and expedient to fulfil an approved resolution plan in terms of section 61.

(4) The Central Bank may, on good cause being shown, dismiss and replace an official administrator.

(5) Any compensation of an official administrator, his or her agents and employees, and expenses incurred by them or the Central Bank in execution of the official administration, shall be paid by the subject bank.

(6) If, in the opinion of the official administrator and based on the facts, the bank has sufficient liquid assets, payments to the official administrator, his or her agents and employees may be made on a current basis.

(7) The Central Bank may indemnify the official administrator, his agents and employees of the costs of any legal action actually and reasonably incurred by such person in performing his functions, unless such person acted in bad faith and in a manner which violates the provisions of this Part.

(8) The Central Bank may issue directions to an official administrator on any matters relating to the powers and duties exercisable by the official administrator under this Part.

Powers and duties of official administrator

66. (1) An official administrator shall have all the powers of a principal officer, directors, senior managers, employees, and shall have the power to call general and special meetings of shareholders of a bank for which the official administrator has been appointed and shall have full and exclusive powers to manage, conduct, and control the business of the bank, including to —

(*a*) continue or discontinue operations of the bank;
(*b*) employ any necessary staff;
(*c*) discontinue employment of any staff of the bank;
(*d*) execute any instrument in the name of the bank; and
(*e*) initiate, defend and conduct in the bank's name any action or proceeding to which the bank may be a party.

(2) Notwithstanding any provisions of the Companies Act, or any listing rules of a financial market or rules of a competition authority to the contrary, an official administrator may, subject to the provisions under this Part, and upon approval by the Central Bank of a plan under section 61 —

(*a*) merge the bank with another bank;
(*b*) sell, transfer, or dispose of the whole or any part of assets and liabilities of the bank, including assets and liabilities held in trust, without any approval, assignment or consent with respect to such transfer;
(*c*) issue shares, or rights to acquire shares, in the bank;
(*d*) cancel shares, or rights to acquire shares, in the bank;
(*e*) reduce share capital of the bank;
(*f*) reorganise the bank in accordance with the provisions of this Act;
(*g*) vary or cancel rights or restrictions attached to any class of shares in the bank;
(*h*) require that holders of notes or bonds issued by the bank convert those notes or bonds into newly issued equity of the bank or some other form of eligible capital instrument or that the value of principal or interest of such notes or bonds is reduced or extended;
(*i*) establish a bridge bank to take over and continue operating certain critical functions and viable operations of the bank under resolution; or
(*j*) apply bail-in within resolution.

(3) The powers of a bank's principal officer, directors, senior managers, and employees shall be suspended during an official administration:

Provided that they may —

(i) be instructed by an official administrator to exercise specific functions on behalf of the bank, and
(ii) be required to cooperate with the official administrator and his or her requests.

(4) When an official administrator is appointed under section 65, the official administrator shall, within two working days of such appointment —

(*a*) post in each office of the bank a notice announcing that the bank's business is in the control of the official administrator; and

(*b*) publish a notice of the official administration in the *Gazette*, at least two newspapers of general circulation in Botswana and on the Central Bank's website.

(5) An official administrator shall act in accordance with this Act and any regulation and directive of the Central Bank and shall be accountable to the Central Bank in exercising his or her powers.

(6) An official administrator shall report to the Central Bank and shall provide to it, any information with respect to the official administration when requested to do so.

(7) An official administrator may, within the scope of applicable general guidelines of the Central Bank —

(*a*) delegate any of his powers or duties to any other persons, but shall, notwithstanding such delegation, remain responsible for the discharge of the delegated duties; or

(*b*) employ, at the expense of the bank, any expert to assist the official administrator.

(8) An official administrator shall have unrestricted access to and control over the offices, books, records, and assets of a bank and its subsidiaries for which the official administrator has been appointed.

(9) Any person who wilfully interferes with an official administrator's access to the offices, books, records, and assets of a bank and its subsidiaries, commits an offence and is liable to a fine not exceeding P250 000 or to imprisonment for a term not exceeding three years, or to both.

(10) An official administrator shall have the power to request and obtain assistance from law enforcement officers in gaining access to the bank's offices, books, records, and assets without an order of the Court.

(11) An official administrator shall, upon his or her appointment —

(*a*) secure the assets of the bank to prevent their dissipation; and

(*b*) suspend —

(i) the payment of any dividends or other form of capital distribution to shareholders, and

(ii) any payment to directors for prospective services provided, however, the official administrator may make payment to directors for services rendered on the request of the official administrator.

(12) If an official administrator has reasonable cause to believe that the shareholders, principal officer, directors, senior managers, employees, attorneys, auditors or other professionals have engaged or are engaging in fraudulent activities with respect to the bank, the official administrator shall —

(*a*) immediately notify the Central Bank;

(*b*) when appropriate, pursue civil action seeking damages or other appropriate relief; or

(*c*) when appropriate, refer the matter for prosecution.

(13) The Central Bank shall exercise resolution powers in a way that respects the hierarchy of claims as set out in section 84, and that provides for equal treatment of creditors and shareholders within the same class.

(14) Notwithstanding the provisions of subsection (13), the Central Bank shall, where it is justified in the public interest, depart from the principle of equal treatment of creditors in the same class, where necessary to effect an orderly resolution of the bank in question.

(15) A decision relating to the imposition of a resolution measure shall be immediately enforceable and subject to judicial review in respect of which the remedy shall be restricted to monetary compensation.

Inventory of assets and liabilities and plan of action

67. (1) An official administrator shall, within 10 days after his or her appointment, prepare and deliver to the Central Bank an inventory of the assets and liabilities of a bank.

(2) An official administrator shall, within 60 days after his or her appointment, prepare and deliver to the Central Bank —

(*a*) a statement of financial position of the bank; and

(*b*) a report containing either —

(i) a proposed plan of action to restructure the bank by application of one or more measures under this Act, or

(ii) a recommendation for the compulsory liquidation of the bank and an assessment of the amount likely to be realised in its liquidation, if there is no reasonable prospect to restructure the bank by applying the measures under this Act.

(3) The Central Bank shall, within 30 calendar days from the receipt of the report under subsection (2) (*b*) –

(a) approve, with or without modification or conditions, the proposed plan of action;

(*b*) reject the proposed plan and order any further action that is necessary to facilitate the resolution of the bank, including submission of a new plan by the official administrator or replacement of the official administrator; or

(*c*) order that the bank be subject to compulsory liquidation under Part IX of this Act.

(4) In case of urgency, the Central Bank shall, on the basis of the resolution plan drawn, proceed with the resolution without an inventory.

Resolution measures

68. (1) An official administrator may, in accordance with a report approved by the Central Bank, apply the following resolution measures —

(*a*) increase the capital of the bank through the issuance of shares to shareholders;

(*b*) a merger of the bank with another bank;

(*c*) a transfer, in whole or in part, of the assets and liabilities of the bank;

(*d*) a transfer, in whole or in part, of the shares of the bank;

(*e*) establishing a bridge bank; or

(*f*) bail-in classes of creditors and shareholders.

(2) The implementation of any measure under subsection (1) shall not require any consent of any interested party or creditor.

(3) When a bank issues shares under subsection (1), existing shareholders of the bank may not exercise pre-emptive rights to purchase the shares.

(4) The official administrator shall, in order to issue shares under subsection (1) and notwithstanding any provision of any other law, reduce the value of outstanding shares to the extent necessary to reflect losses.

(5) A bridge bank may be established on approval of and licensing by the Central Bank and such bridge bank shall be owned by —

(*a*) shareholders or bail-in creditors of the bank in resolution; or

(*b*) the Government or resolution fund.

(6) A bridge bank established in accordance with subsection (5) shall exist for a period not exceeding two years:

Provided that the Central Bank may in writing extend this period with a further six months if it considers this necessary in order to transition the bridge bank to a new permanent ownership, merger or liquidation.

(7) An official administrator may transfer to the bridge bank, such assets and liabilities of the bank as may be approved by the Central Bank.

(8) An official administrator shall, with the approval of the Central Bank, determine the constitution of a bridge bank established under subsection (5) and the Central Bank shall appoint directors for the bridge bank and determine their compensation.

(9) The Central Bank shall specify the financial activities that may be conducted by a bridge bank in its licence.

(10) A bank or bridge bank to which assets and liabilities of a bank in official administration are transferred may continue to exercise any right that was exercised by the bank in official administration in respect of the rights, assets, and liabilities transferred.

(11) A bail-in within resolution may be applied by —

(*a*) writing down, in a manner that respects the hierarchy of claims in liquidation, equity or other instruments of ownership of the bank, unsecured and uninsured creditor claims to the extent necessary to absorb the losses;

(*b*) converting into equity or other instruments of ownership of the bank under resolution, all or parts of unsecured and uninsured creditor claims in a manner that respects the hierarchy of claims in liquidation; or

(*c*) upon entry into resolution, conveying or writing down any contingent convertible or contractual bail-in instruments whose terms had not been triggered prior to entry into resolution and treating the resulting instruments in line with paragraphs (*a*) and (*b*).

Suspension of payments and termination rights during official administration

69. (1) An official administrator may, with the consent of the Central Bank, suspend or limit payment of any obligation of the bank in official administration for a period not exceeding five working days.

(2) Notwithstanding the provisions of subsection (1) —

(*a*) the official administrator may suspend, for a period not exceeding 10 working days, the payment of deposits -

(i) which do not fall within paragraph (*b*), or

(ii) which exceed P100 000;

(*b*) the payment of deposits to related parties of the bank may, at the sole discretion of the official administrator, be suspended by an official administrator during the official administration; and

(*c*) the payment of deposits to a person who is also a borrower from the bank and owes overdue debt to the bank shall be refused by the official administrator, and the past due claims of the bank to the borrower shall be set off against the deposits.

(3) A person shall not, without the consent of an official administrator —

(*a*) exercise any rights under a mortgage, charge, or other security over the property of a bank in official administration;

(*b*) levy any execution or attachment or enforce any judgment or order obtained against a bank in official administration; or

(*c*) take any action to sell, transfer, assign or dispose of any property of a bank in official administration.

(4) The commencement of official administration or the exercise of resolution measures shall not entitle a person to exercise termination rights in relation to any contract entered with the bank.

(5) Subsection (4) shall not apply to the exercise of termination rights in respect of an eligible financial contract.

(6) Notwithstanding subsection (5), the official administrator may suspend the exercise of early termination rights under an eligible financial contract which a bank under official administration is a party to —

(*a*) where the request to exercise early termination rights arises from official administration or the exercise of resolution powers;

(*b*) where the suspension of the early termination rights does not exceed a period of two working days from the commencement of official administration;

(*c*) where, following the transfer of eligible financial contracts to an acquiring party, the exercise of early termination rights is based on the commencement of official administration or the exercise of resolution powers; or

(*d*) under any other condition as the Central Bank may determine.

(7) The official administrator and the Central Bank shall, in the exercise of the powers conferred under this section, have regard to the impact on the safe and orderly functioning of money or securities markets in Botswana.

Creditor safeguard

70. (1) A creditor safeguard shall apply to all resolution actions, including the bail-in of liabilities either through conversion to equity or write-down, transfer of assets and liabilities, and restructuring of capital.

(2) If any creditor of a bank in official administration, as a result of the application of any resolution measure provided under this Act, is in a financial position that is worse than if the bank in official administration had been subject to compulsory liquidation, the creditor shall be entitled to compensation of an amount that would restore the creditor to the same position he or she would have been in if the bank in official administration had been subject to compulsory liquidation.

(3) The resolution measures under this Act shall not be used for —

(*a*) transferring property against which a liability is secured, unless the liability and the benefit of the security interest is also transferred; or

(*b*) transferring only some but not all of the rights and liabilities protected under a netting clause contained in an eligible financial contract.

(4) The compensation under subsection (2) shall be paid within 30 calendar days in accordance with the procedures determined by the Central Bank.

(5) The amount of compensation under subsection (2) shall be —

(*a*) the difference between —

(i) the amount which a creditor would have received, had the bank in official administration been liquidated without transferring assets or liabilities, and

(ii) the amount which a creditor has received, or is likely to receive, under the liquidation of the non-transferred part of the bank in official administration;

(*b*) calculated in accordance with the valuation methods determined by the Central Bank;

(*c*) determined by an independent valuer appointed by a court of law on application by the Central Bank, who meets qualification requirements determined by the Central Bank, made without regard to any direct or indirect support of the bank provided or given by the Central Bank; and

(*d*) funded from the bank's assets in resolution, with any shortfall funded from the resolution fund.

(6) An independent valuer shall prepare a valuation report, which comprehensively sets out the valuation methodology and assumptions, and shall report his findings to the High Court within the timeframe specified by the Central Bank.

(7) A party concerned by the valuation may challenge the valuation findings and the amount of compensation in the High Court and the High Court may require that a third party review the challenged report.

(8) In making a judgement under subsection (7), the High Court shall not have powers to reverse or amend any resolution measures applied by the Central Bank.

Shareholder safeguard

71. (1) A shareholder safeguard shall apply to all resolution actions, including the bail-in of liabilities either through conversion to equity or write-down, transfer of assets and liabilities, and restructuring of capital.

(2) In taking a resolution action in relation to a bank, claims of shareholders that would have the same ranking in liquidation shall be treated in the same manner.

Termination of bank resolution

72. (1) A bank resolution shall be terminated when —

(*a*) the term of the appointment of the official administrator under section 65 expires; or

(*b*) the Central Bank determines that —

(i) the resolution is no longer necessary because measures have been taken and the grounds for appointment of the official administrator have ceased to exist, or

(ii) it is no longer possible to take the measures under section 68.

(2) The determination of the Central Bank under subsection (1) (*b*) shall be accompanied by a report prepared by an official administrator to explain measures taken and expenses incurred during the official administration.

(3) When the resolution terminates, the Central Bank shall revoke the licence of the bank, unless —

(*a*) the bank is recapitalised under this Part;

(*b*) the resolution is no longer necessary as referred to in subsection (1) (*b*) (i); or

(*c*) the Central Bank determines that other resolution measures that have been used have been effective.

(4) When the resolution of a bank, which is recapitalised under this Part, terminates —

(*a*) the shareholders of the bank shall immediately become able to exercise voting rights and be entitled to payments of dividends and capital distributions;

(*b*) the official administrator shall carry out the duties of directors of the bank until election of new directors by the shareholders is completed; and

(*c*) upon election of new directors under paragraph (*b*), an official administrator shall return control of a bank and its properties, books, and records to the competent bodies.

PART IX — *Liquidation*

Appointment of liquidator under compulsory liquidation

73. (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 a bank or deposit-taking institution:

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 appointed by the Central Bank, and

(ii) the provisions of Companies Act relating to winding up and judicial management shall not apply to banks.

(2) For purposes of this Part "Master" refers to the Central Bank or a person appointed by the Central Bank.

(3) Before the commencement of any winding-up of a bank or deposit-taking institution, whether voluntary or involuntary, the Central Bank may —

(*a*) upon receipt of 14 days prior notice 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

(*b*) in the case of involuntary winding-up, petition the High Court for a winding-up order, and shall be entitled to appear before the High Court and make representations.

(4) For the purposes of any winding-up, and notwithstanding anything to the contrary in the Companies Act, or in the Insolvency Act, the provisions of this Act shall apply.

(5) For the purposes of saving of the rights of creditors and contributories and judicial management under the Companies Act, when the Central Bank has, under this Act, placed a bank or deposit-taking institution under official administration, which bank or deposit-taking institution is subsequently wound-up, the official administration shall be deemed to be and to correspond with a sequestration order under the Insolvency Act.

(6) The Master shall appoint a liquidator, in accordance with the Companies Act, for a bank or deposit-taking institution when the Central Bank has revoked the licence of the bank or deposit-taking institution or when an official administration has been terminated without restructuring.

(7) Subsection (2) shall not be construed as preventing the Master from appointing a liquidator for a bank or deposit-taking institution of which the licence has been revoked but which has not been subject to official administration.

(8) The Master shall publish a notice of appointment of a liquidator in the *Gazette*, at least two newspapers of general circulation in Botswana and on the Central Bank's website.

(9) A liquidator shall be a person from the private sector or an official of the Central Bank who meets such qualifications as may be determined by the Master.

(10) The Master may vary terms of appointment of a liquidator and dismiss a liquidator at any time for good cause upon written notice to the person so appointed.

(11) A liquidator appointed under subsection (1) shall take possession and control of the bank or deposit-taking institution and administer the liquidation of assets of the bank or deposit-taking institution, the recovery on any claims of the bank or deposit-taking institution, and the distribution of the proceeds to creditors.

(12) No one other than the Master may commence a proceeding with respect to a bank or deposit-taking institution for the collective resolution of claims by its creditors against the bank or deposit-taking institution.

(13) Compensation of all expenses incurred by the Master, liquidator, and experts hired by the Master and liquidator in execution of provisions of this Part shall be paid from the assets of the bank or deposit-taking institution.

(14) If, in the opinion of the liquidator, there are sufficient liquid assets in the circumstances, payments to the liquidator, Master and experts in subsection (13) shall be made on a current basis.

Notice of liquidation

74. (1) A liquidator shall immediately post in each office and branch of the bank or deposit-taking institution a notice announcing the liquidation of the bank or deposit-taking institution specifying the effective date of possession by the liquidator.

(2) The notice under subsection (1) shall state, among other things identified by the liquidator, that no additional deposits will be accepted by the bank or deposit-taking institution.

(3) A notice of liquidation shall be published by the liquidator in the *Gazette*, at least two newspapers of general circulation in Botswana and on the Central Bank's website.

Prohibition against accepting deposits

75. (1) A bank or deposit-taking institution shall not receive any deposits after the appointment of a liquidator.

(2) Any director, principal officer, or employee of a bank or deposit-taking institution, who has knowledge of or should have known of the commencement of the compulsory liquidation, and who receives or authorises the acceptance of a deposit, commits an offence and is liable to a fine not exceeding P1 000 000 or to imprisonment for a term not exceeding five years, or to both.

Powers and duties of liquidator

76. (1) When a liquidator is appointed under section 73, the liquidator shall become the sole legal representative of the bank or deposit-taking institution and shall assume all rights and powers of the bank or deposit-taking institution's shareholders, principal officer, directors, and senior managers and shall be responsible for the control of the bank or deposit-taking institution.

(2) Without prejudice to the generality of subsection (1) and subject to subsection (3), such rights and powers of a liquidator shall include —

(*a*) holding title to books, records, and assets of the bank or deposit-taking institution;

(*b*) managing, operating and representing the bank or deposit-taking institution;

(*c*) disposing of assets and liabilities of the bank or deposit-taking institution; and

(*d*) taking such other action as he or she deems proper for the efficient liquidation of the bank or deposit-taking institution and to obtain the maximum amount from the sale of the bank or deposit-taking institution in whole or in part or its assets, including, without limitation —

(i) continuing or interrupting any operation of the bank or deposit-taking institution with the exception of deposit taking as provided for under section 73 of this Act,

(ii) suspending or limiting the payment of debts subject to the approval of the Master,

(iii) borrowing money with or without provision of security interest,

(iv) hiring specialists, experts or professional consultants,

(v) collecting debts and other assets due to the bank or deposit-taking institution and recovering assets owed to the bank or deposit-taking institution,

(vi) employing or dismissing any officer, employee, or agent of the bank or deposit-taking institution, or

(vii) continuing, initiating and defending the bank or deposit-taking institution in any legal proceedings.

(3) All powers of a bank or deposit-taking institution's shareholders, principal officer, directors, and senior managers shall be terminated at the commencement of the liquidation, provided, however, that the principal officer, directors and senior managers may be instructed by the liquidator to exercise specific functions for the bank or deposit-taking institution.

(4) A liquidator shall act in accordance with requirements of the Central Bank and shall be accountable to the Master for the performance of his or her duties and the exercise of his or her powers.

(5) A liquidator shall provide any information with respect to the liquidation upon request by the Central Bank or depositors and other creditors.

(6) A liquidator shall have unrestricted access to, and control over, the offices, books, records, and assets of the bank or deposit-taking institution.

(7) A liquidator may request the assistance of law enforcement officials, who shall, if necessary, use force to assist a liquidator to gain access to and control over any offices, books, records, and assets of the bank or deposit-taking institution.

(8) Any person who wilfully interferes with a liquidator's access to or control over the offices, books, records, and assets of the bank or deposit-taking institution 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 five years, or to both.

(9) A liquidator shall secure the offices, books, records, and assets of the bank or deposit-taking institution to seek to prevent their dissipation by theft or other improper action, in such manners as may be determined by the Central Bank.

(10) A liquidator shall not allow payment of any dividend or capital distribution to shareholders or payment of any unearned compensation to principal officer, directors or senior managers of the bank or deposit-taking institution for services subsequent to the commencement of the liquidation, provided, however, that compensation may be paid to a principal officer, directors and senior managers for performing services requested by the liquidator.

(11) A liquidator shall, within 30 days from the date of his or her appointment, make and submit to the Master, depositors and other creditors, an inventory of assets and liabilities of the bank or deposit-taking institution.

(12) A liquidator shall, within 60 days from the date of his or her appointment, make and submit to the Master, depositors and other creditors, a new balance sheet of the bank or deposit-taking institution.

(13) If a liquidator has reasonable cause to believe that the shareholders, principal officer, directors, senior managers, employees, attorneys, auditors, or other professionals have engaged or are engaging in fraudulent activities with respect to the bank or deposit-taking institution, the liquidator shall immediately notify the Master and shall where appropriate —

(*a*) pursue civil action seeking damages or other appropriate relief; or

(*b*) refer the matter to a prosecutor.

Moratorium during liquidation

77. Upon the appointment of a liquidator —

(*a*) any term, statutory, contractual or otherwise, on the expiration of which a claim or right of the bank or deposit-taking institution would expire or be extinguished, shall be suspended;

(*b*) calculation of interest and penalties against a bank or deposit-taking institution's obligations shall be suspended and no other charge or liability shall accrue on the obligations of the bank or deposit-taking institution;

(*c*) all legal proceedings against the bank or deposit-taking institution shall be stayed and exercise of any claim on the bank or deposit-taking institution's assets shall be suspended;

(*d*) no right may be exercised over the bank or deposit-taking institution's assets during the liquidation, except rights given to the liquidator;

(*e*) no creditor may attach, sell, or take possession of any assets of the bank or deposit-taking institution as a means of enforcing his or her claim or initiate or continue any legal proceeding to recover a debt or perfect a security interest in the bank or deposit-taking institution's assets;

(*f*) any attachment or security interest, except one existing six months prior to the effective date of the liquidation, shall be vacated, and no attachment or security interest, except one created by the liquidator, shall attach to any of the assets of the bank or deposit-taking institution so long as the liquidation continues; and

(*g*) the rights of shareholders shall be extinguished, except for the right to receive proceeds, if any, under section 73.

Transfer of assets and liabilities

78. (1) Notwithstanding any provisions of the Companies Act and Insolvency Act, the liquidator may, upon approval by the Master, transfer in whole or in part, assets and liabilities of a bank or deposit-taking institution without the consent of any person, including shareholders.

(2) In making a determination under subsection (1), in addition to any other consideration, the liquidator shall take into account the likely effect of such transfer of assets and liabilities of the bank or deposit-taking institution on the overall safety, soundness and stability of the financial system.

Termination of certain contracts

79. (1) A liquidator may, within 30 days from the date of his or her appointment, repudiate any unfulfilled or partially fulfilled contract, to the extent that the fulfilment of such contract is determined to be burdensome for the bank or deposit-taking institution and the repudiation would promote the orderly administration of the bank or deposit-taking institution's affairs and protect creditor interests.

(2) Notwithstanding any other law, any liability arising from the repudiation under subsection (1) shall be determined as of the date of the repudiation and shall be limited to actual direct damages incurred and shall not include any damage for lost profits or non-monetary damages.

(3) Subject to any law governing conditions of employment, a liquidator may terminate, not later than six months after his or her appointment —

(*a*) any employment contract made by the bank or deposit-taking institution;

(*b*) any contract for services to which the bank or deposit-taking institution is a party; or

(*c*) any obligation of the bank or deposit-taking institution as a lessee of property.

(4) Where a liquidator terminates any obligation of a bank or deposit-taking institution as a lessee under subsection (3) (*c*), notwithstanding any term of the lease to the contrary, the lessor shall —

(*a*) be given notice of 30 calendar days by the liquidator before the intended termination; and

(*b*) have no right to consequential or other damages arising only from the termination.

Filing and notice of claims

80. (1) A liquidator shall, within 60 days from his or her appointment, specify a manner and time, not being earlier than 60 days from the date of delivery or publication under paragraph (*a*) or (*b*), to file a claim against the bank or deposit-taking institution with the liquidator, by —

(*a*) delivering a notice to all known creditors, except depositors and lessees of safe-deposit boxes held by the bank or deposit-taking institution; and

(*b*) publishing a notice in the *Gazette*, at least two newspapers of general circulation in Botswana and on the Central Bank's website.

(2) A liquidator shall, not later than 90 days after the due date for filing claims under subsection (1) —

(*a*) reject any claim of which the liquidator doubts the validity;

(*b*) determine the amount, if any, owing to each known depositor or other creditor, and the priority of such depositor or creditors claim under this Part;

(*c*) prepare and file with the Central Bank a schedule of the actions proposed to be taken for the purpose of the compulsory liquidation of the bank or deposit-taking institution;

(*d*) notify each creditor of whether its claim is allowed in full or not; and

(*e*) publish in the *Gazette*, at least two newspapers of general circulation in Botswana and on the Central Bank's website, a notice of the place where the schedule referred to in paragraph (*c*) is available for inspection.

(3) A liquidator shall not reject claims on deposits solely on the grounds that those are not filed with the liquidator.

Objections

81. (1) A depositor or creditor or shareholder of the bank or deposit-taking institution, or any other interested person, may within 20 working days of the filing of a schedule, file with the liquidator any objection to any action proposed in such schedule.

(2) A liquidator shall hear objections filed under subsection (1) and make such order as he or she considers just in the circumstances.

(3) When the liquidator allows an objection, the schedule referred to in section 69 shall be automatically modified.

(4) Where the liquidator does not allow an objection, the matter shall be referred to the Master.

Distribution related to liquidation

82. (1) A liquidator may, upon filing of a schedule under section 80, make partial distribution to the holders of claims which are undisputed or which have been allowed by the Court, on condition that a proper reserve is established for the payment of disputed claims.

(2) A liquidator shall, as soon as it is practicable after all objections against distribution proposed by the liquidator have been heard and determined, make final distribution of the assets of the bank or deposit-taking institution in accordance with the priorities set out under this Act.

(3) When the contents of any safe deposit box maintained by a bank in compulsory liquidation has not been withdrawn before the expiration of the period specified in a notice, which shall be not less than 45 days, the safe deposit box shall be opened by a liquidator.

(4) When a safe deposit box is opened by a liquidator under subsection (3), the contents shall be turned over to the Central Bank and held by it for five years, unless claimed by a person entitled thereto.

(5) Upon expiration of the five years provided under subsection (4), such contents shall become abandoned property and shall be transferred to the Government.

Avoidance of pre-liquidation transactions

83. (1) The liquidator shall declare as invalid, any transaction that violates any law and is performed by a bank or deposit-taking institution prior to the commencement of its compulsory liquidation.

(2) A liquidator shall, within one year from the date of his or her appointment declare the following transactions void —

(*a*) gratuitous transfers made within one year prior to the date of the appointment of the liquidator;

(*b*) transactions in which the consideration given by the bank or deposit-taking institution considerably exceeded the consideration received by the bank or deposit-taking institution, made within one year prior to the date of the appointment of the liquidator;

(*c*) transfer of property of the bank or deposit-taking institution to, or provision of security interest to claims of a creditor whose claims were incurred within six months prior to the date of the appointment of the liquidator, if such transfer or provision increases the amount that the creditor would receive in the liquidation procedures; or

(*d*) transactions with related parties of the bank or deposit-taking institutions, if such transactions are detrimental to the interests of depositors and creditors and were made within five years prior to the date of the appointment of the liquidator.

(3) Subsection (2) shall not apply to the payment of deposits the amount of which does not exceed P10 000.

(4) Notwithstanding any provision of any other law —

(*a*) effect shall be given to the termination provisions of eligible financial contracts between a bank or deposit-taking institution in compulsory liquidation and its counterparty; and

(*b*) the net termination value determined in accordance with an eligible financial contract between the bank or deposit-taking institution in compulsory liquidation and its counterparty, shall be a claim of the bank or deposit-taking institution on the counterparty or shall be admitted after its validation as a claim of the counterparty on the bank or deposit-taking institution.

(5) Except as provided under this section, no set-off shall be allowed with respect to claims acquired towards a bank or deposit-taking institution after the appointment of its liquidator or within three months before such appointment.

(6) Notwithstanding subsection (5), deposits may be set-off by a liquidator against any past-due sum due by the depositor to the bank or deposit-taking institution.

Order of priority in payment of claims

84. (1) A liquidator shall distribute amounts realised from the liquidation of a bank or deposit-taking institution to pay claims, other than allowed secured claims to the extent of the value of such security, in the following order of priority —

(*a*) expenses incurred by the official administrator, liquidator or Master;

(*b*) insured deposit liabilities incurred by the bank or deposit-taking institution with non-bank customers, in accordance with a deposit insurance scheme established under the laws of Botswana;

(*c*) deposit liabilities other than deposits of other banks or deposit-taking institutions;

(*d*) deposit liabilities incurred by the bank or deposit-taking institution with other banks;

(*e*) the amount of deposits not paid under paragraph (*b*);

(*f*) sums owed to the Central Bank such as penalties, fees and financial market transactions;

(*g*) wages and salaries of employees, but not members of the board of directors and principal officer of the bank or deposit-taking institution, provided that such amount in respect of each employee, does not exceed P100 000;

(*h*) taxes due and other liabilities owing to the Government;

(*i*) other unsecured claims in respect of each employee, creditors; and

(*j*) subordinated debt.

(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 or deposit-taking institution are insufficient to meet them, in which case they shall be settled in equal proportions between themselves.

(3) If amounts available to pay claims are insufficient to pay in full the allowed claims in any class, no amount may be paid or distributed on account of claims in any lower class.

(4) Claims shall be paid without discrimination among creditors on the basis of their nationality, place of residence, or the jurisdiction where a claim is payable.

(5) After payment of all claims in the schedule filed with the liquidator, any remaining claims that were not filed within the time specified by rule of the liquidator may be paid in the order of priority described in this section if there are sufficient funds for such purpose.

(6) Any proceeds remaining after all claims of depositors and other creditors have been paid shall be transferred to the Government.

Remaining assets

85. Any assets of a bank or deposit-taking institution in compulsory liquidation, which remain after the final distribution, shall be distributed among shareholders of the bank or deposit-taking institution in accordance with their rights.

Final reporting on liquidation

86. (1) A liquidator shall, when all assets of a bank or deposit-taking institution being liquidated have been distributed or dealt with as required by this Part, submit a report to the Master that includes an audited statement of income and expenses incurred during the period of the liquidation.

(2) Upon approval of the report by the Master, a notice of the completion of the liquidation shall be published in the *Gazette*, at least two newspapers of general circulation in Botswana and on the Central Bank's website, and the Master shall inform the Registrar who shall immediately strike the name of the bank or deposit-taking institution from the Register under the Companies Act.

(3) Upon publication of the notice referred to in subsection (2), a liquidator shall be relieved of any further obligation in connection with his activities in connection with the liquidation of the bank or deposit-taking institution.

Procedures for voluntary liquidation

87. (1) Any bank or deposit-taking institution that proposes to enter into voluntary liquidation shall first obtain the written authorisation of its board of directors, and the Central Bank.

(2) The bank or deposit-taking institution that proposes to enter into voluntary liquidation shall, after obtaining the written authorisations of its board of directors and the Central Bank, file a petition for voluntary winding-up with the Court.

(3) The Central Bank may authorise the bank or deposit-taking institution to enter into voluntary liquidation, where –

(*a*) the bank or deposit-taking institution is solvent and has sufficient liquid assets to repay its depositors and other creditors without delay; and

(*b*) the proposed liquidation has been approved by shareholders representing three quarters of the voting rights at a meeting called for determining whether or not to approve the liquidation.

(4) Where the bank or deposit-taking institution has received the authorisation of the Central Bank under subsection (2), it shall —

(*a*) immediately post in a conspicuous place in all of its locations, a notice that it is in liquidation and that no deposits will be accepted;

(*b*) immediately cease to do business, retaining only the powers to do the necessary business for the purposes of effecting an orderly liquidation;

(*c*) immediately surrender the licence to the Central Bank for revocation;

(*d*) repay its depositors and other creditors; and

(*e*) wind up all operations undertaken prior to the receipt of the authorisation.

(5) When a bank or deposit-taking institution is in the process of voluntary liquidation, the bank or deposit-taking institution shall first discharge its liability to its depositors and thereafter rank all other creditors in accordance with the provisions of the Companies Act.

Notice and publication of voluntary liquidation

88. A bank or deposit-taking institution shall —

(*a*) not later than 30 days from the receipt of an authorisation, send by mail a notice of voluntary liquidation, specifying such information as the Central Bank may determine, to depositors, other creditors and persons otherwise entitled to the funds or property held by the bank or deposit-taking institution as a fiduciary, lessor of a safe deposit box or bailee; and

(*b*) cause publication of the voluntary liquidation in such manner as the Central Bank may direct.

Rights of depositors and creditors

89. (1) The authorisation to go into voluntary liquidation by the bank or deposit-taking institution shall not prejudice the rights of a depositor or other creditor to payment in full of his claim nor the right of an owner of funds or other property held by the bank or deposit-taking institution to the return thereof.

(2) A bank or deposit-taking institution undergoing voluntary liquidation shall promptly pay all lawful claims and return all funds and property to the rightful owners within such period as the Central Bank may determine.

Distribution of assets

90. (1) In the distribution of assets by a bank or deposit-taking institution, and where, in the opinion of the Central Bank, the bank or deposit-taking institution has discharged all its obligations, the remainder of the bank or deposit-taking institution's assets shall be proportionally shared among the shareholders, according to their respective rights.

(2) A distribution of assets to any shareholder shall not be made before —

(*a*) all claims of depositors and other creditors have been paid;

(*b*) a bank or deposit-taking institution, in the case of a disputed claim, has turned over to the Central Bank, or to any other person proposed by the liquidator and approved by the Central Bank, sufficient funds to meet any liability that may be judicially determined; and

(*c*) any other funds or property held by the bank or deposit-taking institution that could not be returned to the rightful owners have been transferred to the Central Bank.

(3) All distributions of funds and property prior to distribution to shareholders shall be made in accordance with the order of distribution of amounts by a liquidator under a compulsory liquidation.

(4) Any funds or property not claimed within a period of 10 years following their transfer shall be presumed to be abandoned funds or property and shall be dealt with as may be determined by the Central Bank.

Insufficient assets

91. Where the Central Bank finds that the assets of a bank or deposit-taking institution whose voluntary liquidation has been authorised shall not be sufficient for the full discharge of its obligations or that completion of the voluntary liquidation is unduly delayed, it shall appoint any person as liquidator, to take possession of the bank or deposit-taking institution and commence proceedings leading to its compulsory liquidation.

PART X — *Appeals*

Appeals Tribunal

92. (1) There shall be established an Appeals Tribunal to hear appeals against decisions of the Central Bank (hereinafter referred to as the "Tribunal").

(2) The Tribunal established under subsection (1) shall consist of –

(*a*) a Chairperson, who shall be a retired judge of the High Court, or a legal practitioner who qualifies to be appointed as a judge of the High Court; and

(*b*) four other persons appointed from among persons of good standing who possess considerable knowledge and experience in business, finance, economics, accounting, law or other relevant academic fields.

(3) The members of the Tribunal shall be appointed by the Minister for a term of three years and shall be eligible for re-appointment for a further term not exceeding three years.

(4) The Minister shall by notice in the *Gazette* and at least two newspapers of general circulation in Botswana, on the Central Bank's website, publish the appointments of the members of the Tribunal specifying the dates of their appointments and the terms of their appointments to the Tribunal.

(5) The members of the Tribunal shall be paid such allowances as shall be determined by the Minister.

Appeals

93. (1) A person aggrieved by a decision of the Central Bank –

(*a*) refusing to grant the person a licence; or

(*b*) varying the conditions of the licence,

may, within 30 days after the refusal or variation of the conditions of the licence, appeal to the Tribunal.

(2) In determining an appeal under this section, the Tribunal may, having regard to the provisions of this Act, and in the public interest –

(*a*) dismiss the appeal; or

(*b*) refer the matter to the Central Bank with such directions as it may consider necessary.

Proceedings of Appeals Tribunal

94. (1) The Tribunal shall sit as and when it has received an appeal.

(2) The Tribunal may call such witnesses or request the production of such documents as is necessary for the conduct of the proceedings before the Tribunal.

(3) A witness appearing before the Tribunal shall be entitled to the same allowances as those of a witness in proceedings before a Magistrates' Court.

(4) Subject to the provisions of this Act, the Tribunal may regulate its own procedure and shall not be bound by the rules of evidence and may inform itself of any matter in such manner as it sees fit.

(5) A person appearing before the Tribunal may appear in person or may be assisted by any other person.

Appeal to High Court

95. Any person aggrieved by the decision of the Tribunal may within 30 days after the decision of the Tribunal, appeal to the High Court.

Abandoned funds

96. (1) Where —

(*a*) a customer's deposit lodged with a bank or deposit-taking institution for any purpose has remained untouched and unclaimed for 10 years or more; and

(*b*) the customer has not responded within six months to a letter from the bank or deposit-taking institution concerning the dormant deposit sent to the customer's last known address by registered post,

the deposit irrespective of the amounts, shall be deemed to have been abandoned and shall, without further formality, be transferred forthwith by the bank or deposit-taking institution concerned to the Central Bank in the format determined by the Central Bank:

Provided that in cases where there are no such funds for the relevant year, a bank or deposit-taking institution shall submit a nil return to the Central Bank for record.

(2) The Central Bank shall, within a period of six months of receipt of the funds, publish in the *Gazette* and advertise, in at least two newspapers circulating in Botswana and on the Central Bank's website, particulars of the person in whose names the deposits are held, using his last known addresses, calling on the persons so named or his heirs, to submit a claim to the Central Bank.

(3) The Central Bank shall determine the minimum amount of funds for which the Central Bank will advertise and publish for purposes of subsection (2).

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

(5) No refund made pursuant to subsection (4) shall bear interest.

(6) Where, abandoned deposits have not been claimed under subsection (4) for at least five years, the Central Bank shall transfer such deposits to the Government.

(7) Any bank or deposit-taking institution which fails to transfer funds presumed to be abandoned into the custody of the Central Bank pursuant to subsection (1), shall be liable to a fine not exceeding P500 000 as may be imposed by the Central Bank.

(8) Any other property held by the bank as a trustee, fiduciary, lessor of a safe deposit box or bailee, which has remained unclaimed for more than 10 years, shall together with the inventories pertaining thereto, be placed in the custody of the Central Bank and if unclaimed after a period of five years thereafter, shall be disposed of in such manner as the Central Bank may determine.

Evidence in relation to banker's books

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

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

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

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

(*c*) the book is in the custody of the bank; or

(*d*) the copy of the entry is certified by a responsible officer of the bank and is a correct copy of the original entry.

(3) An officer, employee or agent of a bank shall not, 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.

(4) 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.

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

Biometric validation

98. (1) In all transactions with a bank or deposit-taking institution connected with the opening of, deposit into or withdrawal from, an account, the biometric validation of a depositor who is unable to sign his or her name shall, if affixed in the presence of two officers of the bank or deposit-taking institution, have the same legal force and effect as if it were the depositor's signature.

(2) Notwithstanding subsection (1), the Central Bank may issue guidelines to provide for other methods of identification in relation to certain transactions, including transactions that are electronically processed.

Controlling of advertisements

99. (1) If an advertisement made on behalf of any bank or deposit-taking institution is, in the view of the Central Bank, false or misleading, the Central Bank may direct the bank or deposit-taking institution 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 or deposit-taking institution shall comply with any such direction.

(2) For the purposes of subsection (1), an "advertisement" means any material, written, published, broadcast or otherwise, containing an invitation or information such as might lead directly or indirectly to the making of a deposit or obtaining of other financial services.

(3) Any bank or deposit-taking institution that contravenes subsection (1), shall be liable to a fine not exceeding P100 000 as may be imposed by the Central Bank.

Confidentiality of information

100. (1) Subject to the provisions of this Act, no director, principal officer, officer, employee or agent of a bank, banking group or deposit-taking institution or any other person who by virtue of his professional relationship with a bank, banking group or deposit-taking institution has access to the records of the bank (each such person being jointly hereinafter referred to as a "banker") shall, during or after his or her relationship with the bank, banking group or deposit-taking institution, 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 any other 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 the bank, banking group or deposit- taking institution shall not apply where —

(*a*) the customer is declared bankrupt in Botswana, or, if a company, is being wound up, and the information is required in connection with bankruptcy or winding-up proceedings;

(*b*) civil or criminal proceedings arise involving the bank, banking group or deposit-taking institution and the customer or his account or credit granted to him or her;

(*c*) the bank, banking group or deposit-taking institution 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, banking group or deposit-taking institution in Botswana, or by an auditor or legal representative of that bank, banking group or deposit- taking institution who requires and is entitled to know the information in the course of his professional duties;

(*f*) the information is required by another bank, banking group or deposit-taking institution 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 connection with an investigation carried out under the authority of the Director thereof in accordance with the provisions of the Corruption and Economic Crime Act; Cap. 08:02

(*h*) the information is required by the Botswana Unified Revenue Service –

(i) in connection with its function to counteract tax fraud and other forms of tax evasion in accordance with the Botswana Unified Revenue Service Act, or Cap. 53:03

(ii) for the purpose of responding to a valid request for information under an agreement entered into under the Income Tax Act; Cap. 52:01

(*i*) the information is required by the Agency, in accordance with the provisions of the Financial Intelligence Act;

(*j*) the bank is required to provide additional information to the Agency on a suspicious transaction report that it has filed with the Agency, in accordance with the provisions of the Financial Intelligence Act;

(*k*) the information is requested by the Non-Bank Financial Institutions Regulatory Authority in the execution of its mandate in accordance with Non-Bank Financial Regulatory Authority Act; Cap. 46:08

(*l*) the information is required by a credit bureau for purposes directly related to any activity authorised under the licence issued to the credit bureau under the Credit Information Act;

(*m*) the information is being sought for commercial reasons and is required by another bank in relation to —

(i) the opening of an account,

(ii) the provision of any correspondent banking services:

Provided that enhanced due diligence measures shall be applied by a banker to high-risk cross-border correspondent banking relationships, or

(iii) a wire transfer transaction for a customer;

(*n*) the customer has passed away, testate or intestate, and the information is required by the administrator or executor of his estate, in relation to succession of the estate;

(*o*) the Central Bank has consented, in writing, to the disclosure of the information; or

(*p*) the disclosure of the information is required by this Act or by any other law.

(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; or

(*b*) by a representative office established in Botswana in accordance with the provisions of section 6 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 granted to, or foreign exchange transactions with, the customer shall be disclosed, or

(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 foreign central bank, or any other entity or agency, by whatever name called, which has the responsibility of supervising that bank and wishes to conduct an audit, examination or inspection of an affiliate of that bank in Botswana, shall not do so without obtaining the prior written authorisation 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) The Central Bank may conduct an audit, examination or inspection under subsection (4), jointly with 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 has the responsibility of supervising a bank in a foreign country, for the purpose of assisting such official, entity or agency in exercising any functions corresponding to those of the Central Bank under this Act.

(6) Where a police officer requires any information from a bank or deposit- taking institution 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.

(7) Notice of an application to the court made under subsection (6) shall be served on both the bank or deposit-taking institution and the person in question.

(8) 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 to do so.

(9) Notwithstanding subsection (8), the Central Bank may disclose to the auditor of a bank or deposit-taking institution 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.

(10) Nothing in this section shall preclude —

(*a*) the disclosure of information by the Central Bank, under conditions of confidentiality, to a central bank in a foreign country or to any other entity or agency, by whatever name called, which has the responsibility of supervising a bank in a foreign country, for the purpose of assisting it in exercising functions corresponding to those of the Central Bank under this Act;

(*b*) the exchange of information by the Central Bank, under conditions of confidentiality, with any other domestic entity or agency of the Government, including a regulatory authority, that has functions related to the regulation or supervision of financial services, financial offence or taxation;

(*c*) the exchange of anti-money laundering and proliferation information under conditions of confidentiality, with a comparable body in a foreign country with similar function; or

(*d*) the dissemination of terrorism information, including current terrorism threat levels.

(11) 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, deposit-taking institution or customer, unless the consent of the bank or deposit-taking institution or the customer as the case may be, has been obtained in writing.

(12) For the purposes of —

(*a*) subsection (1), "professional relationship" includes a relationship between a bank or deposit-taking institution and a service provider, including a computer bureau or a printer, being a relationship that was entered into in the normal course of business or that the Central Bank has approved of; and

(*b*) subsection (10), "financial offence" has the same meaning assigned to it under the Financial Intelligence Act.

(13) Any person who wilfully discloses information that he or she knows to be subject to the confidentiality requirements of this Act, commits an offence and liable to a fine not exceeding P2 000 000 or imprisonment for a term not exceeding 10 years or to both.

Hours of business

101. (1) A bank or a deposit-taking institution 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).

(2) A bank or a deposit-taking institution shall notify the Central Bank, in writing, of any change in its hours of business, 14 days prior to the entry into force of the proposed change in operating hours.

(3) A bank or a deposit-taking institution that intends to change its hours of business in accordance with the provisions of this section, shall inform its customers of such change at least five (5) days prior to the entry into force of the proposed change in operating hours.

(4) A bank or a deposit-taking institution shall display, in a conspicuous place at each office where it transacts business with the public, the hours the office is open for business.

(5) Notwithstanding the provisions of this section, business may be conducted, on a 24-hour basis, through automated teller machines, internet, mobile or similar devices as approved by the Central Bank.

Publication of information

102. (1) Every bank, banking group or deposit-taking institution and any affiliate shall furnish to the Central Bank, at such time and in such a manner as may be determined by the Central Bank, such information as the Central Bank may require for the proper discharge of its functions and the Central Bank may require such information to be provided on a consolidated basis.

(2) 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:

Provided that no information or data which might disclose the affairs of a bank, banking group, deposit-taking institution or customer shall be published, unless a prior written consent of that bank, banking group, deposit-taking institution or customer as the case may be, has been first obtained by the Central Bank.

(3) The Central Bank may require every bank, banking group or deposit-taking institution to publish its financial statements and any other information to be determined by the Central Bank in newspapers of general circulation in Botswana in such a form, and at such intervals as the Central Bank may determine.

(4) A bank, banking group or deposit-taking institution that fails to furnish information or publish financial statements as required under this section, shall be liable to a fine of P10 000 for each day in which the failure continues.

Bank holidays Cap. 03:07

103. (1) All public holidays declared in terms of the Public Holidays Act shall be observed as bank holidays.

(2) The Central Bank may, by notice published in the *Gazette* and on the Central Bank's website, declare any day to be a bank holiday.

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

(4) 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 next working day following the bank holiday or public holiday, as the case may be.

Application of other laws

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

(2) The issue of a licence under this Act shall not be deemed to exempt a bank or deposit-taking institution from obtaining any other licence, permit or authority under any other written law, in respect of any other activity carried on by such bank or deposit-taking institution provided that the prior approval of the Central Bank has been obtained.

Immunity of Central Bank

105. (1) The licensing, regulation and supervisory requirements, or any conditions of any acts performed by the Central Bank under this Act shall not —

(*a*) constitute a warranty as to the solvency of a bank, deposit-taking institution or any entity forming part of that bank, deposit-taking institution or financial group; or

(*b*) make the Central Bank liable in respect of any loss incurred through the insolvency or default of a bank or deposit-taking institution.

(2) No act or thing done by the Central Bank, any member of Board of the Central Bank, 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 the Central Bank, any member of the Board of the Central Bank, such officer of the Central Bank or any such person to any liability, action, claim or demand whatsoever.

Recovery of administrative penalties

106. (1) In the event that administrative penalties levied by the Central Bank pursuant to this Act are not paid by the bank, deposit-taking institution, principal officer or senior manager within 30 days following the date on which they are levied, the Central Bank shall –

(*a*) order that additional penalties, in the amount determined by the Central Bank, shall accrue on a daily basis until the entire amount is paid, and

(*b*) commence an action against the bank or deposit-taking institution or the administrator, as the case may be, to obtain payment.

(2) Notwithstanding the provisions of subsection (1), an administrative penalty may be recovered by deduction from any balance of the bank or deposit-taking institution concerned at the Central Bank or any monies owing by the Central Bank to the bank or deposit-taking institution concerned.

Annual submissions

107. (1) A bank or deposit-taking institution shall submit to the Central Bank, on an annual basis, true, accurate and complete information indicating –

(*a*) the names and holdings of all significant shareholders or those that exert controlling influence, including the identities of holders of beneficial interests in shares held by nominees, custodians and through vehicles which might obscure ownership or such other information as the Central Bank may require; and

(*b*) the composition and details of board members, principal officer and senior management.

(2) A bank or deposit-taking institution shall notify the Central Bank immediately of resignation or removal of a board member, principal officer or senior manager.

(3) A bank or deposit-taking institution that contravenes this section shall be liable to a fine not exceeding P100 000 as may be imposed by the Central Bank.

General penalty

108. Any person who contravenes any provision of this Act or any regulations made under this Act, shall be liable to a fine not exceeding P500 000, or to imprisonment for a term not exceeding five years, or to both.

Regulations

109. (1) The Minister may in consultation with the Central Bank make regulations prescribing anything under this Act which is to be prescribed or for the better carrying out of the purposes and provisions of this Act.

(2) Without prejudice to the generality of the subsection (1), regulations may provide for —

(*a*) the manner in which an application for a licence is to be made and the manner in which a licence is to be issued or renewed;

(*b*) the manner in which an application to merge or acquire is to be made and which documents to accompany the application;

(*c*) procedures on how to engage in any activities, either directly or through a subsidiary and subject to any limitation in the licence issued;

(*d*) procedures on limitations on large exposures and concentration of risks; and

(*e*) any other matter required or permitted to be prescribed under this Act.

Repeal of Cap. 46:04

110. The Banking Act (hereinafter referred to as "the repealed Act") is hereby repealed.

Savings and transitional provisions

111. (1) Notwithstanding the repeal effected under section 110, any subsidiary legislation made under the repealed Act and in force immediately prior to the coming into force of this Act shall continue to have effect as if made under this Act, to the extent that it is not inconsistent with this Act.

(2) The repeal under section 110 shall not be construed as invalidating any process to resolve an investigation begun or undertaken under or in accordance with the provisions of the repealed Act.

(3) Any legal proceedings in respect of any offence committed or alleged to be committed under the repealed Act shall be carried out or prosecuted as if commenced under this Act.

(4) Any fines imposed by the Central Bank under the repealed Act, shall continue as if imposed under this Act.

(5) Any decision or action taken or purported to have been taken or done by the Central Bank under the provisions of the repealed Act, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been taken or done under the corresponding provisions of this Act.

(6) A licence or other authorisation granted in terms of the repealed Act shall —

(*a*) not be invalidated by the repeal and shall have effect as though granted in terms of this Act; and

(*b*) remain valid until its expiry date whereupon an application shall be made under this Act for the relevant licence or other authorisation.

(7) Any right of appeal, which subsisted immediately before the commencement of this Act by virtue of the repealed Act, shall be treated as subsisting by virtue of the corresponding provisions in this Act, and any appeal commenced before the repeal of the repealed Act may be disposed of as though commenced in terms of the provisions of this Act.

(8) A person issued with an exemption to carry on business as a microfinance institution shall, within a period of six months after the commencement of this Act, make an application to the Central Bank for a licence to carry on business as a deposit-taking institution in exchange for the certificate of exemption issued to that person under the repealed Act.

PASSED by the National Assembly this 14th day of April, 2023.

BARBARA N. DITHAPO,
Clerk of the National Assembly.