

PROCEEDS OF SERIOUS CRIME (AMENDMENT) ACT, 2000

No. 13



of 2000

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 15 of Act No. 19 of 1990
3. Insertion of section 16A
4. Insertion of Schedule

An Act to amend the Proceeds of Serious Crime Act

Date of Assent: 29.09.2000.

Date of Commencement: 6.10.2000.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Proceeds of Serious Crime (Amendment) Act, 2000.

Short title

2. Section 15 of the Proceeds of Serious Crime Act (hereinafter referred to as "the Act"), is amended —

Amendment
of section 15
of Act No. 19
of 1990

(a) by substituting for subsection (2) thereof the following new subsection —

"(2) For the purposes of this section, references in subsection (1) to —

(i) concealing money or property shall include references to concealing or disguising the nature, source, location, disposition, movement, ownership or any rights with respect to such money or property;

(ii) disposing of any money or property shall include references to converting, transferring or removing such money or property and the provision of advice or assistance in relation to disposing, converting, transferring or removing such money or property."

(b) by inserting immediately after subsection (2), the following new subsection (3) —

"(3) In any proceedings, where it is proved to the satisfaction of the court that a person had engaged in acts mentioned in subsections (1) and (2), or had reason to know or believe that such money or other property, directly or indirectly represented another person's proceeds of a serious offence, it shall be presumed that the person so knew or believed unless the contrary is proved."

Insertion of section 16A in the Act

(c) by inserting immediately after subsection (3), the following new subsection (4) —

“(4) For the purposes of subsection (3), to believe that money or property, whether in whole or in part directly or indirectly, represent another person’s proceeds of a serious offence, shall include having reasonable cause to suspect that the money or property represented such proceeds.”

3. The Act is amended by inserting immediately after section 16 thereof, the following new section —

Duties of a designated body

16A (1) This section shall apply to the following persons or body of persons whose business consists of or includes the provision of services involving the acceptance or holding of money or property for or on behalf of other persons or whose business appears to the Minister to be otherwise liable to be used for the purpose of committing or facilitating the commission of a serious offence under this Act, or any corresponding or similar offence under the law of any country (referred to in this section as a “designated body”) namely —

Act No. 13 of 1995

Cap. 42:03

Act No. 20 of 1999

Cap. 65:03

Cap. 72:01

Act No. 11 of 1994

Cap. 46:01

Act No. 19 of 1996

Act No. 12 of 1995

- (a) a bank licensed under the Banking Act;
- (b) a building society registered under the Building Society Act;
- (c) a collective investment undertaking established under the Collective Investment Undertakings Act;
- (d) Botswana Savings Bank established under the Botswana Savings Bank Act;
- (e) a post office designated under the Post Office Act;
- (f) a registered stockbroker in terms of the Botswana Stock Exchange Act;
- (g) a long term insurance business specified under the Insurance Industry Act;
- (h) a person who transacts foreign exchange business licensed under Bank of Botswana Act;
- (i) an international financial services centre certification committee constituted under the Income Tax Act;
- (j) any other person or body as may by order be prescribed by the Minister under subsection (23).

(2) This section shall apply to business relationships, transactions and services, of a kind specified under the Schedule, provided by a designated body under subsection (1) which business relationships, transactions or services are liable to be used for the purposes of committing or facilitating the commission of a serious offence.

Act No.13 of
1994

Act No. 20 of
1999

(3) The Minister may, after consultation with the Directorate on Corruption and Economic Crime established under the Corruption and Economic Crime Act (Referred to in this section as the "Directorate") and the Regulatory Authority designated under the Collective Investment Undertakings Act (referred to in this section as the "Regulatory Authority"), by Order published in the Gazette, amend the Schedule accordingly.

(4) This section shall not apply where a designated body enters into a business relationship, concludes a transaction or provides a service of a kind specified under the Schedule for another designated body or a body corresponding to a designated body in a state or country prescribed for the time being by the Minister as not applicable.

(5) No designated body shall enter into a business relationship, conclude a transaction or provide a service of a kind specified under the Schedule unless the proof of identity required by subsections (6) and (7) has been obtained.

(6) A designated body shall take reasonable measures to obtain the required proof of the identity of a person for whom it proposes to enter into a business relationship, conclude a transaction or provide a service of a kind specified under the Schedule if —

- (a) the service is in respect of either a single transaction or a series of transactions which are or appear to be linked and amount in the aggregate to an amount prescribed in Regulations; or
- (b) on reasonable grounds, it suspects that the business relationship, transaction or service is connected to the commission of a serious offence under this Act.

(7) Where a designated body proposing to enter into a business relationship, concludes a transaction or provides a service of a kind specified under the Schedule for a person whom it knows or has reason to believe to be acting for a third party, the designated body shall take reasonable measures to obtain the required proof of the identity of the third party and the authority of the person to conclude a transaction on behalf of the third party.

(8) Subsections (6) and (7) shall not apply to a long term insurance business listed in subsection (1) where —

- (a) the amount of the periodic premiums to be paid in respect of the life policy in any twelve month period does not exceed the amount prescribed in Regulations; or
- (b) a single premium to be paid in respect of a life policy does not exceed the amount prescribed for the purpose in Regulations.
- (9) Paragraph (a) of subsection 8 excludes —

 - (a) a pension scheme taken out by virtue of a contract of employment or the occupation of the person to be insured under the life policy provided that the life policy in question does not contain a surrender clause and may not be used as collateral for a loan; or
 - (b) a transaction or a series of transactions taking place in the course of a long term insurance business in respect of which payment is made from an account held in the name of the other party with a designated body or a body corresponding to a designated body prescribed under subsection (4).
- (10) Where a designated body establishing a business relationship, is requested to carry out a transaction or provides a service of a kind specified under the Schedule, the designated body shall keep the following records —

 - (a) in the case of the identification of a prospective customer or the third party on whose behalf the customer is acting, copies of documentation presented to identify such customer or third party and proof of authority of the customer to conclude such transaction;
 - (b) in the case of transactions, the original documents or copies of the nature of the business relationship established or transaction concluded; and
 - (c) identifying particulars of all accounts involved in such business relationship, transaction or service.
- (11) A designated body shall keep all records referred to in subsection (10) in the prescribed manner for a period of at least five years commencing on the date of the —

 - (a) termination of the relevant business relation with the customer; or
 - (b) completion of the execution of a transaction.
- (12) For the purposes of an investigation under this Act, the Directorate may require a designated body to furnish information or produce documents relevant to the investigation.

(13) Any information kept in the records of a designated body in the prescribed form shall be admissible as evidence in any proceedings in a court of law.

(14) Where a designated body which is party to a transaction involving the payment or receipt by it of money exceeding an amount prescribed from time to time, it shall, within five days of concluding such a transaction, report the prescribed details of the transaction to the Directorate and to the Regulatory Authority.

(15) Where a designated body that is party to a transaction in respect of which there are reasonable grounds to suspect that the transaction brings or will bring the proceeds of serious crime into its possession or it may facilitate the transfer of the proceeds of serious crime, the designated body shall, within ten days of becoming party to such a transaction, report the suspicion to the Directorate and to the Regulatory Authority.

(16) A designated body that intends to transfer or convey an amount of cash in the form of Pula currency or foreign currency, exceeding the amount prescribed from time to time, out of or into the country shall report the prescribed details in respect of the transfer to the Directorate and to the Regulatory Authority before the transfer takes place.

(17) A designated body that has disclosed information in compliance with a duty imposed by subsections (14), (15) and (16) may continue to carry out the transaction or provide a service of a kind specified under the Schedule unless the designated body is directed by the Directorate or the Regulatory Authority to suspend the carrying out of that transaction or service.

(18) No duty of secrecy or confidentiality or any other restriction on the disclosure of any information as to the affairs of a customer of a designated body, whether imposed by law, common law or an agreement, shall affect a duty imposed by subsections (14), (15) and (16).

(19) A designated body shall, in relation to the carrying on of its business, adopt internal measures to prevent and detect the commission of a serious offence under this Act.

(20) Measures adopted under subsection (19) shall include the —

- (a) procedures to be followed by directors, officers and employees in the conduct of the business of a designated body;

- (b) instructions given to directors, officers and employees of a designated body on the prevention of the use of the financial system for the purpose of engaging in activities of money laundering; and
- (c) training of directors, other officers and employees of a designated body for the purpose of enabling them to identify transactions which may relate to the commission of a serious offence under this Act.

(21) Any person who gives information to the Directorate or the Regulatory Authority under this section shall not give information which is false or misleading.

(22) Any person who, without lawful authority or reasonable excuse, discloses —

- (a) to any customer of whom information relating to him is being reported to the Directorate or to the Regulatory Authority the fact that he is subject to an investigation in respect of an offence alleged or suspected to have been committed by him under this Act; or
- (b) to any other person either the identity of any person who is subject to such an investigation or any details of an investigation;

shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding P2000 or to both.

(23) No civil or criminal proceedings shall be instituted against any designated body or its directors, officers and employees, for breach of any restriction on disclosure of information imposed by contract or any legislative, regulatory or administrative provision, if they report to the Directorate or Regulatory Authority in good faith.

(24) Where an offence is committed by a designated body, every director, officer or employee of the designated body who knowingly authorises or permits the offence shall be liable to the same penalty as the designated body.

(25) A person who contravenes a provision of this section shall be guilty of an offence and shall be liable on conviction, to a fine not exceeding P2,500,000 or to imprisonment for a term not exceeding three years or to both.

(26) The Minister may, after consultation with the Minister responsible for Finance and Development Planning make Regulations prescribing the —

- (a) other persons or bodies to be designated bodies for the purposes of subsection (1);

- (b) business relationships, transactions or services for the purposes of subsection (3);
- (c) limits of amounts of money involved in business relationships, transactions or services for the purposes of subsection (6);
- (d) states or countries for the purposes of subsection (4);
- (e) documents or other information that may be accepted as proof of a person's identity;
- (f) manner of ascertaining another person's identity;
- (g) manner in which records shall be kept by a designated body;
- (h) manner in which information shall be reported to the Directorate and to the Regulatory Authority;
- (i) aspects that shall be addressed in the internal measures adopted by a designated body;
- (j) amount in respect of which transfer of money into or out of the country shall be reported.

4. The Act is amended by inserting, immediately after section 23 thereof, the following new Schedule —

Insertion of
Schedule

SCHEDULE
section 16A(3)

Business relationships, transactions and services provided by a designated body

1. Lending
2. Financial leasing
3. Money transmission services
4. Issuing and administering means of payment (eg. credit cards, travellers' cheques and bankers' drafts)
5. Guarantees and commitments
6. Trading for own account or for account of customers in:
 - (a) money market instruments;
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest rate instruments;
 - (e) transferrable securities
7. Participation in share issues and the provision of services related to such issues;
8. Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings;
9. Money broking;
10. Portfolio management and advice;
11. Safekeeping and administration of securities;
12. Safe custody services, including:
 - consumer credit;
 - mortgage credit;
 - factoring, with or without recourse;
 - financing of commercial transactions (including forfating);

13. All types of direct life assurance (including annuities, supplementary insurance carried on by life assurance undertakings, permanent health insurance, capital redemption, operations management of group pension funds, marriage assurance, birth assurance);
14. Any other activity which may be prescribed.

PASSED by the National Assembly this 1st day of August, 2000.

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