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SCHEDULE

An Act to make provision for the control and management of public moneys and public supplies and for matters connected therewith and incidental thereto.

Date of assent: 23.12.11

Date of commencement: On Notice

ENACTED by the Parliament of Botswana.

PART I – Preliminary

1. This Act may be cited as the Public Finance Management Act, 2011, and shall come into operation on such date as the Minister shall, by Order published in the *Gazette* appoint.

Short title and commencement

2. (1) In this Act, unless the context otherwise requires –

Interpretation

“Accountant-General” means a person appointed in terms of section 13;

“accounting officer” means a person designated as an accounting officer under section 6;

“Appropriation Act” means an Act of Parliament the purpose of which is an appropriation of public revenues pursuant to section 118 of the Constitution;

“Auditor-General” means a public officer whose office is created and defined in section 124 of the Constitution;

“conditions of employment” means the conditions of employment for the public service issued from time to time by the Government defining the conditions of service of public officers;

“Consolidated Fund” means the fund established by section 117 of the Constitution;

“Development Fund” has the meaning assigned to it under section 36;

“development revenue” means the revenue accounts as detailed in the annual Development Fund Estimates;

“Director of Internal Audit” means the public officer designated by the Permanent Secretary to guide, direct and co-ordinate the activities of officers appointed by the Permanent Secretary under section 11;

“Financial Instructions” means instructions issued by the Minister under section 57;

“financial year” means any period of 12 months ending on 31st March;

“Minister” means the minister responsible for finance and development planning;

“organisation” means a Government ministry, department, or other entity of the Government listed in the Appropriation Act for purposes of being allocated with funding from the Consolidated Fund;

“Permanent Secretary” means the Permanent Secretary of the ministry responsible for finance;

“public fund” means any fund or account of public moneys;

“public moneys”, includes –

(a) public revenues; and

(b) any trust or other moneys, or securities received or held, whether temporarily or otherwise, by any public officer in his or her official capacity either alone or jointly with any other person;

“public officer” has the meaning assigned to the term in the Public Service Act, 2008, subject to subsections (3) and (4);

“public private partnership” means a commercial transaction between an entity to which this Act applies and a private party in terms of which the private party —

- (a) for commercial purposes performs a public function or undertakes the establishment, maintenance or management of public property, whether on behalf of the entity or for own account;
- (b) assumes substantial financial, technical or operational risk; and
- (c) receives a benefit for the performance of the function or for the establishment, maintenance or management of the public property, which benefit may be in the form of —
 - (i) consideration paid by the entity from its funds,
 - (ii) charges or fees collected by the private party from customers for the provision of the public function or for the establishment, maintenance or management of the public property, or
 - (iii) a combination of such consideration, charges or fees;

“public supplies” means property of any description (other than money, and securities) belonging to, in the possession of, or under the control of Government;

“Special Fund” has the meaning assigned to the term in section 37;

“standing imprest” means an advance of money provided to an officer for disbursement on approved expenditure in instances where vouchers cannot first be submitted to the Accountant-General or a Treasury cashier for payment due to the nature and exigencies of office duties;

“statutory expenditure” means expenditure charged on the Consolidated Fund under section 118 (1) (a) of the Constitution;

“supplies” means plant or equipment, furniture, tool, spare part, food items, fuel, clothing, pharmaceuticals or all other types of materials which are the property of the Government, including livestock belonging to the Government; and

“Supply Instructions and Procedure” means the Supply Instructions and Procedure to be issued by the Minister under section 57.

(2) Where the Minister is of the opinion that adequate provision exists outside this Act for the management of moneys forming part of any trust fund of which a public officer is a trustee, he or she may, by Order published in the *Gazette*, direct that such money shall not be public moneys for the purposes of this Act.

(3) For the purposes of this Act, a person shall not be considered to be a public officer by reason only of the fact that he or she is in receipt of any remuneration or allowance from public revenues, and the provisions of section 127 (3) and (4) of the Constitution shall have effect in relation to this Act as they have in relation to the Constitution.

(4) A public officer acting otherwise than in his or her official capacity shall not be regarded as a public officer for the purposes of this Act.

(5) Where there is any doubt as to the capacity in which a public officer acts he or she shall be deemed to be acting in his or her official capacity unless the contrary is proved.

3. (1) All or any of the functions conferred by this Act on the Permanent Secretary (excluding the functions conferred by this section) may, subject to the general or special directions of the Permanent Secretary, be carried out by any other public officer in his or her Ministry for the time being designated by the Permanent Secretary, in writing, for that purpose.

Administration

(2) In the exercise of his or her functions under this Act, the Accountant-General shall act in accordance with the general or special directions of the Permanent Secretary.

PART II – *Control and Management of Public Finances and Supplies*

4. (1) The Minister shall supervise the finances of Botswana as to ensure that a full account of the finances is made to the National Assembly, and that Botswana's financial control is maintained, and for such purposes shall, subject to the provisions of the Constitution and this Act, have the control and management of the Consolidated Fund, the Development Fund and all other public funds, and the supervision, control and direction of all matters relating to the financial affairs of Botswana.

Powers and
duties of
Minister

(2) Without derogating from the generality of subsection (1), the Minister shall —

- (a) develop and implement a macroeconomic and fiscal policy framework for Botswana, as provided in section 5;
- (b) cause the establishment of systems throughout Government for planning, monitoring, allocating and budgeting for the use of public moneys and supplies in order to attain efficiency and effectiveness of the economy;
- (c) cause the review of all requests for the issue of moneys from the Consolidated Fund and, where the Minister considers it appropriate, approve their inclusion in estimates of expenditure for submission to the National Assembly in accordance with section 5;
- (d) provide a framework for the scrutiny and control by the National Assembly over the utilisation of public supplies and public moneys by maintaining clear reporting methods and systems which —
 - (i) comprehensively set out the applicable hierarchy and procedures for accountability,
 - (ii) ensure the exercise of regularity and propriety in the handling and expenditure of public money and, in particular, demonstrate that goods or services are procured in a fair, equitable, competitive and cost-effective manner in accordance with the law providing for public procurement, and
 - (iii) ensure that the Consolidated Fund is effectively managed and shall —

- A. ensure that all deductions from the Fund are for the purpose of authorised or statutory expenditure in accordance with the provisions of this Act and sections 118 and 119 of the Constitution, and
 - B. require compliance with the established lines of responsibility and best practice regarding principles of fiscal management in the handling of the moneys of the Consolidated Fund, other funds or special funds established under this Act and other public moneys; and
- (e) safeguard public assets by acting under and complying with statutory authority and control when conducting the following financial transactions on behalf of the Government —
- (i) borrowing of money,
 - (ii) issuing securities,
 - (iii) investing public moneys,
 - (iv) giving guarantees and indemnities, and
 - (v) operating bank accounts.

Development
of macro-
economic and
fiscal policy by
Minister

5. (1) The Minister shall develop and implement a macroeconomic and fiscal policy framework as part of the National Development Plan or any other medium-term planning framework that may be adopted.

(2) The Minister shall develop macroeconomic objectives in terms of subsection (1) that shall provide for the —

- (a) broad strategic priorities by which Government shall be guided in the preparation of the budget;
- (b) overarching policy goals that will guide the budget decisions;
- (c) policy areas that the Government is to focus on;
- (d) accord between the budget for the year and the goals of the National Development Plan;
- (e) advice to Government on the total of public moneys available or that which would be made available and the allocation of such moneys to individual programmes;
- (f) supervision and monitoring of public moneys; and
- (g) co-ordination of the international and inter-governmental financial and fiscal relations of Botswana.

(3) The Minister shall develop macroeconomic fiscal policy objectives in terms of subsection (1) that are to achieve the following principles of fiscal management —

- (a) reduction of the total debt to prudent levels so as to provide protection against factors that may impact adversely on the level of total debt in the future;
- (b) maintenance of appropriate levels of debt that do not exceed the limitation on borrowing provided for in section 20 of the Stocks, Bonds and Treasury Bills Act;
- (c) prudent management of the fiscal risks facing the Government; and
- (d) pursuit of policies that are consistent with a reasonable degree of predictability about the level and stability of tax rates for future years.

(4) The Minister shall, annually, present to the National Assembly a report on the —

- (a) current and projected state of the economy;
- (b) finances of Botswana; and
- (c) fiscal policy of the Government.

(5) For the purpose of subsection (4), the Minister shall at the time of presentation of the estimates as required by section 6, ensure that a complete report is made to the National Assembly which —

- (a) sets out recent trends and development indicators of the national economy;
- (b) identifies the period considered by the Minister to be appropriate for the planning of the fiscal policy of the Government;
- (c) provides forecasts of the indicators referred to in subparagraph (i), for the current year and the period determined by the Minister under paragraph (b);
- (d) supplies detailed information on recent fiscal developments and forecasts for the period determined by the Minister under paragraph (b) in respect of —
 - (i) revenues,
 - (ii) recurrent and development expenditures,
 - (iii) borrowing and debt servicing,
 - (iv) contingent liabilities, and
 - (v) any other information in respect of assets and liabilities that may be considered appropriate by the Minister.

(6) For the purposes of subsection (4), the Minister shall at the time of presentation of the estimates as required by section 6, present or submit to the National Assembly —

- (a) a report on the level of compliance by the Government with macroeconomic objectives and the principles of fiscal management as provided in subsection (2) and (3), and
- (b) any additional reports and information as may be necessary during the financial year.

6. (1) The Minister shall, when laying the annual estimates of revenue and expenditure of the Consolidated Fund in respect of each organisation, designate a public officer to be the accounting officer for such organisation.

(2) Notwithstanding anything contained in subsection (1), the Minister may, if he or she thinks it desirable —

- (a) designate different public officers in respect of different parts of an organisation of revenue or expenditure; and
- (b) at any time designate a public officer to be the accounting officer for any organisation or any part of any organisation and include such designation in the next appropriate supplementary estimates of expenditure or revenue.

(3) Where a public officer has been designated in respect of such organisation as referred to in subsection (2), the provisions of subsection (4) shall apply to such officer in respect of such organisation for which he or she is designated.

Accounting
responsibility

- (4) A public officer designated under this section shall be responsible, for the organisation in respect of which he or she is designated, for —
- (a) the control of expenditure;
 - (b) the collection of revenue and the payment thereof into the Consolidated Fund;
 - (c) the procurement, control, custody, issue and use of all public supplies;
 - (d) control, custody and use of public moneys; and
 - (e) such other matters as may be provided in this Act and the Financial Instructions.

Duties of public officers

7. A public officer concerned with or responsible for the collection, custody, or disbursement of public moneys or the receipt, custody, issue or use of public supplies or stores, shall comply with —
- (a) directives issued by the Permanent Secretary; and
 - (b) financial procedures issued by the Accountant General, containing procedural detail of the financial instructions.

Appointment of revenue collectors, supplies officers, etc.

8. (1) A person shall not be appointed to a position concerned with or responsible for the collection, custody, or disbursement of public moneys or the receipt, custody, issue or use of public supplies or stores unless such person is fit and proper for the appointment having regard to that person's qualifications, criminal record, integrity, medical fitness and general conduct.

(2) A person or entity other than a public officer may not be appointed to or given responsibility for the collection, custody, or disbursement of public moneys or the receipt, custody, issue or use of public supplies or stores unless such person's or entity's appointment is made with the prior written authorisation of the Permanent Secretary.

(3) The Accountant-General shall from time to time, issue directives as to the definition of "fit and proper".

Basis of accounting and classification of accounts

9. (1) The Minister shall, in consultation with the Accountant-General, determine the basis of accounting and classification of accounts for the Government of Botswana.

(2) For purposes of subsection (1), the Minister may determine such basis of accounting and or classification of accounts with reference to any law and professional standards set by an accounting body recognised in Botswana.

(3) The standards set by the body referred to in subsection (1) shall be in compliance with national and international best practices with respect to public finance accounting.

Powers of Permanent Secretary

10. The Permanent Secretary or any other public officer deputed by him or her in writing shall —

- (a) be entitled to inspect all Government offices and offices of entities that are subject to this Act and shall be given access at all times;
- (b) be given all available information he or she may require with regard to public moneys collected, held or disbursed or public supplies received, held, issued or used in Government offices and offices of entities or from such offices and to all documents and records in respect of public moneys;

- (c) be entitled at any time to inspect such money, supplies, documents and records so far as may in any way be necessary for the purpose of ensuring compliance with the financial instructions, procedures or any directions issued under this Act;
- (d) carry out such internal audit examinations and make such reports as the Permanent Secretary may be required to carry out or make under this Act; and
- (e) carry out any other function relating to public finance management as is provided in this Act, the Financial Instructions or other instrument made under this Act.

11. (1) The Permanent Secretary shall, in writing, appoint such number of public officers, under the control and direction of the Director of Internal Audit, as he or she deems necessary to provide internal audit services and carry out such examinations as he or she deems appropriate, which officers shall report to their respective accounting officers.

Internal audit
examinations

(2) The accounting officers referred to in subsection (1) shall forward or cause to be forwarded, to the Director of Internal Audit and the Permanent Secretary, copies of reports referred to in the said subsection.

12. (1) The Minister shall, by regulations, establish an audit committee to be known as the Government Audit Committee, which shall oversee the conduct of internal audit examinations carried out in terms of section 11 and monitor all internal audit activities of Government to ensure compliance with the generally accepted standards of internal auditing.

Government
Audit
Committee

(2) The Minister shall appoint members of the Government Audit Committee from the public and private sector holding qualifications and relevant experience in accounting and auditing, financial management or other applicable qualification and experience.

(3) Regulations shall provide powers and functions of the Government Audit Committee, which are to include —

- (a) provision of an independent review and oversight of the Government financial and other reporting activities;
- (b) reviewing of internal controls, risk management and governance processes;
- (c) monitoring and reviewing the effectiveness of Government internal audit function;
- (d) requiring the attendance of any public officer, including accounting officers, at its meetings to provide such information or answer such questions as the Government Audit Committee may require;
- (e) the Audit Charter which includes composition, powers and functions of the Government Audit Committee;
- (f) issuing of annual reports with respect to government internal audit; and
- (g) such other powers and functions as the Minister may prescribe.

(4) The Government Audit Committee shall report to the Minister, who shall consider and may deal with any report submitted to him or her as the Minister deems appropriate, including directing that —

- (a) with respect to any person considered liable in the report —
 - (i) proceedings for surcharge or other administrative action be commenced,
 - (ii) a complaint be submitted to the Directorate on Corruption and Economic Crime,
 - (iii) such other disciplinary measures as are provided in the Public Service Act and the public officers conditions of service be taken, or
 - (iv) court proceedings be commenced; or
- (b) a report or information, together with any recommendation on action to be taken, be presented to the relevant Minister regarding any audit findings affecting his or her ministry.

Designation,
powers and
duties of
Accountant-
General

13. (1) Subject to the Public Service Act, there shall be appointed a public officer to be known as the Accountant-General.

(2) The Accountant-General shall, subject to the direction or the control of the Permanent Secretary, be responsible for the —

- (a) compilation and management of the accounts of Government;
- (b) custody and safety of public moneys;
- (c) disbursements of public moneys;
- (d) issuing of procedures and guidelines for the control, custody, issue and use of public moneys and supplies;
- (e) establishment and maintenance of an asset register; and
- (f) such other matters as the Permanent Secretary shall direct.

(3) The Accountant-General may, with the approval of the Permanent Secretary, give general directions to accounting officers which are consistent with this Act, or any instructions issued under it.

(4) Without prejudice to the generality of subsection (3), the Accountant-General —

- (a) shall, with the approval of Permanent Secretary, issue financial procedures for purposes of control and management of public moneys and supplies and to ensure compliance with this Act;
- (b) ensure that the system of internal control and management of public moneys in every Government ministry, department, public fund, agency, or other reporting unit required to produce accounts under this Act or under any other written law, is appropriate to the needs of the organisations concerned and conforms to national and internationally recognised financial standards; and
- (c) ensure, as far as practicable, that adequate provisions exist for the safe custody of public moneys, supplies, property, securities and other documents.

Government
supplies

14. (1) Each Government department or ministry shall maintain adequate records of supplies.

(2) The Minister shall in consultation with the Accountant-General, make regulations governing the receipt, custody, control and issue of supplies.

(3) Notwithstanding anything to the contrary contained in this Act or in any other written law, any public officer dealing with or involved in Government supplies shall comply with the regulations made pursuant to subsection (2).

15. (1) Money at the credit of any public fund, other than day-to-day cash requirements, shall be kept in an account at the Bank of Botswana which shall disburse the same on behalf of the Government.

Banking, etc. of
public moneys

(2) A public officer shall not open any public or official account at any bank without the authority in writing of the Accountant-General.

(3) A person shall not overdraw any account such as is referred to in this section without the permission of the Minister except in cases where the overdraw is less than P100 000 for a period less than 30 days, in which event the Permanent Secretary may authorise or ratify such overdraw.

16. (1) The Permanent Secretary may authorise the Accountant-General to issue imprests to public officers for any purpose for which moneys have been appropriated from the Consolidated Fund.

Imprests

(2) The Permanent Secretary may authorise standing imprests required for specified purposes by accounting officers, and the Permanent Secretary may submit such imprests to be audited by the Auditor-General or other officer of equal rank.

17. (1) Except when acting in pursuance of a duty imposed on him or her by or under any written law, a public officer shall not receive any deposit unless the Accountant-General has in writing authorised the receipt of that deposit or deposits of the class to which that deposit belongs.

Deposits

(2) The Accountant-General shall open such deposit accounts as he or she may deem necessary for recording the receipt of deposits and shall in relation to every such account, specify a public officer who shall control the account.

(3) Unless the Minister otherwise directs, any interest or dividend received in respect of any deposit shall be credited to the Consolidated Fund.

(4) Any public officer controlling a deposit account shall refund or pay out, as the case may be, any deposit to a person claiming the same if such person proves to the satisfaction of that officer that he or she is entitled to be refunded or paid.

(5) Subject to the provision of any other written law, any deposit which is unclaimed for five years shall be paid into the Consolidated Fund.

(6) Subject to any time limit as may be provided in the Prescription Act, if any person entitled to be refunded or paid subsequently proves his or her claim to the satisfaction of the Permanent Secretary, the amount of the deposit shall be refunded to him or her and the payment of any such refund shall be a charge on the Consolidated Fund.

Cap. 13:01

(7) In this section, "deposit" means any moneys, not being public revenues, held or received by a public officer on behalf of some other person, whether known or unknown.

Public
officers as
trustees

18. A public officer shall not accept appointment as a trustee without the written authority of the Minister and any appointment contrary to this section shall be void.

PART III – *Loans, Guarantees and Grants*

Authority to
raise loans*

19. (1) Except as expressly authorised by this Act, it is not lawful for —
(a) the Government to borrow money; and
(b) any person to lend money to the Government.

(2) Any loan agreement concluded on behalf of the Government shall contain a provision to the effect that it shall not be binding against the Government unless it is concluded in accordance with the provisions of this Act.

(3) Except as otherwise provided in any written law, all moneys received as a result of money being borrowed under this Part shall be paid into the Development Fund.

Power of
Minister
to borrow

20. (1) Subject to subsection (3), the Minister may conduct or conclude negotiations for an agreement to borrow money from any person, country or entity without prior authorisation of the National Assembly.

(2) The Minister may borrow by means of a bank overdraft or advances from any bank or any entity authorised to provide financial services in or outside Botswana, such moneys as the Minister may need to meet current requirements of the Government where it is in the public interest to do so.

(3) The Minister shall, with respect to borrowing from banks or entities authorised to provide financial services outside Botswana, satisfy himself or herself that the bank or the entity from which facilities are obtained is authorised to provide loan facilities under the laws of its country of registration.

(4) Any negotiation conducted or agreement concluded in terms of subsection (1) or agreement to borrow money by means of an overdraft or advance under subsection (2) shall not be binding on the Government until and unless the National Assembly has, by means of an Act of Parliament, authorised or ratified the agreement to borrow.

Repayment,
conversion or
consolidation
of loans

21. The Minister may, on such terms and conditions as he or she may determine and where necessary, with the approval of the lender —

- (a) repay any loan prior to the redemption date of that loan;
- (b) convert the loan into any other loan; or
- (c) consolidate two or more loans into an existing or new loan.

Authority to
guarantee
loans

22. (1) Subject to subsection (2) where the Minister is satisfied that it is in the public interest to do so, he or she may, on behalf of the Government, guarantee the repayment of the principal money and the payment of the interest and other charges incidental thereto on any loan raised either within or outside Botswana in the manner and on conditions he or she may think fit by —

- (a) a statutory body wholly owned by the Government;
- (b) a private entity in which the Government is a shareholder;
- (c) a local authority; or
- (d) any other person, entity, authority or body in respect of which it would be in the public interest to so guarantee the loan.

(2) The Minister may provide a guarantee in terms of subsection (1) without prior authorisation or ratification of the National Assembly where he or she is —

- (a) required to guarantee a loan pursuant to the terms and conditions of employment of public officers or any officers in the employment of the Government or as required by the conditions of employment; and
- (b) of the opinion that it is not practically possible to secure prior approval of the National Assembly before providing a guarantee as provided in subsection (1), subject to subsequent parliamentary authorisation or ratification given through a resolution.

23. (1) Where a guarantee is given by the Minister under section 22, an entity or person for whose benefit that guarantee is given, shall reimburse the Government in the manner the Minister may specify —

- (a) all sums of moneys which the Government has paid in terms of the guarantee;
- (b) all the expenses which the Government has incurred in relation to the guarantee and, in addition, shall pay the Government the interest or service charge in relation to that sum or money paid by the Government or expense incurred by the Government, as the Minister may direct; and
- (c) all sums consisting of the guarantee fee at a rate as the Minister may determine except that such guarantee fee shall not be payable for guarantees given under section 22 (2) (a).

(2) All moneys received under subsection (1) shall be paid into the Consolidated Fund.

24. (1) A ministry or Government department shall not conclude an agreement for a grant or receive a grant, except under an agreement concluded by the Minister, or by another Minister or public officer expressly authorised in writing by the Minister as provided under section 27.

(2) Subject to subsection (1) the Minister may conclude an agreement with any person, entity or country for the purpose of receiving a grant for the benefit of any ministry, local authority or non-governmental organisation.

(3) The Minister shall not conclude an agreement for the purpose of receiving a grant where the terms of the agreement are deemed not to be in the public interest, in that such terms provide for —

- (a) the transfer to the person giving the grant of intellectual property rights relating to any study or other research to be financed by the grant;
- (b) unconditional access by the person giving the grant to information under the custody of any ministry or local authority,

Beneficiary
to reimburse
all costs

Authority to
receive grants

- (c) unconditional access by the person giving the grant to any part of the country for the purpose of —
 - (i) conducting any form of experiment or survey, or
 - (ii) gathering any plant variety or indigenous specie of flora or fauna, or

such other matter, which upon investigation is deemed not to be in the public interest by the Minister.

Amounts due on loans or guarantees to be charged on Consolidated Fund

25. Any sum of money due from the Government —

- (a) in respect of any loan either by way of repayment or payment of interest and other charges;
 - (b) by way of interest on or otherwise in respect of any bond or stock in accordance with this Act or any other written law;
 - (c) in respect of any guarantee given under section 22; or
 - (d) in respect of any debt lawfully incurred for and on behalf of Government including but not limited to payments made pursuant to contracts entered into by the Government for the provision of goods and services through the public-private partnership mode of procurement,
- shall be charged on and paid out of the Consolidated Fund.

Minister to specify particulars in annual estimates

26. The Minister shall, in the annual estimates of public revenue and expenditure submitted to the National Assembly in accordance with section 6, specify the amount required to meet the cost of servicing all —

- (a) loans, or guarantees raised under this Act whether by repayment of capital or payment of interest or other charges incurred on the loan for the financial year to which these estimates relate, and the amount expected to be raised from loans and grants during that year; and
- (b) debt lawfully incurred for and on behalf of Government as provided in section 25 (d).

Delegation by Minister

27. The Minister may, by a written instrument signed by him or her, delegate to any Minister or public officer —

- (a) his or her functions under this Act relating to the negotiation of a loan, guarantee or grant; and
- (b) the authority to execute on behalf of the Government any agreement or other instrument relating to a loan or guarantee raised or given under this Act.

PART IV – *Expenditure*

Withdrawals from Consolidated Fund

28. (1) Moneys shall not be withdrawn from the Consolidated Fund except upon the authority of a warrant under the hand of the Minister, and such warrant shall not be issued unless the withdrawal may lawfully be made in accordance with section 118 (1) of the Constitution.

(2) The unspent balance of any warrant issued under this section may at any time be withdrawn or reduced by the Minister if in his or her opinion, the exigencies of the financial situation render such withdrawal or reduction expedient.

29. A warrant issued under section 28 in relation to any financial year shall lapse and cease to have any effect after the end of that year.

Warrant to lapse at end of financial year

30. (1) Moneys shall not be withdrawn from other public funds unless the issue of those moneys has been authorised by or under written law.

Withdrawals from other public funds

(2) In this section “other public funds” means public funds other than the Consolidated Fund, and trust funds not established by law.

31. (1) If it appears to the President that the Appropriation Act for any financial year will not come into operation by the beginning of that financial year, the President, subject to subsection (2), may by warrant under his or her hand authorise the withdrawal from the Consolidated Fund of moneys for the purpose of meeting expenditure necessary to carry on the Government from the beginning of that financial year until the expiration of four months thereafter or the coming into operation of the Appropriation Act whichever comes earlier.

Provision if Appropriation Act not in force

(2) Provision shall not be made under subsection (1) for any service —

(a) for which no provision was made during the previous financial year; or

(b) in excess of one – third of the provision made for that service during such previous financial year.

(3) On the coming into operation of the Appropriation Act for any financial year, any warrant issued under subsection (1) in respect of that financial year shall cease to have effect and any moneys withdrawn from the Consolidated Fund for any service under the authority of such a warrant shall be set off against the amount provided for that service by the said Act.

32. (1) There shall continue to be the Contingencies Fund for the purpose of enabling advances to be made in accordance with the provisions of subsection (2) and such Fund shall consist of such moneys as may from time to time be appropriated by law for the purposes of the Fund.

Contingencies Fund

(2) If at any time the President is satisfied that there has arisen an urgent and unforeseen need for the expenditure of public revenues for which no other provision exists and that the circumstances are such that the expenditure cannot, without loss to the Government, be postponed until adequate provision is made by the National Assembly, the President may by warrant authorise advances from the Contingencies Fund in such amounts as may from time to time be necessary to meet that need.

(3) The total value of warrants issued in any financial year and not yet replaced under the provision of subsection (4) shall at no time exceed the total of the Fund.

(4) Where pursuant to section 121 (2) of the Constitution, the National Assembly has approved a supplementary estimate replacing any amount advanced from the Contingencies Fund under this section, the warrant issued under subsection (2) (referred to in this Act as the “Contingencies Fund Warrant”) shall be replaced by a warrant issued pursuant to the said estimates and expenditure under the Contingencies Fund Warrant shall be deemed to have been incurred under the said estimates and shall be accounted for accordingly.

Other
advances

33. (1) Subject to the provisions of this section, the Minister may authorise the issue from public funds of advances —

- (a) on behalf of, and recoverable from, other governments;
- (b) to or on account of trust or other funds administered by the Government, or to or on behalf of public bodies, institutions or individuals, where in the opinion of the Minister such advances are in the public interest;
- (c) to public officers for the purposes and under the conditions set out in conditions of employment for public officers or for such other purposes as may be recommended by the Permanent Secretary;
- (d) to meet expenditure which has been approved by National Assembly and is to be financed from the proceeds of a loan the raising of which is authorised by law and which a lender has agreed to make; and
- (e) to purchase unallocated supplies.

(2) The Minister may, by order, specify the limits for advances outstanding.

Re-allocation
between
organisations

34. Surplus arising from under-expenditure or anticipated under-expenditure on any organisation for which financial provision has been made by an Appropriation Act or supplementary estimate shall not be applied in aid of any other organisation, except as may be permitted by or under the Financial Instructions.

Losses

35. Where a loss has occurred of any moneys forming part of the public funds, to the extent that it is not recovered, such loss shall be charged against expenditure and accounted for accordingly, provision in respect of such loss being made by the Appropriation Act or supplementary estimate in accordance with the provisions of the Constitution and this Act.

PART V – Development Fund and Special Funds

Development
Fund

36. (1) The Development Fund shall, for the purpose of financing projects of the Government for economic and social development, continue in force as a Fund not forming part of the Consolidated Fund but kept in a separate account with the Accountant-General.

(2) The Development Fund shall consist of —

- (a) any moneys standing to the credit of the fund, whether such moneys have been paid into a deposit account pending transfer to development revenue or have been so transferred; or
- (b) moneys brought to account from the following sources —
 - (i) any moneys appropriated by the law for the purposes of the Fund,
 - (ii) any loans raised by the Government for the purposes of the Fund,
 - (iii) any grants made to the Government by any other Government, body or person for the purposes of projects to be financed from the Fund, or generally for the purposes of the Fund, and
 - (iv) unless the Minister otherwise directs, moneys earned by or received in reimbursement of expenditure under any project.

(3) The Development Fund shall be administered and expenditure from the Fund regulated in accordance with the rules set out in the Schedule.

37. (1) For the purposes of this Act —

- (a) any fund of public revenues established by or under any written law for some specific purpose;
- (b) any trust fund held by the Government; and
- (c) any fund created by the Minister in exercise of the powers conferred upon him or her by section 38,

shall, subject to the provision of subsection (2), be deemed to be a Special Fund.

(2) The Contingencies Fund, the Development Fund and any fund or account of deposits established under section 15, shall not be regarded as Special Funds for the purposes of this Act.

38. (1) The Minister may, by order published in the *Gazette*, establish additional Special Funds.

(2) An order made under subsection (1) shall state the purpose of and the revenue to be paid into the Special Fund established and the public officer responsible for the administration of the Fund.

(3) A Special Fund shall not be established except for a purpose that is approved by the Minister as necessary to address a particular urgent public need that requires immediate funding.

(4) An order made by the Minister under this section shall be laid before the National Assembly at the next meeting commencing after such order has been made.

39. Each of the existing Special Funds shall continue to be maintained for the purpose for which it was established until such time as it is dissolved.

40. (1) Subject to subsection (2), a Special Fund shall be administered and expenditure from the Fund authorised in the manner provided by the written law or trust instrument establishing the Fund, or any other written law relating to the Fund.

(2) Notwithstanding any other law, the Minister may, if in his or her opinion the exigencies of the financial situation render such withdrawal or reduction expedient and in the best interest of the public, by order, authorise expenditure from any Special Fund for a purpose other than that contained in the written law or trust instrument establishing the Fund.

(3) If in respect of any Special Fund no such written law or trust instrument exists, or the Minister considers provision in the Fund inadequate, he or she may, by regulations, make provision or additional provision, as the case may be, for such matters in relation to that Fund.

(4) A Special Fund shall be kept in separate accounts by the Accountant-General or, where by virtue of any written law some other public officer is responsible for the administration of the Fund, by that other public officer:

Provided that it shall be lawful for the Accountant-General to keep the accounts on behalf of any such other public officer.

Definition of
"Special
Fund"

Establishment
of Special
Funds, etc.

Existing
Special Funds

Administration,
etc. of Special
Funds

(5) Subject to the provisions of this section and of any other written law for the time being in force, any moneys held in a Special Fund which are not required for immediate use may be invested in accordance with the objects of such Special Fund as the Accountant-General may direct.

(6) Except where the Minister otherwise directs, any interest or dividend received in respect of any investments of moneys belonging to a Special Fund shall not be paid into the Consolidated Fund, but shall be paid into that Special Fund.

Dissolution of
Special Funds

41. (1) The Minister may, by order, dissolve a Special Fund where —

(a) the moneys forming part of any such Special Fund, not being a Fund constituted by or under a written law other than this Act, are exhausted; and

(b) no legal provision exists whereby any further moneys may be paid into the Fund.

(2) If before the moneys forming part of a Special Fund are exhausted, the objects for which such Special Fund not created by or under a written law other than this Act are fulfilled or cease to exist, and in the opinion of the Minister there is no likelihood that any objects for which the Fund could be lawfully used will arise in the future, the Minister may, by order, dissolve the fund and the moneys remaining in such Fund shall thereupon be paid into and form part of the Consolidated Fund.

PART VI – *Audit and Accounts*

Annual public
accounts

42. (1) Any officer other than the Accountant-General who, by virtue of any law, is responsible for the administration of any Special Fund, shall prepare, sign and transmit to the Auditor-General and the Accountant-General an account of such Fund in respect of that financial year containing such information and in such form as the Minister may direct in the regulations, within a period of two months after the close of each financial year.

(2) The Accountant-General shall prepare, sign and transmit to the Auditor-General, for the purposes of auditing, the accounts and statements as may be prescribed by the Minister in regulations for the purposes of this subsection and which are consistent with the basis of accounting in relation to that financial year, within a period of six months after the close of each financial year.

(3) As soon as the Auditor-General has completed his or her examination of the accounts and statements transmitted to him or her in accordance with subsection (2), the Auditor-General shall return the same, together with his or her certificate on the accounts and statements, to the Accountant-General who shall, within the period of four weeks after their return to him or her, submit them, together with the Auditor-General's certificate on the accounts and statements, to the Minister.

(4) The Minister shall, within the period of 30 days after the submission to him or her of the accounts and statements in accordance with subsection (3) lay the same, together with the Auditor-General's certificate on the accounts and statements, before the National Assembly.

PART VII – *Surcharge*

43. (1) The Permanent Secretary shall delegate to an accounting officer, the power to surcharge any public officer in the organisation of the accounting officer.

Power of
surcharge

(2) Where it appears to an accounting officer that any person who is or was at the relevant time a public officer, or any person who, although not a public officer, is or was at the relevant time paid from public funds or is or was at the relevant time responsible for the custody, safekeeping or collection of public or other property or public or other moneys has, by wilful default or negligence —

- (a) failed to collect any moneys owing to the Government for the collection of which such person is or was responsible;
 - (b) made or caused or permitted to be made in any way including fraud, forgery, misappropriation, theft, burglary or any other way whatsoever any unauthorised, unvouched, improper, nugatory, unnecessary or otherwise incorrect payment of public money for which he or she was at the relevant time responsible;
 - (c) caused or permitted any deficiency in, or damages to, or the loss or destruction of any public moneys, securities, public buildings, equipment, vehicles, stores, fittings, furniture or other Government property;
 - (d) caused or permitted the misuse of any Government property whereby the public revenue has suffered loss;
 - (e) caused or permitted any personal injury, damage to or loss of property in circumstances which render the Government liable to third parties in respect of such injury, loss or damages;
 - (f) committed or incurred, or has authorised or required a person under his control to commit or incur expenditure in excess of any amount duly authorised at the time of such committal expenditure;
 - (g) been negligent in the handling or safekeeping of public moneys or other property for which he or she was at the relevant time responsible;
 - (h) or through lack of supervision, caused or made possible the commission of, by any officer or other person under his or her supervision or control, any act referred to in this subsection;
 - (i) increased the budget for his or her ministry or department without just cause and without the written authority of the Minister; or
 - (j) varied the terms of any tender without written authority from the Public Procurement and Asset Disposal Board,
- and loss of public moneys or property or damage to the Government have thereby resulted or there has been a contravention of the requirements of Financial Instructions and other regulations issued under this Act and any other written laws, that person shall be liable to surcharge under this Part.

(3) Where a person is liable to surcharge under subsection (1), and if within a period specified by the accounting officer responsible, an explanation satisfactory to the accounting officer is not furnished by such person in respect of the act or omission rendering him or her liable to surcharge, the accounting officer may surcharge against such person the amount not collected or the amount by which the public revenue has suffered as a result of such act or omission, as the case may be in accordance with the requirements and procedures for investigations and hearing for purposes of the surcharge set out in the Surcharge Instructions.

(4) Notwithstanding subsections (2) and (3), where the Permanent Secretary is of the opinion that the liability for any surcharge made under those subsections was incurred wholly or partially by reason of the lack of supervision by the accounting officer of the person who was surcharged, the Permanent Secretary may recommend to the President that such accounting officer be surcharged.

(5) Where a recommendation has been made to the Permanent Secretary to the President under subsection (4), the Permanent Secretary to the President shall call for an explanation from the accounting officer concerned, and if, after considering such explanation, he or she is satisfied that the liability for surcharge was incurred wholly or partially by reason of lack of supervision, he or she shall instruct the Permanent Secretary to surcharge against such accounting officer either in place of or in addition to the person supervised.

(6) Any surcharge made under subsection (5) shall not, when added to any surcharge imposed on the person supervised, exceed the amount not collected, or the amount by which the public revenue has suffered, as the case may be.

(7) The accounting officer shall cause the person surcharged, the Permanent Secretary, the Auditor-General and the Accountant General to be notified of any surcharge made under this section.

Powers of
Permanent
Secretary to
surcharge
public
officers

44. (1) Notwithstanding anything to the contrary contained in this Act, the Permanent Secretary may at any time, where it appears to him or her, to be necessary to make good the loss the public revenue has suffered on account of actions or omissions as specified in section 43, surcharge any person liable to be surcharged under the said section.

(2) The provisions of section 43 (3) shall apply with the necessary modifications where the Permanent Secretary exercises his or her power to surcharge in terms of this section.

(3) The Permanent Secretary shall cause the person surcharged, the surcharged person's accounting officer, the Auditor-General and the Accountant-General to be notified of any surcharge made under this section where the Permanent Secretary exercises his or her power to surcharge under section 43.

45. (1) Each accounting officer shall, on a quarterly basis, submit a full report to the Permanent Secretary on the losses suffered to public moneys or property, or damage to Government in his or her ministry or department, which shall include details of —

Accounting officers to submit quarterly reports on surcharge

- (a) the nature and amount of the loss;
- (b) circumstances surrounding the loss;
- (c) investigations or other enquiry conducted regarding the loss;
- (d) current replacement value of the loss sustained;
- (e) person or persons alleged to be responsible for the loss;
- (f) surcharge action or other action taken against the person alleged to be responsible for the loss;
- (g) response to surcharge, or other action taken, of the person alleged to be responsible for the loss;
- (h) amount recovered or to be recovered and the dates of recovery;
- (i) inadequacies, failings or limitations of —
 - (i) supervisory measures, or
 - (ii) security and other protective measures in place, as well as the steps recommended to address them; and
- (j) such other matters as may be provided in the Surcharge Instructions.

(2) The Permanent Secretary shall publish an annual report on surcharges, losses suffered by the Government and on any other matter provided for under this Part.

46. The Permanent Secretary to the President, the Permanent Secretary or the accounting officer, as the case may be, may at any time withdraw any surcharge in respect of which a satisfactory explanation has been received or if it otherwise appears that no surcharge should have been made, and in any such event the Permanent Secretary or the accounting officer shall notify the persons specified in section 44 of such withdrawal.

Withdrawal of surcharge

47. (1) Any person, including an accounting officer surcharged pursuant to the Permanent Secretary to the President's instructions in terms of section 43 (4), who is dissatisfied with any surcharge made against him or her under sections 43 and 44 may, within the period of 30 days after he or she has been notified of the surcharge, appeal in writing to the Public Service Commission or to the Judicial Service Commission, as is appropriate in his or her case.

Appeals

(2) Where a person lodges an appeal under this section, he or she shall, at the same time, transmit a copy of his or her appeal to the Permanent Secretary and his or her accounting officer.

(3) Before deciding an appeal under this section, the Commission in question —

- (a) shall give the appellant, Permanent Secretary to the President, the Permanent Secretary or the accounting officer the opportunity to call additional evidence and to make oral and written submission to it; and
- (b) may call additional evidence.

(4) After considering an appeal under this section, including all additional evidence and every submission which may have been called or made to it under subsection (3), the Commission in question shall either —

- (a) dismiss the appeal and confirm the surcharge; or
- (b) allow the appeal, wholly or in part and accordingly set aside the surcharge or vary its terms to such extent as the Commission considers just and reasonable in all the circumstances.

(5) On deciding an appeal under this section, the Commission in question shall cause the Permanent Secretary to the President, the Permanent Secretary and the accounting officer of the surcharged officer to be notified of the terms of its decision and the Permanent Secretary shall thereupon cause the appellant, the Auditor-General and the Accountant-General to be so notified.

Recovery of
surcharge

48. (1) The amount of any surcharge made or confirmed under the provisions of this Part shall be due and payable on the expiration of the period within which, by virtue of section 47 (1), the person surcharged may appeal or, if he or she has appealed, on the final determination of such appeal.

(2) Save where it is provided otherwise by any other written law, any amount of any surcharge not paid within 30 days of becoming due and payable shall be recovered by the Accountant-General by such deductions from the salary, pension or terminal benefits of the person surcharged as the Permanent Secretary or the accounting officer where the surcharge was laid by him or her may direct:

Provided that —

- (a) no one such monthly deduction shall exceed one-sixth of the person's gross monthly salary, pension or terminal benefits, as revised from time to time, as the case may be; and
- (b) where the person surcharged is due to be paid any moneys of whatever description by the Government other than by way of salary the Permanent Secretary may cause the amount of any surcharge imposed on that person to be deducted from such moneys in whole or in part as he or she considers fit.

(3) The powers of the Permanent Secretary to the President, the Permanent Secretary or the accounting officer under this section are without prejudice to —

- (a) the powers of the Attorney-General under the State Proceedings (Civil Actions by or against Government or Public Officers) Act;
- (b) the Director of Public Prosecutions' power to institute criminal prosecution even where moneys lost to the state have been recovered; and
- (c) the institution of disciplinary proceedings against the person surcharged under the Public Service Act, the conditions of employment for public officers or under any applicable law or conditions of service of the concerned public officer.

Cap. 10:01

PART VIII – *Liability*

Liability to
keep public
money

49. (1) Where the Permanent Secretary has reason to believe that any person, including a person who is not a public officer —

- (a) has received money from Government and has not duly paid it over;
- (b) has received money for which the person is accountable to the Government and has not duly accounted for it; or
- (c) has in his or her possession public money which has not been applied for the intended purpose; or
- (d) has received an overpayment or money in excess of that which the person is entitled,

the Permanent Secretary may cause a notice to be served on the person or on the person's executor or executrix within the meaning of the Administration of Estates Act in the case of a deceased person, which shall require the person or the person's executor or executrix within such time as may be specified in the notice to duly pay over, account for, or apply the money and transmit to the Permanent Secretary, a notice with a copy to the Accountant-General that this has been done.

Cap. 31:01

(2) Where a person fails or refuses to comply with a notice served under subsection (1) within the time stipulated, the Permanent Secretary shall cause to be stated an account between the person and the Government showing the amount of money not duly paid over, accounted for or applied, with interest at the prevailing Bank of Botswana rate from the date the amount became due.

(3) In any proceedings for the recovery of the money, a copy of the account stated by a person authorised in that behalf by the Accountant-General shall be prima facie evidence that the amount stated together with interest is due and payable to the Government.

(4) Where it appears —

- (a) by the books of account kept by or in the office of a person employed in the collection or management of public moneys;
- (b) in any accounting by that person; or
- (c) by written acknowledgement,

that the person has, in the course of employment received moneys that belong to the Government and refused or neglected to pay over the moneys to the proper persons at the proper times, an affidavit deposing to these facts made by any person who has knowledge of the matter shall in any proceedings for the recovery of the moneys be received in evidence and be prima facie evidence of the facts stated.

(5) The provision of this section shall apply, with the necessary modifications, to Government supplies or the value of the money or securities.

Government
property

50. (1) Books, papers, accounts and documents kept or used by, or received or taken into the possession of any person, who is or has been employed in the collection or management of revenue by virtue of that employment, is property that belongs to the Government.

(2) The moneys and valuable securities received or taken into the possession of an officer or a person in the cause of employment are moneys and valuable securities that belong to the Government.

Deduction
from money
due by
Government

51. (1) Save where it is provided otherwise in any other written law, where a person is indebted to the Government for a specific sum of money, the Permanent Secretary, in consultation with the Attorney-General, may authorise the retention, by way of deduction or set-off, of the amount of the indebtedness out of any sum of money that may be due or payable by the Government to that person.

(2) Notwithstanding subsection (1), the Permanent Secretary, the Accountant-General or any other accounting officer shall recover an overpayment made out of the Consolidated Fund on account of salary, wages, gratuities and allowances out of a sum of money that may be due or payable by the Government to the person to whom the overpayment was made.

PART IX – *Financial Regulations, Instructions and Procedures*

Regulations

52. (1) The Minister may make regulations providing for any matter which under this Act is to be provided for by regulations or is to be prescribed or which, in the Minister's opinion, is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act or to give force or effect to its provisions or for its better administration.

(2) Without derogating from the generality of subsection (1), regulations may provide for any of the following —

- (a) principles of fiscal management;
- (b) the form of any document referred to in this Act and the way it is to be prepared, executed, transmitted or delivered;
- (c) procedures, methods and other requirements to enable the Government Auditing Committee to carry out its functions;
- (d) reports to be submitted by authorised persons for any matter under this Act;
- (e) limitations and conditions to apply to any loan or grant agreement;
- (f) procedures, methods and requirements to be followed in the drawing up of the National Development Plan;
- (g) levels at which public officers in specified ranks may authorise expenditure or write-offs; and
- (h) public private partnership contracts and payment with respect to such contracts and payments from the Consolidated Fund.

(3) Regulations made under this section may prescribe for any person who, without reasonable cause, fails to comply with the regulations to have committed an offence and liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding 5 years, or to both.

53. (1) The regulations made under section 52 may authorise the use of electronic forms, signatures and approval processes and procedures or electronic transactions generally, keeping books of accounts and other records in electronic mode as the Minister may deem appropriate.

Regulations to authorise use of electronic forms, transactions, etc.

(2) The Minister may direct that the electronic authorisations or transactions or keeping of books of accounts and other records in electronic mode referred to in subsection (1) be subject to any law dealing specifically therewith.

54. (1) The Minister may, for the purpose of effective and efficient management of public moneys and supplies and the observance of the highest standards of the principles of fiscal management issue —

Financial Instructions, procedures and manuals

- (a)** Financial Instructions and Procedures, in consultation with the Accountant-General;
- (b)** Supplies Instructions and Procedures, in consultation with the Accountant-General;
- (c)** Budget and Estimates Instructions and Manual, in consultation with the Permanent Secretary;
- (d)** Surcharge Instructions and Procedures, in consultation with the Permanent Secretary;
- (e)** Internal Audit Instructions and Manual, in consultation with the Director of Internal Audit;
- (f)** Finance Officers Instructions and Manual in consultation with the Secretary for Budget and Development;
- (g)** Planning Officers Instructions and Manual in consultation with the Secretary for Budget and Development;
- (h)** Inspections Instructions and Manual in consultation with the Accountant-General; or
- (i)** such other financial instructions, procedures and manuals as the Minister shall deem necessary for the purposes of this Act.

(2) Any person who fails to comply with any financial instruction, procedure or manual as provided under subsection (1), is liable to surcharge under Part VII of this Act or be subject to disciplinary proceedings either under the Public Service Act or the conditions of service for public officers.

PART X – Miscellaneous

55. (1) The Minister may abandon and remit any claims by or on behalf of the Government, or any service to Government and write-off losses of or deficiencies in public moneys or public resources.

Abandonment of claims, etc and write-off of public money and supplies

(2) The Minister may, in the regulations delegate, as he or she deems appropriate, to any public officer any powers which the Minister is authorised to exercise by and under this section and set the extent or limit of the delegated powers.

(3) The Minister shall, at every budget session of National Assembly, table a report of the total abandonments and write-offs of public moneys and supplies for the financial year ending.

- 56.** (1) A person who —
- (a) without reasonable excuse, fails to provide by the due date, any information the Permanent Secretary may reasonably require in terms of section 10;
 - (b) without reasonable excuse fails to provide any information that the Permanent Secretary, the Accountant-General, Auditor-General or a person authorised by him or her may reasonably require in terms of this Act;
 - (c) without reasonable cause fails to provide, or wilfully obstructs access to any item required pursuant to the provisions of the Act;
 - (d) opens or causes to be opened any bank account for public or official use without the permission of the Accountant-General or in any other way contravenes section 15 in respect of any bank account; or
 - (e) being a public officer, without reasonable excuse fails to comply with any financial regulations or instructions or procedures under any law, or fails to execute duties and functions imposed on him or her under this Act or any other law,

is subject to disciplinary proceedings either under the Public Service Act or the Conditions of Service for Public Officers.

(2) In this Part, a reference to a public officer includes a person who has been a public officer.

Right to institute civil and administrative actions reserved

57. The right of Government to institute civil proceedings to recover any money, property or supplies due to Government and the right to institute disciplinary proceedings under the Public Service Act, the conditions of employment for public officers, any applicable law or the conditions of service applicable to the concerned person shall not be affected or in any way be restricted by the institution of criminal proceedings under section 56.

Repeal of Cap. 54:01

58. The Finance and Audit Act (in this Act referred to as the “repealed Act”) is hereby repealed.

Transitional and savings provisions

59. (1) Any loan raised by the Government under any written law and in respect of which any liability is subsisting immediately before the commencement of this Act, shall be deemed to be a loan raised under this Act notwithstanding that the amount of the loan or any obligation undertaken by the Government in respect of the loan exceeds any limitation imposed by this Act or the repealed Act and or is not an authorised loan in terms of this Act.

(2) All guarantees and indemnities issued under the repealed Act and subsisting immediately before the commencement of this Act, shall continue in effect and be binding in the same manner and to the same extent as if they were issued under this Act.

(3) Any person appointed under the repealed Act and holding office at the commencement of this Act, shall remain in office as if he or she had been appointed under this Act.

(4) Any rights, powers and duties, whether arising under any written law or otherwise, which immediately before the coming into operation of this Act were vested in any office established under the repealed Act shall, if not inconsistent with this Act, by virtue of this subsection, be transferred to, vested in, imposed on, or be enforceable by or against an office established under a corresponding provision of this Act.

(5) Any act made, executed, issued or passed under the repealed Act and in force and operative at the commencement of this Act shall have effect as if made, executed, issued or passed under this Act.

(6) Any fund or account kept under the repealed Act that continues to be operative at the commencement of this Act, shall be deemed to be a fund or account kept under this Act.

(7) Any statutory instrument made under the Act repealed by section 58 and in force at the commencement of this Act, shall continue in force to the extent that it is consistent with this Act.

SCHEDULE

RULES FOR OPERATION OF THE DEVELOPMENT FUND (section 36 (3))

ARRANGEMENT OF RULES

RULE

1. Definitions
2. Use of Fund
3. Authority for withdrawal
4. Annual estimates to be prepared
5. Accounting officers
6. Appropriation Bill
7. Issue of moneys before commencement of Appropriation Act
8. Supplementary estimates
9. Special warrant
10. Supplementary Appropriation Bill
11. Accounting and use of moneys constituting Fund
12. Conditions to be observed

Definitions

1. In this Schedule —

“approved project” means a project contained in a National Development Plan;

“Fund” means the Development Fund established under section 36;

“new project” means a project which is not contained in a Development Plan;

“National Development Plan” means a plan of economic and social development, including any amendment of or addition to such plan, prepared by the Government and approved by the National Assembly by resolution;

“programme” means a collection of projects of similar features and characteristics and may include a collection of projects from various organisations;

“project” means a project for the Government for social or economic development; and

“tranche” means disbursements of funds for implementation of projects authorised by the Minister.

Use of Fund

2. Except as provided by rule 9, provision shall not be made for expenditure from the Fund for any purpose other than the purpose of an approved project.

Authority for withdrawal

3. (1) Moneys shall not be disbursed from the Fund except upon the authority of a warrant under the hand of the Minister; and such warrant shall not be issued unless the disbursement of those moneys is in respect of —

(a) an approved project;

(b) a new project as may be required under the provisions of rule 9; and

(c) a project referred to in paragraphs (a) and (b) that is included in a tranche.

(2) Notwithstanding subrule (1), where moneys have been paid into the Fund in respect of a project and that project has thereafter been financed from some other source, those moneys may be withdrawn from the Fund without warrant and credited to the deposit account from which they were originally withdrawn.

Annual estimates to be prepared

4. (1) The Minister shall cause to be prepared in each financial year, estimates of the revenue and expenditure of the Fund for the next following financial year (which estimates are hereinafter referred to as "the annual estimates").

(2) The annual estimates shall be so prepared as to show the provision made for each project provided for in the annual estimates under a separate programme and the various programmes shall be grouped under organisations of expenditure for the projects.

(3) The annual estimates shall show, in relation to each project, an estimate of the total cost of the project in addition to the estimate of sums required during the financial year.

(4) The annual estimates shall be appended to the estimates of the Consolidated Fund for the same financial year laid before the National Assembly.

(5) The annual estimates shall be accompanied by a statement showing the estimated balance of the Fund at the commencement of the next following financial year and the anticipated revenue accruing to and total expenditure from the Fund during that financial year.

Accounting officers

5. (1) When laying the annual estimates before the National Assembly, the Minister shall, in respect of each programme, or where necessary, each project provided for in the annual estimates, designate a public officer as the accounting officer for that programme or project:

Provided that the Minister may, if he considers it desirable to do so —

(a) designate at that time different public officers as the accounting officers for different parts of any such programme or project; and

(b) at any other time, designate a public officer as the accounting officer for any such programme or project or part of the programme or project, in which case the designation shall be included in the next appropriate supplementary estimates of the Fund.

(2) In respect of the programme or project or part of the programme or project for which he or she has been designated as the accounting officer under subrule (1), every accounting officer shall be responsible for

(a) the control of expenditure;

(b) the control, custody, issue and use of all public supplies;

(c) the custody of public moneys; and

(d) efficient management of the programmes or projects.

Appropriation Bill

6. The Appropriation Bill for any financial year shall authorise the issue from the Fund of the total amount necessary to meet expenditure on all programmes or projects for which provision has been made in the annual estimates for that financial year approved by the National Assembly without containing organisations of expenditure corresponding to the organisations of expenditure in the annual estimates or any other particulars in respect of the appropriation or application of that total amount.

Issue of moneys before commencement of Appropriation Act

7. (1) If the Appropriation Act for any financial year has not come into operation by the beginning of that year, the President shall direct the Minister to issue a warrant authorising the issue of moneys from the Fund to meet such expenditure as may be necessary for the continuation of programmes or projects financed from the Fund in the immediately preceding financial year until the expiration of four months from the beginning of the new financial year or the coming into operation of the Appropriation Act, whichever comes earlier.

(2) All moneys disbursed from the Fund in pursuance of this rule shall be deemed to have been disbursed in anticipation of the enactment of an Appropriation Act and, on the coming into operation of that Act, any warrant issued under this rule shall cease to have effect and disbursements under the Fund shall be deemed to have been made by virtue of the Act and shall be accounted for accordingly.

Supplementary estimates

8. If it is found —

- (a) that the total estimated cost of a programme, as shown in the annual estimates and approved by the National Assembly, is insufficient to enable that programme to proceed in the current financial year;
- (b) that the total amount appropriated for all programmes in the current financial year is insufficient;
- (c) that a need has arisen to proceed with an approved programme or project which has not been included in the annual estimates for the current financial year; or
- (d) that a need has arisen to proceed with a new programme or project, a supplementary estimate shall be laid before the National Assembly for approval by resolution.

Special warrant

9. (1) If in any financial year any of the circumstances referred to in rule 8 arise in relation to a project and, in the judgment of the President, expenditure up to the level of the new or revised total estimated cost of a programme is so urgently required that it cannot, without serious detriment to the public interest, be postponed until a new or revised total estimated cost is approved by the National Assembly, the President may direct the Minister to issue a special warrant authorising that expenditure.

(2) At the next meeting of the National Assembly after the issue of a special warrant under subrule (1), the Minister shall submit a new or revised total estimated cost for the programme in question, as the circumstances require, to the National Assembly for its approval by resolution.

Supplementary Appropriation Bill

10. Where expenditure in excess of the total amount appropriated in any financial year has been approved by the National Assembly under rule 8 or 9, a Supplementary Appropriation Bill shall be introduced in the National Assembly, not later than the end of the financial year next following, authorising the issue from the Fund of the additional moneys so approved.

Accounting and use of moneys constituting Fund

11. Moneys received for the purposes of the Fund shall be brought to the account of the Fund in such a manner as to identify the source from which they came and shall be used to offset expenditure incurred and disbursed from the Fund in respect of programmes or projects for which the moneys were approved and allocated.

Conditions to be observed

12. Subject to section 24 (3), where the grantor attaches, to any grant of money which, by virtue of section 36 (2) (b), is paid into the Fund, conditions relating to the use of the grant, those conditions shall be observed and these Rules shall be applied in such manner as to ensure that observance.

PASSED by the National Assembly on this 6th day of December, 2011.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

2011 Statutory Instruments

No	Cap	Title
1	04:02	Rules of the High Court, 2011
2	38:01	Open Season Hunting (Declaration) Order, 2011
3	43:02	Trade (Exemption) Regs, 2011
4	43:08	Control of Goods, Prices and Other Charges (Petroleum Prices) (Am) Regs, 2011
5	42:09	Tourism (Reservation of Tourist Enterprises for Citizens)(Revocation) Regs, 2011
6	43:08	Control of Goods (Import and Export of Agricultural Products) (Am) Regs, 2011
7	40:01	Ghanzi District Council (Livestock Control) Bye-Laws, 2011
8	66:03	Precious and Semi Precious (Protection) (BK11 Mining Licence No 2010/59L Precious Stone Security Area) Order, 2011
9	25:02	Immigration (Visa) (Am) Regs, 2011
10	74:02	Water Utilities Corporation (Sanitation, Sewer Connection, Sewerage and Septic Tank Emptying Services) Order, 2011.
11	50:01	Customs and Excise Duty Amendment of Schedule (No 1) Notice, 2011
12	50:01	Customs and Excise Duty Amendment of Schedule (No 2) Notice, 2011
13	04:04	Rules of the Magistrates' Courts, 2011
14	40:01	North East District Council (Dogs) Bye-laws, 2011
15	61:04	Veterinary Surgeons (Commencement Date) Order, 2011
16	32:02	Establishment of Subordinate Land Boards (Am) Order, 2011
17	32:02	Tribal Land (Subordinate Land Boards) (Am) Regs, 2011
18	32:02	Tribal Land (Am) Regs, 2011
19	32:02	Tribal Land (Amendment of Schedule) Order, 2011
20	43:08	Control of Goods, Prices and Other Charges (Petroleum Prices) (Am) (No 2) Regs, 2011
21	61:05	Accountants Act (Date of Commencement) Order, 2011
22	46:10	Financial Reporting (Date of Commencement) Order, 2011
23	17:02	Census Order, 2011
24	43:08	Control of Goods (Import and Export of Agricultural Products) (Am) (No 2) Regs, 2011
25	47:04	Vocational Training (Levy) (Am) Order, 2011
26	58:01	Colleges of Education (Am) Regs, 2011
27	38:01	Wildlife Conservation and National Parks (Open Season Hunting) (Declaration) (No 2) Order, 2011
28	40:01	North East District Council (Abattoir) Bye-laws, 2011
29	50:01	Customs and Excise Duty Amendment of Schedule (No 3) Notice, 2011
30	25:02	Immigration (Visa) (Am) (No 2) Regs, 2011
31	74:02	Water Utilities Corporation (Supply of Water) Order, 2011
32	74:02	Water Utilities Corporation (Sanitation, Sewer Connection, Sewerage and Septic Tank Emptying Services) Order (No 2), 2011.
33	65:05	Food Control (Maximum Levels of Aflatoxins in Foods) Regs, 2011
34	74:02	Water Utilities Corporation (Supply of Water) (Am) Order, 2011
35	43:02	Trade (Exemption) (No 2) Regs, 2011
36	43:08	Control of Goods, Prices and Other Charges (Petroleum Prices) (Am) (No 3) Regs, 2011
37	40:01	North East District Council (Refuse) Bye-laws, 2011

38	43:08	Control of Goods (Import and Export of Agricultural Products) (Am) (No 3) Regs, 2011	
39	50:01	Customs and Excise Duty Amendment of Schedule (No 4) Notice, 2011	
40	50:01	Customs and Excise Duty Amendment of Schedule (No 5) Notice, 2011	
41	01:02	National Registration (Am) Regs, 2011	
42	17:02	Census (Am) Regs, 2011	
43	42:01	Companies (Fees) (Am) Regs, 2011	
44	43:11	Liquor (Lonetree Wildlife Camp)(Exemption) Regs, 2011	
45	54:01	Livestock Advisory Services Fund Order, 2011	
46	55:01	Maintenance of Primary Reserves by Banks Order, 2011	
47	50:01	Customs and Excise Duty Amendment of Schedule (No 6) Notice, 2011	
48	43:02	Trade (Exemption) (No 3) Regs, 2011	
49	48:02	Trade Disputes (Amendment of Schedule) Order, 2011	[revoked]
50	26:01	Public Service Regulations, 2011	
51	50:01	Customs and Excise Duty Amendment of Schedule (No 7) Notice, 2011	
52	50:01	Customs and Excise Duty Amendment of Schedule (No 8) Notice, 2011	
53	37:01	Diseases of Animals (Am) Act (Date of Commencement) Order, 2011 (Act 22 of 2008)	
54	37:01	Diseases of Animals (Determination of the Value of Compensation) Order, 2011	
55	37:01	Declaration of Foot and Mouth Disease (Infected Area) Order, 2011	
56	48:02	Trade Disputes (Revocation) Order, 2011	
57	48:02	Trade Disputes (Amendment of Schedule) Order, 2011	
58	43:02	Trade (Exemption) (No 4) Regs, 2011	
59	35:06	Agricultural Resources Conservation (Utilization of Veld Products) (Am) Regs, 2011	
60	50:01	Customs and Excise Duty Amendment of Schedule (No 9) Notice, 2011	
61	50:01	Customs and Excise Duty Amendment of Schedule (No 10) Notice, 2011	
62	01:03	Law Revision Order, 2011	
63	59:03	Declaration of National Monument Order, 2011	
64	43:08	Control of Goods, Prices and Other Charges (Petroleum Prices) (Am) (No 4) Regs, 2011	
65	05:03	Commissioners of Oaths (Amendment of Schedule) Order, 2011	
66	50:01	Customs and Excise Duty Amendment of Schedule (No 11) Notice, 2011	
67	40:01	Ghanzi District Council (Barbers and Braiders) Bye-laws, 2011	
68	40:01	North West District Council (Day-Care Centre) (Am) Bye-Laws, 2011	
69	43:02	Trade Regs, 2011	
70	43:02	Trade (Exemption) (No 4 (5)) Regs, 2011	
71	46:05	Hypothecation (Authorised Creditors) (Am) (No 6) Regs, 2011	
72	39:01	Diplomatic Immunities and Privileges (Designation of Organisations and Conferment of Immunities and Privileges (Am) Order, 2011	
73	39:01	Diplomatic Immunities and Privileges (Conferment of Personal Immunities and Privileges (Am) Order, 2011	
74	50:01	Customs and Excise Duty Amendment of Schedule (No 12) Notice, 2011	
75	54:01	Conservation Trust Fund (Am) Order, 2011	
76	71:04	Civil Aviation Act (Date of Commencement) Order, 2011	
77	71:02	Aviation Security Act (Date of Commencement) Order, 2011	
78	50:01	Customs and Excise Duty Amendment of Schedule (No 13) Notice, 2011	
79	43:02	Trade Act (Size of Enterprises) Order, 2011	
80	43:02	Trade (Exemption) (No 6) Regs, 2011	

81	43:02	Trade (Exemption) (No 7) Regs, 2011		
82	46:09	Competition Act (Specified Parts Commencement Date) Order, 2011		
83	25:02	Immigration Act (Commencement Date) Order, 2011		
84	46:09	Competition Regs, 2011		
85	25:02	Immigration Regs, 2011		
86	43:02	Trade (Exemption) (No 8) Regs, 2011		
87	05:03	Commissioners of Oaths (Amendment of Schedule) (No 2) Order, 2011		
88	50:01	Customs and Excise Duty Amendment of Schedule (No 14) Notice, 2011		
89	43:02	Trade (Exemption) (No 9) Regs, 2011		
90	61:03	Nurses and Midwives (Professional Ethics and Practice) Regs, 2011		
91	61:03	Nurses and Midwives (Disciplinary) Regs, 2011		
92	61:03	Nurses and Midwives (Registration) Regs, 2011		
93	42:01	Companies (Forms) Regs, 2011		
94	32:08	Alteration of Condition in Title Deed (Lesecon and M Enterprise (Pty) Ltd Metsimothabe) Order, 2011		
95	32:08	Alteration of Condition in Title Deed (Grace Kgotlane, Mmopane) Order, 2011		
96	32:08	Alteration of Condition in Title Deed (Maramane Minkie Pheto, Mogoditshane) Order, 2011		
97	32:08	Alteration of Condition in Title Deed (Bikie Donald Kooitse, Molepolole) Order, 2011		
98	05:03	Commissioners of Oaths (Am of Schedule) Order, 2011		
99	40:01	Central District Council (Markets) Bye-Laws, 2011		
100	50:01	Customs and Excise Duty Amendment of Schedule (No 15) Notice, 2011		
101	43:08	Control of Goods, Prices and Other Charges (Petroleum Prices) (Am) (No 5) Regs, 2011		
102	46:05	Hypothecation (Authorised Creditors) (Am) (No 7) Regs, 2011		
103	40:02	Kasane Township (Am) Regs, 2011		
104	43:02	Trade (Exemption) (No 10) Regs, 2011		
105	43:02	Trade (Exemption) (No 11) Regs, 2011		
106	43:02	Trade (Am) Regs, 2011		
107	43:02	Trade (Exemption) (No 12) Regs, 2011		
108	43:02	Trade (Exemption) (No 13) Regs, 2011		
109	43:02	Trade (Exemption) (No 14) Regs, 2011		
110	43:08	Control of Goods, Prices and Other Charges (Petroleum Prices) (Am) (No 6) Regs, 2011		
111	25:02	Immigration (Amendment) Regs, 2011		
112	25:02	Immigration (Exemption) Order, 2011		
113	04:05	Customary Courts (Enforcement of Specified Laws)(Am) Order, 2011		
114	43:11	Traditional Beer Regs, 2011		
115	42:09	Tourism (Reservation of Tourist Enterprises for Citizens) Regs, 2011		
116	59:04	National Archives and Records Services Regs, 2011		
117	50:01	Customs and Excise Duty Amendment of Schedule (No 16) Notice, 2011		