

SECURITIES ACT
(Act No. 26 of 2014)

SECURITIES (INSTITUTIONS LICENSING) REGULATIONS, 2017
(Published on 31st March, 2017)

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SCHEDULES

IN EXERCISE of the powers conferred on the Minister of Finance and Economic Development by section 59 of the Securities Act, the following Regulations are hereby made —

1. These Regulations may be cited as the Securities (Institutions Licensing) Regulations, 2017. Citation
2. In these Regulations, unless the context otherwise requires — Interpretation
“board” means —
 - (a) where the securities business is a company, the board of directors;
 - (b) where the securities business is a partnership, the partners; or
 - (c) where the securities business is conducted in another legal form, the persons registered with the Regulatory Authority as having responsibility for the conduct of the business; and“key person” or “key personnel” means the Chief Executive Officer, Director, Chief Financial Officer, company secretary, compliance officer and internal auditor or any person fulfilling a similar function with a different name or any other officer that the Regulatory Authority may deem to be a key person.
3. These Regulations shall apply to a person who wishes to establish or operate a securities institution and applies to the Regulatory Authority for a licence under section 3 of the Act. Application of Regulations

4. (1) A person shall not establish or operate a securities institution unless that person has been issued with a licence in accordance with section 3 of the Act.

(2) A person who wishes to apply for a licence to establish or operate a securities institution shall make an application to the Regulatory Authority in Form 1A set out in Schedule 1.

(3) An applicant may apply to be an operator of more than one category of securities institution business and shall indicate, on the application form, which category or categories of securities institution business the applicant wishes to establish or operate.

(4) Where the Regulatory Authority grants a licence to an applicant under section 3 of the Act, it shall —

(a) grant a single licence for the applicant stating the categories in the licence; and

(b) stipulate in the licence, a condition specifying the securities institution business the applicant is licensed to operate.

(5) An application for a licence shall be accompanied by a non-refundable processing fee for the type of licence applied for as set out in the Schedule to the Non-Bank Financial Institutions Regulatory Authority (Supervisory Levies and Licensing Fees) Regulations and where the application is for more than one licensed activity, the applicant shall pay an application fee for each activity.

(6) An application for a licence under subregulation (2) shall be accompanied by the information set out in Schedule 2.

(7) An applicant shall supply such additional information and meet such additional requirements as the Regulatory Authority may direct.

(8) An applicant shall complete a personal questionnaire, set out in Schedule 3, in respect of each of the key persons and controllers and the questionnaire shall not be considered complete unless signed and dated by the person to whom the questionnaire relates.

(9) Where an applicant is a partnership, personal questionnaires shall be submitted by the partners and where the applicant is any other legal entity, the application shall be submitted by one of the key persons responsible for the conduct of the business.

(10) Where a person, who is required to submit a personal questionnaire has already filed such a questionnaire with the Regulatory Authority, the applicant may supply the Regulatory Authority with a copy of that questionnaire giving details of any changes to the information contained in the questionnaire and including a declaration by the applicant and the person to whom the questionnaire relates that —

(a) the changes indicated are accurate; and

(b) in all other respects, the information in the questionnaire remains true and is not misleading.

(11) An applicant may withdraw an application at any time and the application fee paid in respect of the application shall not be refundable.

(12) Where, following submission of the application, the applicant becomes aware of a material change in any of the information supplied with the application, or any material event that may affect the application, the applicant shall notify the Regulatory Authority of the change or event, irrespective of whether the Regulatory Authority has considered the application or not.

5. (1) The Regulatory Authority shall grant a licence, in accordance with section 4 of the Act only if the Regulatory Authority is satisfied that the applicant and the applicant's key persons and controllers meet the requirements of these Regulations.

(2) In respect of the applicant under subregulation (1), the Regulatory Authority shall, before granting such applicant a licence, be satisfied that —

- (a) the corporate governance of the applicant is in compliance with the Non-Bank Financial Institutions Regulatory Authority (Securities Business Corporate Governance) Rules;**
- (b) the applicant has the capacity to comply with the Non-Bank Financial Institutions Regulatory Authority (Securities Business Corporate Governance) Rules;**
- (c) the applicant has the capacity to comply with —**
 - (i) any licence condition that applies to it, and**
 - (ii) any other regulatory requirement imposed under the Act or other financial services laws;**
- (d) the applicant's key personnel possess the minimum qualifications set out in Schedule 4 in respect of the activity that the applicant proposes to undertake;**
- (e) the financial resources of the applicant are sufficient for the activity for which the applicant is applying for a licence as specified in the Non-Bank Financial Institutions Regulatory Authority (Financial Resource Requirements) Rules:**

Provided that where the applicant is proposing to undertake more than one activity, the financial resources required shall be the sum total specified in the Non-Bank Financial Institutions Regulatory Authority (Financial Resource Requirements) Rules of each of those activities or such other amount as the Regulatory Authority may require;

- (f) the applicant's proposed business plan submitted provides reasonable grounds for believing that the applicant will conduct business in compliance with the regulatory requirements, without becoming a risk to the stability of the Botswana capital markets;**
 - (g) the applicant has not, at any time or in any jurisdiction —**
 - (i) been subject to any insolvency or liquidation proceedings,**
 - (ii) made any arrangement with creditors,**
 - (iii) been the subject of a compulsory winding up, or**
 - (iv) engaged in any other conduct, that may compromise the applicant's ability to maintain the financial resource requirements applicable to the applicant;**
 - (h) the applicant has not at any time, been subject to proceedings by a law enforcement authority or regulatory authority or any professional association, of a nature that would compromise the applicant's integrity;**
 - (i) there are no other factors that may compromise —**
 - (i) the integrity, financial standing or professional skills of the applicant or its key personnel,**
 - (ii) the integrity or financial standing of the applicant's controllers,**
 - (iii) the sustainability of the financial position of the applicant and its likely impact on the stability of the financial system in Botswana;**
- or**

- (iv) the capacity of the applicant to meet its regulatory requirements and the relevant obligations which the applicant may be subject to in Botswana or elsewhere, imposed by law; and
 - (j) there are no factors that might impede the Regulatory Authority's effective oversight of the securities institution business.
- (3) In respect of the applicant's key person and controller, the Regulatory Authority shall before granting a licence to the applicant, be satisfied that —
- (a) the applicant's key person or controller has not been convicted of a criminal offence involving dishonesty;
 - (b) the applicant's key person or controller has not been found guilty of misconduct or unprofessional conduct or other conduct that may compromise his or her integrity as a key person or controller, by a competent tribunal, board or body legally constituted, within or outside Botswana, for the purpose of adjudicating on matters of discipline and conduct;
 - (c) the applicant's key person or controller, being a holder of a professional qualification, has not been suspended or barred from practising the profession, trade or skill within or outside Botswana;
 - (d) the applicant's key person or controller has not been removed from any office of trust on account of misconduct, by any court within or outside Botswana;
 - (e) the applicant's key person or controller has not, in any jurisdiction, been subject to termination by his or her employer, nor has he or she resigned from a position in circumstances where, but for the resignation there would likely have been an alternative sanction such as dismissal;
 - (f) the applicant's key person or controller has not, at any time been subject to bankruptcy proceedings or made other arrangements or arrangements of a nature that might compromise his or her financial standing and the ability to maintain a sound financial position;
 - (g) the applicant's key person or controller has not been involved as a director or controller, or any capacity with significant influence over the management of the organisation, in any entity, whether company, partnership or any legal form, that has been subject to any of the proceedings set out in subregulation (2)(h) unless the Regulatory Authority is satisfied that the circumstances do not compromise on the applicant's key person's or controller's financial standing; and
 - (h) there are no other factors that might compromise his or her integrity, competence or financial standing.
- (4) Where the applicant is licensed by the Bank of Botswana, or where any key person or controller is an employee or director of a bank licensed by the Bank of Botswana —
- (a) the Regulatory Authority may rely upon a certificate from the Bank of Botswana as to the integrity and financial standing of the applicant or its key person or controller; and
 - (b) notwithstanding paragraph (a), the Regulatory Authority shall make its own determination as to whether the Regulatory Authority's requirements regarding the financial resources, skills, qualifications of the applicant and key person are met.

6. (1) A person operating a securities institution business may apply for an amendment to a licence to permit the undertaking of additional activities as set out in Form 1B of Schedule 1.

(2) The Regulatory Authority shall approve the additional activities and amend the licence accordingly, only if it is satisfied that the applicant and the applicant's key person and controller meet the requirements specified in these Regulations in respect of the additional activities.

(3) An application under subregulation (1) shall be accompanied by the processing fee corresponding to the licence application as set out in the Non-Bank Financial Institutions Regulatory Authority (Supervisory Levies and Licensing Fees) Regulations and —

- (a) where the application is for more than one licensed activity, the applicant shall pay the application fee for each activity; and
- (b) the fees shall be payable to the Regulatory Authority in such form or manner as it may direct.

(4) A securities institution shall not appoint a new key person, nor shall a person become a controller of a securities institution unless the Regulatory Authority has granted its approval in writing.

(5) The Regulatory Authority shall grant its approval under subregulation (4) only if the Regulatory Authority is satisfied that the new key person or controller, as the case may be, meets the requirements specified in these Regulations.

(6) A licensed securities institution that wishes to appoint a new key person shall make an application to the Regulatory Authority using Form 1C of Schedule 1.

(7) Where a person wishes to become a controller or a partner in a securities institution, the securities institution shall submit an application to the Regulatory Authority, using Form 1C of Schedule 1 and the application shall be accompanied by a personal questionnaire signed and dated by the person who is to be the controller or partner.

(8) An application for approval of new key persons or controllers shall be accompanied by the processing fee corresponding to the licence application as set out in the Non-Bank Financial Institutions Regulatory Authority (Supervisory Levies and Licensing Fees) Regulations and the fees shall be payable to the Regulatory Authority in such manner as it may direct.

(9) Where the Regulatory Authority becomes aware that a key person has been appointed by the securities institution without the approval of the Regulatory Authority, the Regulatory Authority may —

- (a) impose a penalty not exceeding P50 000 against the securities institution and direct the securities institution to submit the appropriate application; or
- (b) direct the securities institution to dismiss the key person.

(10) Where the Regulatory Authority becomes aware that a new person has become a controller of the securities institution without the approval of the Regulatory Authority, the Regulatory Authority may —

- (a) impose a penalty not exceeding P50 000 against the securities institution and direct the securities institution to submit the appropriate application;
- (b) direct the securities institution to dismiss the controller; or
- (c) direct the person to dispose of his or her interest in the securities institution.

Processing applications

(11) Where the Regulatory Authority becomes aware that a key person has been appointed by the securities institution without the approval of the Regulatory Authority, the Regulatory Authority may —

- (a) impose a penalty not exceeding P10 000 against the person; or
- (b) direct the securities institution to dismiss the key person.

7. (1) Where the Regulatory Authority receives an application from a person in accordance with regulation 5 or 6, the Regulatory Authority —

- (a) shall acknowledge receipt of the application in writing;
- (b) may require additional information from the applicant or any of the key personnel or controllers; and
- (c) shall, where the information is not supplied, decline the application.

(2) Where the Regulatory Authority considers that the licensing criteria are not met, it shall —

- (a) inform the applicant, in writing, of its intention to decline the application and giving reasons;
- (b) allow the applicant one month in which to make representations; and
- (c) consider any representation made within that period and may —
 - (i) confirm the decision to decline the application,
 - (ii) approve the application, or
 - (iii) seek further information from the applicant.

(3) Where the Regulatory Authority intends to approve an application, with conditions, it shall —

- (a) inform the applicant in writing, giving reasons;
- (b) allow the applicant one month in which to make representations; and
- (c) consider the representations received within that period and may —
 - (i) confirm the decision to impose conditions,
 - (ii) approve the application with any conditions, in which case regulation 8 shall apply in relation to the licence fees, or
 - (iii) reject the application, in which case subregulation (2) shall apply.

(4) Where the Regulatory Authority intends to approve an application or an application for an extension of licensed activities, it shall —

- (a) inform the applicant in writing of the approval giving reasons; and
- (b) inform the applicant in writing, the date from which approval takes place where an annual licence fee has been paid.

(5) Notwithstanding any other provision of the Regulations, where the Regulatory Authority approves an application, it shall give the applicant written notice and the approval shall take effect from the date specified by the Regulatory Authority.

Fees

8. (1) A person operating a securities business shall pay to the Regulatory Authority, in accordance with the Non-Bank Financial Institutions Regulatory Authority (Supervisory Levies and Licensing Fees) Regulations —

- (a) a licence renewal fee; and
- (b) a supervisory levy, in such form and manner as the Authority may direct.

(2) The first supervisory levy shall be paid immediately after the Regulatory Authority has issued a licence.

(3) Where the Regulatory Authority has issued a licence, after 1st April the supervisory levy shall be reduced by one twelfth for every complete month that has passed.

9. All licences that are issued by the Regulatory Authority, unless provided for under the Act, shall be valid for a period of three years.

Period of validity of licence

10. (1) An application for the renewal of a licence shall be made to the Regulatory Authority at least three months before the licence expires in Form 1D set out in Schedule 1.

Renewal of licence

(2) Where an application for renewal is made after the period of three months referred to in subregulation (1), the Regulatory Authority may renew the licence subject to payment of a penalty fee of P350 per day during the period that the securities institution does not renew its licence.

(3) Where a period exceeding 3 months from the date that the licence expired has elapsed, a securities institution shall re-apply for a licence, and the Regulatory Authority shall treat the re-application as a new application for a licence.

(4) An application for the renewal of a licence under subregulation (3) shall be accompanied by the information set out in Schedule 2.

(5) An applicant shall supply such additional information and meet such additional criteria as the Regulatory Authority may direct.

11. (1) The Regulatory Authority may suspend or revoke a licence issued under the Act, or employ any of the other powers available to it under the Act when —

Licence suspension and revocation

- (a) the securities institution makes such a request;
- (b) any information supplied to the Regulatory Authority by the securities institution, its key persons or controllers (including information supplied in a licence application) is false or misleading;
- (c) the Regulatory Authority is no longer satisfied that the conditions justifying the granting of a licence continue to exist;
- (d) the securities institution or any financial group of which it is a part, has breached any requirement of the Act or rules;
- (e) the securities institution has breached a condition on the licence;
- (f) the Regulatory Authority has reasonable grounds for believing that the securities institution or its key persons or its controllers are not fit and proper persons; or
- (g) the securities institution has not commenced business within a period of 12 months from the date of a licence being granted to it.

(2) Where a securities institution decides to withdraw from a regulated activity, it shall —

- (a) notify the Regulatory Authority and each of its clients of its decision;
- (b) ensure, to the satisfaction of the Regulatory Authority, that any such business which is outstanding is properly transferred to another securities institution; or
- (c) arrange for the orderly winding down of the business subject to any conditions that the Regulatory Authority may specify.

12. (1) The Regulatory Authority shall impose the following conditions on any licence granted by it under the Act —

Conditions on licences

- (a) a licence issued under the Act shall not be transferrable;
- (b) a licence holder shall undertake only the Non-Bank Financial Institutions activities specified in the licence;
- (c) a director of a securities institution shall not be a director or partner of, or have any direct or indirect interest in any other securities broker or dealer; and

(d) a security broker or dealer shall be manned at all times by an officer who is an agent, partner, director or employee who —

(i) has the requisite skills set out in Schedule 4, and

(ii) has the right to execute orders on a securities exchange.

(2) The Regulatory Authority may vary the conditions of a licence where it is concerned that the securities institution may not have the necessary financial, human or other resources to continue to operate.

(3) The Regulatory Authority may suspend or restrict the activities of the securities institution in any way it considers appropriate under the circumstances.

Duplicate
licence

13. Where the Regulatory Authority is satisfied that a licence issued under the Regulations is lost, destroyed or defaced, the Regulatory Authority may upon a payment of P 1 000 by the licensee, issue a duplicate licence.

Offences and
penalties

14. (1) A person who, without reasonable cause, fails to comply with these Regulations commits an offence and is liable to a fine not exceeding P200 000 or to imprisonment for a term not exceeding five years, or to both.

(2) In the case of a continuing contravention of the provisions of regulation 15, such person shall be liable to a further fine not exceeding P350 for every day during which the contravention continues:

Provided that the total amount for the further fine shall not exceed P200 000.

(3) In addition, the administrative penalties that may be imposed by the Regulatory Authority in the event of a contravention of these Regulations shall include —

(a) a written warning to the person or a notice published in a newspaper of general circulation directing the person to —

(i) do a specified act or refrain from doing a specified act,

(ii) remedy the effects of the contravention,

(iii) compensate any person who has suffered loss because of the contravention, or

(iv) ensure that the person does not commit further contraventions of the Act; or

(b) variation, suspension or revocation of a licence.

(4) Before taking action in terms of subregulation (3), the Regulatory Authority shall give the person written notice of the proposed action, specifying the grounds for the action and the facts supporting those grounds and allow the person to request for a hearing within 21 days of giving the notice.

(5) Where a person requests for a hearing under subregulation (4), the Regulatory Authority shall hold a hearing before taking any action, and such hearing shall be held in camera, unless the person consents to the hearing being held in public.

Transitional
provisions

15. (1) A securities institution that has been licensed under the Act shall be entitled to continue to conduct business as a securities institution:

Provided that —

(a) it has commenced operations by the time these Regulations come into force;

(b) it complies with these Regulations and any other applicable regulatory requirements within one year of these Regulations coming into effect; and

(c) it makes an application under these Regulations within one year of these Regulations coming into effect and the Regulatory Authority has not made a decision on the application.

(2) The Regulatory Authority, on approving the application of a securities institution that meets the requirements of subregulation (1), may impose conditions requiring the securities institution to take any action necessary to bring it into compliance with these Regulations.

(3) Where the Regulatory Authority decides that an application from a securities institution under subregulation (1) does not meet the application criteria in these Regulations, the Regulatory Authority may grant an exemption from the requirement to have a licence, for a period not exceeding three months, so as to provide the securities institution time to wind down its business in an orderly manner as directed by the Regulatory Authority.

SCHEDULE 1

Form 1A
(reg. 4)

**APPLICATION FOR A LICENCE TO ESTABLISH OR OPERATE A
SECURITIES INSTITUTION**

Please answer every question, writing "not applicable" if appropriate. If there is insufficient space, please continue on a separate sheet, identifying, on the separate sheet, the question for which the additional information is supplied.

(1) Name of applicant (Please give the name of the applicant for a licence)

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(2) Name and capacity of the person submitting this form (Please note that this form shall be submitted by the chief executive officer or another executive director or partner)

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(3) Current Registered Office Address (Please give the full physical address. A Postal address is not acceptable)

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4) Other addresses used by the applicant (Please give the head office address, if different from the registered office, and any other addresses used by the applicant)

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5) Nature of business to be conducted. (Please indicate which of the activities described below you wish to undertake. Tick all that apply.)

- Asset manager
- Custodian
- Investment adviser
- Market maker
- Participant
- Securities broker or dealer
- Transfer agent or a transfer secretary

6) Previous regulatory history (Please give details of any regulatory authority that has exercised financial services supervisory authority over the applicant in the past 7 years)

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7) Name and address of the key person or controller

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(8) Position the key persons are to take up

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(9) Declaration (Please answer “Yes” or “No” to each of the following questions.

If the answer is “Yes”, please give full details on a separate sheet of paper.)

(a) Is the applicant, for any reason, precluded in any way from carrying on (fully or partially) the services which the applicant proposes to offer?

YES/NO

(b) Has the applicant ever been convicted of any offence in any jurisdiction?

YES/NO

(c) Has the applicant ever been the subject of any disciplinary, legal, other investigations or other comparable proceedings, by any law enforcement, regulatory, or professional body in any jurisdiction, whether or not there were any sanctions or other findings as a result?

YES/NO

(d) Has the applicant, ever, in any jurisdiction, been subject to liquidation, insolvency proceedings, or compulsory winding up, as the case may be, or made other agreements with creditors?

YES/NO

(e) Has the applicant ever been refused a licence or equivalent authorisation to carry on a business activity in any jurisdiction?

YES/NO

(f) Has any key person or controller been convicted of any offence by any court in any jurisdiction? (If the answer is yes, please cross refer to the relevant personal questionnaire)

YES/NO

g) Has any of the key person or controller ever been subject, in any jurisdiction to investigations, disciplinary proceedings, or termination by an employer, or ever resigned from any position in any jurisdiction in circumstances where, but for the resignation, there would likely have been an alternative sanction such as dismissal? (If the answer is yes, please cross refer to the relevant personal questionnaire)

YES/NO

h) Is the applicant engaged in any litigation in any jurisdiction?

YES/NO

i) Are you aware of any other matter that may be material to an assessment, by the Regulatory Authority of the balance of skills available to, the integrity of or the financial soundness of the applicant?

YES/NO

f) Have you supplied all the information specified in Schedule 2 of the Securities (Institution Licensing) Regulations?

YES/NO

10) Certification

I certify that the above information and all information supplied with this application is complete and correct to the best of my knowledge. I undertake to advise the Regulatory Authority of any material change that occurs at any time after this form is submitted and until such time as the applicant ceases to conduct the licensed activity.

I authorise the NBFIRA to contact any person named herein to verify the contents of this form. In so doing the Regulatory Authority may refer to the application.

Name:.....

Position:.....

Signature..... Date.....

Form 1B
(reg. 6 (I))

APPLICATION FOR AN AMENDMENT TO A LICENCE TO PERMIT THE
UNDERTAKING OF ADDITIONAL ACTIVITIES

Please answer every question, writing "not applicable" where appropriate. If there is insufficient space, please continue on a separate sheet, identifying, on the separate sheet, the question for which the additional information is supplied.

1. Name of applicant (Please give the name of the licensed securities institution)

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2. Name and capacity of the person submitting this form (Please note that this form shall be submitted by the chief executive officer or another executive director or partner)

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3. Current Registered Office Address (Please give the full physical address. Postal address is not acceptable)

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4. Nature of additional business to be conducted. (Please indicate which of the activities described below the applicant wishes to undertake in addition to those currently undertaken. Show all that apply with a tick alongside the activity. If the applicant wishes to discontinue any of the activities currently undertaken please state which are to be discontinued):

Asset manager

Custodian

Investment adviser

Market maker

Participant

Securities broker or dealer

Transfer agent or a transfer secretary

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1. Name and addresses of any additional key persons or controllers

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2. Positions key persons are to take up

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3. Please provide any amendments to the information provided for the previous application that is relevant to the new services (Please refer to Schedule 2 and provide any additional information such as a revised business plan):

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4. Declaration (please answer "yes" or "no" to each of the following questions. If the answers "yes", please give full details on a separate sheet of paper.)

(a) Is the applicant, for any reason, precluded in any from carrying on (fully or partially) the additional services which the applicant proposes to offer?

YES/NO

(b) Has any of the key persons or controllers ever been convicted of any offence by any court in any jurisdiction? (If the answer is yes, please cross refer to the relevant personal questionnaire)

YES/NO

(c) Has any of the key persons or controllers ever been subject, in any jurisdiction to investigations, disciplinary proceedings, or termination by an employer, or resigned from a position in any jurisdiction, in circumstances where, but for the resignation, there would likely have been an alternative sanction such as dismissal? (If the answer is yes, please cross refer to the relevant personal questionnaire)

YES/NO

9. Certification

I certify that the above information and all information supplied with this application is complete and correct to the best of my knowledge. I undertake to advise the Regulatory Authority of any material change that occurs at any time after this form is submitted and until such time as the applicant ceases to conduct the license activity.

I authorise NBFIRA to contact any person named herein to verify the contents of this form. In so doing the Regulatory Authority may refer to the application.

Name:.....

Capacity:.....

Signature..... Date.....

Form 1C
(regs. 6 and 7)

APPLICATION FOR THE APPOINTMENT OF A NEW KEY
PERSON OR CONTROLLER

Please answer every question, writing "not applicable" if appropriate. If there is insufficient space, please continue on a separate sheet, identifying, on the separate sheet, the question for which the additional information is supplied. The term "controller" includes a partner. A partner or controller may also be a key person.

1. Name of applicant (Please give the name of the licensed securities institution)

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2. Name and capacity of the person submitting this form (Please note that this form shall be submitted by the chief executive officer or another executive director or partner)

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3. Current Registered Office Address (Please give the full physical address. Postal address is not acceptable)

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4. Name and addresses of any additional key persons or controllers

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5. Positions key persons are to take up (Controllers who are not key persons shall state that this question is not applicable)

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6. Explanation how the skills and experience relate to the position (Controllers who are not key persons shall state that this question is not applicable)

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7. Assessment of how the new appointment will affect the balance of skills available to the securities institution (Controllers who are not key persons shall state that this question is not applicable)

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8. Declaration (please answer “yes” or “no” to each of the following questions. If the answer is “yes”, please give full details on a separate sheet of paper)

- (a) Has any of the key persons or controllers ever been convicted of any offence by any court in any jurisdiction? (if the answer is yes, please cross refer to the relevant personal questionnaire)

YES/NO

- (b) Has any of the key persons or controllers ever been subject in any jurisdiction, to investigations, disciplinary proceedings, or termination by an employer, or resigned from a position in any jurisdiction, in circumstances where, but for the resignation, there would likely have been an alternative sanction such as dismissal? (if the answer is yes, please cross refer to the relevant personal questionnaire)

YES/NO

(c) Are you aware of any other matter that may be material to an assessment by the Regulatory Authority of the balance of skills available to the integrity of or the financial soundness of the applicant?

YES/NO

9. Certification

I certify that the above information and all information supplied with this application is complete and correct to the best of my knowledge. I undertake to advise the Regulatory Authority of any material change that occurs at any time after this form is submitted and until such time as the applicant ceases to conduct the licensed activity.

I authorise NBFIRA to contact any person named herein to verify the contents of this form. In so doing the Regulatory Authority may refer to the application.

Name:.....

Capacity:.....

Signature..... Date.....

Form 1D
(reg. 10 (1))

APPLICATION FOR RENEWAL OF LICENCE OF
A SECURITIES INSTITUTION

Please answer every question, writing "not applicable" if appropriate. If there is insufficient space, please continue on a separate sheet, identifying, on the separate sheet, the question for which the additional information is supplied.

1. Name of applicant (Please give the name of the licensed securities institution)

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2. Name and capacity of the person submitting this form (Please note that this form shall be submitted by the chief executive officer or another executive director or partner)

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3. Current Registered Office Address (Please give the new physical address. A Postal address is not acceptable)

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4. Details of licence being renewed:

(a) Licence No.

(b) Date of issue

(c) Place of issue

(d) Date of expiry

5. Please provide any amendments to the information provided for the previous application that is relevant (Please refer to Schedule 2 and provide any additional information such as a revised business plan. Please give full details on a separate sheet of paper):

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Certification

I certify that the above information and all information supplied with this application is complete and correct to the best of my knowledge. I undertake to advise the Regulatory Authority of any material change that occurs at any time after this form is submitted and until such time as the applicant ceases to conduct the licensed activity.

I authorise NBFIRA to contact any person named herein to verify the contents of this form. In so doing the Regulatory Authority may refer to the application.

Name:.....

Capacity:.....

Signature..... Date.....

COMPANY SEAL

SCHEDULE 2
(regs. 4 (6) and 10 (4))

1. INFORMATION TO ACCOMPANY A LICENCE APPLICATION

(1) General licence application requirements

- (a) An application for a licence in the form set out in Schedule 1, together with any relevant attachments shall be enclosed in a sealed envelope and filed with the Regulatory Authority. There shall be further submissions through the electronic medium as advised by the Regulatory Authority.**
- (b) An application shall be accompanied by personal questionnaires signed and dated by each key person or controller.**

(2) Information to be supplied by applicants for a licence —

- (a) Each applicant shall supply a description of business it seeks to undertake and the licence category for which it is applying.**
- (b) Each applicant, unless it is a newly formed business, shall supply copies (certified by the director, partner, as the case may be) of the last balance sheet, the last profit and loss account, the last cash flow statement and a statement of changes in equity, incorporating the results of its last financial year, and which have respectively been audited by a qualified auditor (including every document required by law to be attached). The copies of the financial statements shall be accompanied by a copy of the report of the auditors thereon (certified as aforesaid).**
- (c) Where the audited accounts are for a period that ends more than 6 months before the date of application, the applicant, unless it is a newly formed business, shall supply unaudited accounts for a period ending not earlier than 6 months prior to the date of application (which shall also be certified by a director or partner, as the case may be, as being a true and fair reflection of the company's financial position to the best knowledge of the applicant).**
- (d) Each applicant shall supply a business plan containing the particulars of —**
 - (i) the names and addresses of the key persons or controllers,**
 - (ii) the names of the key person (of which there shall be at least two) who shall be registered with the Regulatory Authority as being responsible for the conduct of the business, and**
 - (iii) where the applicant is a company, the shareholding structure which shall disclose —**
 - (aa) whether any of the shareholders will have an executive role to oversee the day to day operations of the business, or**
 - (bb) where controllers are incorporated, the full group structure,**
 - (cc) where the applicant is a partnership, the names and addresses of the partners and information as to which of the partners will have an executive role to oversee the day to day operations of the business,**
 - (dd) the qualifications, experience and expertise of key person and an explanation of how those qualifications individually and collectively will be sufficient for the business to be undertaken,**
 - (ee) the financial projections for three years, together with the key assumptions on which the business plan is based,**

- (ff) one bank reference from the applicant's current bank, or, if the applicant has yet to establish a bank account, the applicant should supply a bank reference for at least two of the directors or partners,
 - (gg) two business references relating to the applicant or, if the applicant has yet to commence business, references relating to at least two of the directors or partners,
 - (hh) the proposed premises suitably located and equipped to provide satisfactory service to clients in the field of activity to which the licence relates or evidence acceptable to the Regulatory Authority that such premises will be available, and
 - (ii) the human and technology resources available to the securities institution that will be capable of providing professional services to clients in the field of activity to which the licence relates or evidence acceptable to the Regulatory Authority that such resources will be available; and
 - (jj) the proposed independent auditor.
- (e) Each applicant shall give an overview of its proposed corporate governance arrangements, which shall include —
- (i) the legal form of the applicant and if —
 - (aa) it is a company, its documents of incorporation,
 - (bb) it is a partnership, its partnership agreement, or
 - (cc) it takes any other legal form, details of that legal form and accompanying verification documents,
 - (ii) particulars of the Board and Board Committees (if any),
 - (iii) particulars of any procedures, codes or protocols that the Board may have adopted at the time of the application and an overview of the procedures, codes and protocols that the applicant intends that the Board shall adopt by the time business commences,
 - (iv) particulars of the management and organisation structure, providing an organisation chart with brief descriptions of the powers and duties of the posts,
 - (v) an overview of the applicant's assessment of risks and policies to mitigate those risks,
 - (vi) an overview of the applicant's proposed internal controls, including *inter alia* —
 - (aa) an explanation of how the controls mitigate the risks to which the applicant is subject, and
 - (bb) a copy of the procedures manual designed to implement internal controls, or
 - (cc) an overview of the proposed contents of such a manual, and
 - (dd) an undertaking that such a manual will be completed by the time the applicant commences licenced activities, and
 - (vii) the applicant's code of conduct for staff, which shall include, *inter alia* —
 - (aa) the provisions regarding the holding or trading of securities,
 - (bb) other measures for avoiding staff conflicts of interest,
 - (cc) confidentiality provisions, or
 - (dd) the measures to be taken in the event of any breach of the code, and
 - (viii) where the applicant seeks to use agents or other third parties to provide the services for which it will be responsible, the applicant should provide details of the agents or other third parties and should supply a copy of the contract and, where appropriate and available, the service level agreement.

- (f) Each applicant shall provide evidence that it has the minimum financial resources required for the activities it proposes to undertake as specified in Financial Resources Requirements Rules.
- (g) Each applicant shall provide evidence that it has the required insurance policies in place as specified in Financial Resources Requirements Rules.

(3) Additional information requirements for applicants for a licence to act as securities brokers or dealers.

In addition to the general application requirements specified in paragraph 2, an applicant for a licence who proposes to be a securities broker or dealer shall provide the following information —

- (a) details of the securities exchanges, over the counter markets, central securities depositories with which it proposes to transact business;
- (b) the identity of the person or persons who have the right to execute trades on the securities exchange;
- (c) details of the proposed information technology and access to the trading network in compliance with the trading, clearing, delivery and settlement requirements of the securities exchange, central securities depository and central counterparty with which the applicant intends to transact business; or
- (d) a declaration that no person is a director or holds a beneficial interest either directly or indirectly in more than one member of a securities exchange.

(4) Additional information requirements for applicants for a licence to act as investments advisers and asset managers —

- (a) An applicant for a licence that proposes to be an investment adviser or asset manager shall inform the Regulatory Authority of the nature and scope of advice that is to be given or the assets that are to be managed, as the case may be. The information shall include —
 - (i) the categories of investment (whether collective investment undertakings or direct investment),
 - (ii) the asset classes (whether bonds, equities, derivatives, commodities or other asset classes),
 - (iii) the geographic scope (whether the securities institution shall be confined to investments in Botswana or in other countries and if the latter which countries),
 - (iv) the types of mandate (discretionary or non-discretionary), and
 - (v) the potential clients.
- (b) The applicant shall also provide information on the terms by which the nature and scope of the advice shall be disclosed.

2. INFORMATION TO ACCOMPANY A LICENCE RENEWAL APPLICATION

(1) Updated business plan which shall include —

- (a) list of controllers;
- (b) shareholding structure and group structure if any;
- (c) organisational structure; and
- (d) latest audited financial statements.

(2) Particulars of Board and Board Committees.

(3) Updated internal control procedures which shall include —

- (a) the manual and/or other policies setting out the procedures for the conduct of business and day to day operations;**
- (b) risk management policy;**
- (c) AML/CTF Policy; and**
- (d) complaints procedure.**

(4) Staff code of conduct which shall include-

- (a) provisions regarding the holding or trading of securities;**
- (b) measures in place to avoid staff conflicts of interest;**
- (c) confidentiality provisions; and**
- (d) disclosures of non-public information.**

SCHEDULE 3
(reg. 4 (8))

PERSONAL QUESTIONNAIRE

Please answer every question, writing “not applicable” if appropriate. If there is insufficient space, please continue on a separate sheet, identifying on the separate sheet the question for which the additional information is supplied.

1. Name of Respondent (Please give the name of the person completing the questionnaire, i.e. the key person or controller)

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2. Previous Names Change of name(s)/Surname(s); (Please list all previous name(s)/ surname(s) and reasons for the change of name)

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3. Name of Applicant (please give the name of the entity that is either a licensed market intermediary or an applicant for a licence)

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4. Proposed Capacity in which the Respondent is completing this questionnaire (e.g. key person or controller etc.)

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5. Current Private Address (Please give the full physical address and postal address)

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6. Date and Place of Birth (Please give the city and country)

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7. Passport/Identity Card Number (Please delete as appropriate)

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8. Nationality and Citizenship (if different from nationality)

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9. Contact Numbers (Please list your contact numbers and email address)

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10. Current Membership of professional bodies and year of admission (Please give name and address of the body, the nature of the membership and the date of admission)

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11. Present Occupation or employment (Please give the name and address of the employer, the nature of the employer's business, the position held and the date of appointment to the position)

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12. All other positions (Please state all the other occupations or positions that will continue to be held concurrently with the appointment as key person or controller of the market intermediary. Please state in each case the name, address and business of the entity with which the position is held, the nature of the position and the date of appointment)

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13. Shareholding (Please provide details of any other entities in which you are a shareholder, including the percentage of shareholding and the company's country of incorporation)

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14. Duties (Please describe the specific duties and responsibilities that you will assume, indicating whether you will be acting on the directions or instructions of any other person(s))

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15. Full Curriculum Vitae, (Please attach full CV, which gives the details requested at question 9 for each post or occupation and identify the posts or other occupations that were in the financial services sector and which are regarded as relevant experience for the proposed appointment. The CV should include the address of the company or companies which you have worked for, indicate the reason for leaving employment and include a minimum of 1 referee)

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16. Relevant Qualifications or Skills (Please give for qualifications, the name and address of the awarding body, the nature of the qualification and the date of the award)

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17. Bank details (Please provide the name and address of your main bank and state how long you have been a customer of that bank)

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.....
18. Previous regulatory history (Please give details of any regulatory authority that has exercised financial services supervisory authority over you or an entity with which you have been associated in the past 7 years. Include the company name, positions held and time period spent with the company)

.....
.....
19. Declaration (Please answer "Yes" or "No" to each of the following questions. If the answer is "Yes", please give full details on a separate sheet of paper.)

(a) Are you, through any previous or current occupation, employment or otherwise, precluded in any way from carrying on (fully or partially) the services which the company (identified in 1 above) offers?

YES/NO

(b) Have you at any time been convicted of any offence by any court in any jurisdiction?

YES/NO

(c) Have you ever been criticized, censured, suspended, fined or been the subject of any other disciplinary action by any banking supervisory or financial regulatory authority, professional body, government agency or stock exchange?

YES/NO

(d) Have you or any entity with which you are or have been associated ever been the subject of any disciplinary, legal, other investigations or other comparable proceedings, by any law enforcement, regulatory or professional body in any jurisdiction, whether or not there were any sanctions or other findings as a result?

YES/NO

- (e) Have you or any entity with which you are or have been associated ever been refused or have withdrawn any authorisation, licence, membership or equivalent authorisation to carry on a business activity in any jurisdiction?

YES/NO

- (f) Have you ever been subject to investigations, disciplinary proceedings or termination by an employer in any jurisdiction, or have you ever resigned from a position in any jurisdiction in circumstances where but for the resignation, there would likely have been an alternative sanction such as dismissal?

YES/NO

- (g) Have you or any entity with which you have been associated with ever been subject in any jurisdiction to bankruptcy, liquidation, insolvency proceedings or compulsory winding up as the case may be, or made other agreements or arrangements with creditors?

YES/NO

- (h) Are you engaged in any personal litigation in any jurisdiction with respect to the management of any business entity?

YES/NO

- (i) Are you aware of any other matter that may be material to an assessment by the Regulatory Authority of your competence, integrity or financial standing?

YES/NO

20. Certification

I certify that the above information is complete and correct to the best of my knowledge. I undertake to advise the Regulatory Authority of any material change that occurs at any time after this form is submitted and until such time as I am no longer connected to the applicant entity.

I authorise the Regulatory Authority to contact any person named herein to counter-verify the contents of this form. In so doing the Regulatory Authority may refer to the application.

Name of Respondent

Signature..... Date.....

SCHEDULE 4
(reg. 5 and 12 (1))

MINIMUM QUALIFICATIONS FOR KEY PERSONS

Securities Institution

Asset Manager

Chief Executive Officer, Directors,
partners or registered key personnel
with responsibility for the conduct of
the business

Compliance officer, Internal auditor

Minimum Qualifications

**CEO, compliance officer and internal auditor,
directors or any person carrying out similar
functions**

- A degree or diploma or certificate offered by an Institution of Higher Educational Learning
- A foreign qualification similar to qualifications above
- An industry or specific qualification
- Financial examination approved by Regulatory Authority
- An industry or professional/special qualifications (e.g. regulatory examinations) offered through a professional body recognised by the regulator or an accredited provider

Compliance Officer additional

- Hold a legal or business diploma or degree recognised by the Regulatory Authority and or have the relevant experience
- Have attained any specific financial services industry or compliance related certificate, diploma or degree recognised by the Regulatory Authority and or have the relevant experience or
- Be an accredited member of any organisation recognised by the Regulatory Authority as being appropriate for this purpose and or have the relevant experience
- At least have 3 years' experience in compliance or risk management function in the financial services industry

Internal Auditor additional

- Hold a legal or business diploma or degree recognised by the Regulatory Authority and or have the relevant experience
- Have attained any specific financial services industry or accounting related certificate, diploma or degree recognised by the Regulatory Authority and or have the relevant experience or
- Be an accredited member of any organisation recognised by the Regulatory Authority as being appropriate for the purpose and or have the relevant experience

Custodian

Chief Executive Officer
Directors
Compliance Officer
Internal Auditor

- At least have 5 years' experience in internal auditing or risk management function in the financial services industry

CEO, compliance officer and internal auditor, directors or any person carrying out similar functions

- A degree or diploma or certificate offered by an institution of higher education/learning
- A foreign qualification similar to qualifications above
- An industry or specific qualification
- Financial examination approved by the Regulatory Authority
- An industry or professional/special qualification (e.g. regulatory examinations) offered through a professional body recognised by the regulator or an accredited provider

Compliance Officer Additional

- Hold a legal or business diploma or degree recognised by the regulator, and/or have the relevant experience
- Have attained any specific financial services industry or compliance related certificate, diploma or degree recognised by the regulator as being and/or have the relevant experience
- Be an accredited member of any organisation recognised by the regulator as being appropriate for this purpose, and/or have the relevant experience
- At least have 3 years of experience in compliance or risk management function in the financial services industry;

Internal auditor additional

- Hold a legal or business diploma or degree recognised by the regulator and/or have the relevant experience
- Have attained any specific financial services industry or accounting related certificate, diploma or degree recognised by the regulator and/or have the relevant experience or
- Be an accredited member of any organisation recognised by the regulatory Authority as being appropriate for this purpose and/or have the relevant experience
- At least have 5 years of experience in internal auditing or risk management function in the financial services industry.

Investment Advisor

Chief Executive Officer
Directors, partners or registered
key personnel with responsibility
or the conduct of the business
Compliance Officer
Internal Auditor

**CEO, compliance officer and internal auditor,
directors or any person carrying out similar
functions**

- A degree or diploma or certificate offered by an institution of higher education/learning
- A foreign qualification similar to qualifications above
- An industry or specific qualification
- Financial examination approved by the Regulatory Authority
- An industry or professional/special qualification (e.g. regulatory examinations) offered through a professional body recognised by the regulator or an accredited provider

Compliance Officer Additional

- Hold a legal or business diploma or degree recognised by the regulator, and/or have the relevant experience
- Have attained any specific financial services industry or compliance related certificate, diploma or degree recognised by the regulator as being and/or have the relevant experience
- Be an accredited member of any organisation recognised by the regulator as being appropriate for this purpose, and/or have the relevant experience
- At least have 3 years of experience in compliance or risk management function in the financial services industry

Internal auditor additional

- Hold a legal or business diploma or degree recognised by the regulator and/or have the relevant experience
- Have attained any specific financial services industry or accounting related certificate, diploma or degree recognised by the regulator and/or have the relevant experience or
- Be an accredited member of any organisation recognised by the regulator as being appropriate for this purpose and/or have the relevant experience
- At least have 5 years of experience in internal auditing or risk management function in the financial services industry.

Securities broker or dealer

Chief Executive Officer
Directors, partners or registered

**CEO, compliance officer and internal auditor,
directors or any person carrying out similar
functions**

key personnel with responsibility
for the conduct of the business
Compliance Officer
Internal Auditor

- A degree or diploma or certificate offered by an institution of higher education/learning
- A foreign qualification similar to qualifications above
- An industry or specific qualification
- Financial examination approved by the Regulatory Authority
- An industry or professional/special qualification (e.g. regulatory examinations) offered through a professional body recognised by the regulator or an accredited provider or

Compliance Officer Additional

- Hold a legal or business diploma or degree recognised by the regulator, and/or have the relevant experience
- Have attained any specific financial services industry or compliance related certificate, diploma or degree recognised by the regulator as being and/or have the relevant experience
- Be an accredited member of any organisation recognised by the regulator as being appropriate for this purpose, and/or have the relevant experience
- At least have 3 years of experience in compliance or risk management function in the financial services industry

Internal auditor additional

- Hold a legal or business diploma or degree recognised by the regulator and/or have the relevant experience
- Have attained any specific financial services industry or accounting related certificate, diploma or degree recognised by the regulator and/or have the relevant experience or
- Be an accredited member of any organisation recognised by the regulator as being appropriate for this purpose and/or have the relevant experience
- At least have 5 years of experience in internal auditing or risk management function in the financial services industry.

MADE this 9th day of March, 2017.

ONTEFETSE K. MATAMBO,
*Minister of Finance and Economic
Development.*