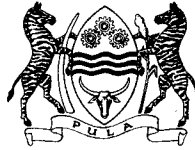


# BANKING (AMENDMENT) ACT, 2018

No. 10



of 2018

## ARRANGEMENT OF SECTIONS

### SECTION

1. Short title
2. Amendment of section 2 of Cap. 46:04
3. Amendment of section 21 of the Act
4. Amendment of section 43 of the Act

**An Act to amend the Banking Act, which provides for the licensing, control and regulation of banks, and for matters incidental thereto.**

*Date of Assent:* 29.06.18

*Date of Commencement:* ON PUBLICATION

ENACTED by the Parliament of Botswana.

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| 1. This Act may be cited as Banking (Amendment) Act, 2018.  | Short title  |
| 2. Section 2 of the Banking Act (in this Act referred to as “the Act”) is amended by inserting, in their correct alphabetical order, the following new definitions —<br>““Agency” has the meaning assigned to it under the Financial Intelligence Act;<br>“investigatory authority” has the meaning assigned to it under the Financial Intelligence Act;<br>“money laundering” has the meaning assigned to it under the Proceeds and Instruments of Crime Act.”.  | Amendment of section 2 of Cap. 46:04<br>Cap. 08:07<br>Cap. 08:03 |
| 3. Section 21 of the Act is amended —<br>(a) by deleting subsection (4); and<br>(b) in subsection (5), by deleting the words “or that fails to notify the Central Bank of any suspicious transaction under subsection (4).”.  | Amendment of section 21 of the Act                               |
| 4. Section 43 of the Act is amended —<br>(a) in subsection (2), by inserting immediately after paragraph (h), the following new paragraphs —<br>“(i) the information is required by the Agency, in accordance with the provisions of the Financial Intelligence Act;<br>(j) the information is being sought for commercial reasons and is required by another bank in relation to —<br>(i) the opening of an account,<br>(ii) the provision of any correspondent banking services:<br>Provided that enhanced due diligence measures shall be applied by a banker to high-risk cross-border correspondent banking relationships, or<br>(iii) a wire transfer transaction for a customer; | Amendment of section 43 of the Act                               |

- (k) the bank is required to provide additional information to the Agency on a suspicious transaction report that it has filed with the Agency, in accordance with the provisions of the Financial Intelligence Act;
  - (l) the customer has passed away, testate or intestate, and the information is required by the administrator or executor of his estate, in relation to succession of the estate;
  - (m) the Central Bank has consented, in writing, to the disclosure of the information; or
  - (n) the disclosure of the information is required by this Act or by any other law.”;
- (b) in subsection (4), by substituting for that subsection the following new subsection —

“(4) An official of a foreign bank or an official of a foreign central bank, or any other entity or agency, by whatever name called, which has the responsibility of supervising that bank and who wishes to conduct an audit, examination or inspection of an affiliate of that bank in Botswana, shall not do so without obtaining the prior written authorization of the Central Bank, and in any event shall be subject to the duty of confidentiality imposed under subsection (1) and to any conditions that the Central Bank may impose.”;
- (c) by inserting immediately after subsection (4), the following new subsection —

“(4A.) The Central Bank may conduct an audit, examination or inspection under subsection (4) jointly with an official of a foreign bank or an official of a foreign central bank, or any other entity or agency, by whatever name called, which has the responsibility of supervising a bank in a foreign country, for the purpose of assisting such official, entity or agency in exercising any functions corresponding to those of the Central Bank under this Act.”;
- (d) in subsection (10), by substituting for that subsection the following new subsection —

“(10) Nothing in this section shall preclude —

  - (a) the disclosure of information by the Central Bank, under conditions of confidentiality, to a central bank in a foreign country or to any other entity or agency, by whatever name called, which has the responsibility of supervising a bank in a foreign country, for the purpose of assisting it in exercising functions corresponding to those of the Central Bank under this Act; or
  - (b) the exchange of information by the Central Bank, under conditions of confidentiality, with any other domestic entity or agency of the Government, including a regulatory authority, that has functions related to the regulation or supervision of financial services, financial crime or taxation.”;

- (e) in subsection (11), by substituting for that subsection the following new subsection —  
“(11) For the purposes of subsection (1), “professional relationship” includes a relationship between a bank and a service provider, including a computer bureau or a printer, being a relationship that was entered into in the normal course of business or that the Central Bank has approved of.”; and
- (f) by inserting immediately after subsection (11), the following new subsection —  
“(11A.) For the purposes of this section —  
“correspondent banking services” means the provision of banking services by one bank to another bank, where neither of the banks is a shell bank or has a relationship with a shell bank;  
“physical presence” means the presence of board members of a bank and staff comprising of senior management of a bank within a country:  
Provided that the existence of a local agent acting on behalf of a bank or the presence of any employees who are not in management positions shall not constitute physical presence; and  
“shell bank” means a bank which has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial group that is subject to effective supervision.”.

PASSED by the National Assembly this 11th day of June, 2018.

BARBARA N. DITHAPO,  
*Clerk of the National Assembly.*