

**CHAPTER 46:06 - NATIONAL CLEARANCE AND SETTLEMENT SYSTEMS: SUBSIDIARY
LEGISLATION
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National Clearance and Settlement Systems Regulations

NATIONAL CLEARANCE AND SETTLEMENT SYSTEMS REGULATIONS

(under section 27)

(18th February, 2005)

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S.I. 10, 2005.

1. Citation

These Regulations may be cited as the National Clearance and Settlement Systems Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"acceptable collateral" means unencumbered assets including Bank of Botswana Certificates, Government bonds, treasury bills and such other liquid instruments as may be approved by the Central Bank, pledged by a clearing bank as collateral for advances made by the Central Bank;

"banking business" has the meaning assigned to it in the Banking Act;

"certificate" means a certificate of recognition of a clearance and settlement;

"clearing bank" means a licensed financial institution which participates in a clearing and settlement system; and

"clearance and settlement system operator" means a person contracted to provide specialised services to a clearance and settlement system.

3. Application for a certificate of recognition

(1) A person who makes an application for a certificate of recognition of a clearance and settlement system to the Central Bank shall do so in Form 1 set out in the Schedule.

(2) An application under subregulation (1) shall be accompanied by an application fee of P10,000.

(3) Companies that were providing payment intermediation services prior to the commencement of the Act may make an application under this regulation within three months of the date of commencement of the Act.

(4) An application under subregulation (3) shall be accompanied by confirmation of membership by a minimum of three financial institutions registered under the Banking Act and conducting banking business.

4. Conditions of recognition

Notwithstanding the provisions of section 3 of the Act, the Central Bank shall not issue a certificate unless it is satisfied that—

- (a) the proposed clearance and settlement system concerns the processing of transfer instructions;
- (b) the participants of the proposed clearing and settlement system are entitled to conduct the business of payment intermediation;
- (c) the business plan proposed in the clearance and settlement system is adequate in terms of volume and values of expected market share; and
- (d) adequate risk management safeguards have been put in place to prevent unsecured exposures amongst participants.

5. Applicant to be incorporated in Botswana

The Central Bank shall issue a certificate of recognition under regulation 6 only to companies incorporated in Botswana.

6. Certificate of recognition

(1) The Central Bank shall, where it is satisfied that an application meets the requirements of section 3 (1) and (3) of the Act and regulations 3, 4 and 5 hereof, issue, to the applicant, a certificate of recognition of a clearance and settlement system in Form 2 set out in the Schedule.

(2) A certificate issued under subregulation (1) shall, unless previously renewed or revoked, expire at the end of a period of 12 months from the date of issue.

(3) Where the Central Bank is not satisfied that the applicant meets the requirements of section 3 (1) and (3) of the Act and regulations 3, 4 and 5 hereof, it shall reject the application and notify the applicant, in writing, stating the reasons for the rejection.

7. Investigation of unrecognised system, etc.

The Central Bank may investigate allegations of—

- (a) operating or participating in an unrecognised clearance and settlement system; and
- (b) any settlement intermediation in contravention of section 17 of the Act.

8. Renewal of certificate

(1) A management body may make an application to the Central Bank for the renewal of a certificate that has not been revoked.

(2) An application under subregulation (1) shall be made in Form 3 set out in the Schedule and shall be accompanied by a renewal fee of P10,000.

(3) Where an application for renewal is made after a period not exceeding 12 months after the expiry of a certificate, the Central Bank may renew the certificate subject to the payment of a penalty by the management body.

(4) The penalty payable in accordance with subregulation (3) shall be a sum equal to one quarter of the renewal fee multiplied by the number of periods of three months or less which has elapsed since the date on which the validity of the certificate expired, calculated to the nearest pula.

(5) An application for the renewal of a certificate that expired 12 months or more prior to the application for renewal shall be treated as an application for a new certificate and the provisions of regulations 3, 4 and 5 shall apply.

9. Transfer of certificate

A management body shall neither transfer nor cede a certificate without the prior written

approval of the Central Bank.

10. Surrender of certificate

A management body may surrender its certificate to the Central Bank by giving the Central Bank 90 days notice, in writing, of its intention to voluntarily cease operating a clearance and settlement system.

11. Display of certificate

(1) A management body shall display, in a prominent place on its business premises, the certificate.

(2) A management body that contravenes subregulation (1) shall be guilty of an offence and liable to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both.

12. Duties of the management body

A management body shall—

- (a) submit debit and credit obligations, in respect of its participants, to the Central Bank, together with an electronic schedule of the individual gross payment details constituting net payment obligations;
- (b) notify the Central Bank of any changes in the shareholding or ownership structure of its clearance and settlement system operator including any direct or indirect shareholding or other interest of any financial institution registered in Botswana;
- (c) maintain acceptable collateral with the Central Bank in the form of sufficient balances in the clearing accounts or holding of other liquid instruments;
- (d) submit monthly statistical reports to the Central Bank on the last day of each calendar month;
- (e) submit to the Central Bank its constitution, rules and procedure and service level agreements; and
- (f) follow any instructions issued under regulation 16.

13. Constitution of management body

A management body shall have a constitution defining the terms of engagement of its clearance and settlement system including—

- (a) the rules governing the appointment of office bearers, procedures for conducting meetings and voting at meetings;
- (b) the duties and liabilities of participants;
- (c) the conditions of participation and breach;
- (d) the transaction costs and management fees payable;
- (e) the terms and procedures for dispute resolution; and
- (f) the prohibited operations.

14. Rules and procedure of management body

A management body shall have rules and procedures for conducting business including—

- (a) clearing procedures and clearing times;
- (b) settlement arrangements and provision for collateral;
- (c) agreement on finality of transfers;
- (d) rules governing the return of items; and
- (e) rules governing management of gridlock.

15. Service level agreements of management body

A management body shall have service level agreements concerning clearing and settlement arrangements including—

- (a) agreements between the management body and participants;
- (b) agreements between the management body and the settlement system operator;
- (c) bilateral agreements between the management body and the nominated settlement authority; and

(d) bilateral agreements between participants and the settlement authority.

16. Instructions by Central Bank

The Central Bank shall guide the management body by issuing operating procedures and standards regarding—

- (a) the minimum clearing arrangements and clearing times to be observed by all clearance and settlement systems;
- (b) the requirements for the safety and security of any system used by the clearance and settlement system;
- (c) rules and requirements for the retention of records;
- (d) the auditability and tracking of individual items; and
- (e) the requirements for the stability of systems including arrangements for disaster recovery and business continuity.

17. Settlement services

(1) The Central Bank shall be the sole provider of settlement services.

(2) Without prejudice to the generality of subregulation (1), the Central Bank may, on the written application of a clearing bank, authorise a clearing bank to provide settlement services in respect of the net payment obligations generated by a specified clearing and settlement system where—

- (a) all the participants of the clearing and settlement system are customers of the clearing bank authorised to provide such settlement services;
- (b) the clearing bank so authorised is not a participant in the clearing and settlement system to which it is providing the settlement services, and shall not become a participant of the clearing and settlement system without—
 - (i) the written approval of the Central Bank, and
 - (ii) terminating its provision of settlement services to the clearing and settlement system;
- (c) the clearing and settlement system provides clearing services in a single specialised market; and
- (d) the gross payment obligations of the clearing and settlement system does not exceed 25 per cent of the total value of transactions generated by the clearing bank.

18. Offence and penalty

A person who—

- (a) wilfully makes a false statement in any form or other document under these Regulations;
 - (b) forges a certificate;
 - (c) alters or erases any part of a certificate or any entry lawfully made thereunder;
 - (d) produces or uses a certificate which is forged or which, to his knowledge, has been unlawfully altered;
 - (e) produces or uses a certificate in the name of some other person or of a fictitious person; or
 - (f) forges any document for the purposes of obtaining a certificate,
- shall be guilty of an offence and liable to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both.

SCHEDULE

Form 1

APPLICATION FOR RECOGNITION OF CLEARANCE AND SETTLEMENT SYSTEM

(Reg. 3(1))

BANK OF BOTSWANA

1. Name of applicant		
Residential address:	Postal address:	Mailing address:

Telephone No:	Fax No:.....	E-mail address:.....
Business:		
Mobile:		
2. Proposed trading name		
3. Current areas of business operations of the applicant (if any)		
4. Proposed nature of business of recognised system (please attach your business plan)		
5. Proposed list of members		
6. Contact persons and positions		

(i)	(ii)	(iii)

7. Details of share holding/Directors (use additional sheet if extra space is required)			
	(i)	(ii)	(iii)
Name:			
Physical address:			
Telephone No:			
Fax No:			
8. Current assets and liabilities (attach a recent balance sheet/business plan)			
9. Sources of initial capital			
10. External auditors			
11. Links with any financial institutions registered in Botswana (through shareholdings, shared directorships, etc.)			
12. Criminal convictions of directors			
13. Convictions/charges of directors under tax/banking/commercial/law, etc.			

I the undersigned, acting as a principal/promoter, declare that the information stated above is true.

Signed:

DATED this day of 20

Dues Information		
Payment included for non-refundable fee		P
Payment included for license fee		P
TOTAL		P
FOR OFFICIAL USE		
(i)	The nature of the proposed business concerns the transmission of transfer instructions.	
(ii)	The nature of proposed clearing arrangements	
(iii)	Proposed list of members	
(iv)	Expected market share (volumes and values)	
(v)	Broad description of business systems/applications to be used	
(iv)	Sources of initial capital including exposure to financial institutions	
APPROVAL		

**FORM 2
CERTIFICATION OF RECOGNITION OF A CLEARANCE AND SETTLEMENT SYSTEM**

(Reg. 6 (1))
BANK OF BOTSWANA

<p>This is to certify that</p> <p>.....</p> <p>.....</p> <p>incorporated under the Companies Act (Cap. 42:01) registration number is hereby recognised to operate a clearing and settlement system under section 3 of the National Clearance and Settlement Systems Act (No. 5 of 2003), subject to compliance with the provisions of all applicable laws and regulations and such other policies and directives as may be issued from time to time by the Bank of Botswana.</p> <p>Signed at Gaborone thisday of, 20.....</p> <p align="right">..... Governor</p>
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**Form 3
APPLICATION FOR RENEWAL OF CERTIFICATE FOR RECOGNITION OF CLEARANCE AND SETTLEMENT SYSTEM**

(Reg. 8 (2))
BANK OF BOTSWANA

1. Name of applicant		
Residential address:	Postal address:	Mailing address:
Telephone No: Business:	Fax No:.....	E-mail address:.....

Mobile:		
2. Trading name		
3. Current areas of business operations of the applicant (if any)		
4. Nature of business of recognised system (please attach your business plan)		
5. List of members		
6. Contact persons and positions		
(i)	(ii)	(iii)
7. Details of share holding/Directors (use additional sheet if extra space is required)		
(i)	(ii)	(iii)
Name:		
Physical address:		
Telephone No:		
Fax No:		
8. Current assets and liabilities (attach a recent balance sheet/business plan)		
9. Sources of initial capital		
10. External auditors		
11. Links with any financial institutions registered in Botswana (through shareholdings, shared directorships, etc.)		
12. Criminal convictions of directors		
13. Convictions/charges of directors under tax/banking/commercial/law, etc.		

I ----- the undersigned, acting as a principal/promoter, declare that the information stated above is true.

Signed: -----

DATED this ----- day of ----- 20 -----

Dues Information		
Payment included for non-refundable fee		P
Penalty fee (if any)		P
TOTAL		P
FOR OFFICIAL USE		
(i) The nature of the business concerns the transmission of transfer instructions		
(ii) The nature of clearing arrangements		
(iii) The list of members		
(iv) Expected market share (volumes and values)		
(v) Broad description of business systems/applications to be used		
(iv) Sources of initial capital including exposure to financial institutions		

APPROVAL		