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Statutory Instrument No. 103 of 2019

FINANCIAL INTELLIGENCE ACT
(Act No. 11 of 2019)

FINANCIAL INTELLIGENCE ACT (COMMENCEMENT DATE) ORDER, 2019
(Published on 2nd September, 2019)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Commencement of Act No. 11 of 2019

IN EXERCISE of the powers conferred on the Minister of Finance and Economic Development by section 1 of the Financial Intelligence Act, 2019, the following Order is hereby made —

- | | |
|------------------------------------|---|
| Citation | 1. This Order may be cited as Financial Intelligence Act (Commencement Date) Order, 2019. |
| Commencement of Act No. 11 of 2019 | 2. The Financial Intelligence Act shall come into operation on 4th September, 2019. |

MADE this 2nd day of September, 2019.

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

Statutory Instrument No. 102 of 2019

TRUST PROPERTY CONTROL (AMENDMENT) ACT
(Act No. 10 of 2019)

TRUST PROPERTY CONTROL (AMENDMENT) ACT
(COMMENCEMENT DATE) ORDER, 2019
(Published on 2nd September, 2019)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Commencement of Act No. 10 of 2019

IN EXERCISE of the powers conferred on the Minister of Defence, Justice and Security by section 1 of the Trust Property Control (Amendment) Act, 2019, the following Order is hereby made —

1. This Order may be cited as Trust Property Control (Amendment) Act Citation
(Commencement Date) Order, 2019.
2. The Trust Property Control (Amendment) Act shall come into operation Commencement
on 4th September, 2019. of Act No. 10 of
2019

MADE this 2nd day of September, 2019.

SHAW KGATHI,
Minister of Defence, Justice and Security.

Statutory Instrument No. 103 of 2019

FINANCIAL INTELLIGENCE ACT
(Cap. 08:07)

FINANCIAL INTELLIGENCE REGULATIONS, 2019
(Published on 4th September, 2019)

ARRANGEMENT OF REGULATIONS

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SCHEDULE

IN EXERCISE of the powers conferred on the Minister of Finance and Economic Development by section 57 of the Financial Intelligence Act, the following Regulations are hereby made —

PART I — *Preliminary*

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|----------------|---|
| Citation | 1. These Regulations may be cited as the Financial Intelligence Regulations, 2019. |
| Interpretation | 2. In these Regulations, unless the context otherwise requires —
“batch file” means a wire transfer comprising a number of wire transfers that are sent to the same financial institution and which may or may not be ultimately intended for different persons; |
| Cap. 42:01 | “close company” has the same meaning assigned to it under the Companies Act;
“company” has the same meaning assigned to it under the Companies Act;
“document” means an original document or copy of the original document certified to be a true copy by a commissioner of oaths;
“entity” means an association, a government department, a non-governmental organisation, an international organisation, an intergovernmental organisation and includes a legal person other than a Botswana company or close company or a foreign company;
“establishing” in relation to establishing the identity of a customer in terms of these Regulations means a two tier process consisting of ascertainment and verification referred to in subregulation (2); and “establish” shall be construed accordingly; |

- “financial institution” includes a bank as defined under the Banking Act, a building society as defined under the Building Societies Act or a non-bank financial institution as defined under the Non-Bank Financial Institutions Regulatory Authority Act; Cap. 46:04
Cap. 42:03
Cap. 46:08
- “foreign company” has the same meaning assigned to it under the Companies Act;
- “identity card” has the same meaning assigned to it under the National Registration Act; Cap. 01:02
- “manager” in respect of a local or foreign company, means the natural person who is the principal executive officer of the company by whatever name he or she may be designated and whether or not he or she is a director of that company;
- “payable through account” means a transaction account opened at a depository institution by a foreign financial institution through which foreign financial institution’s customers engage, either directly or through sub-accounts, in banking activities and transactions in the country where the account was opened;

PART II — *Establishment and Ascertainment of Information*

3. For the purposes of section 14 (1) (b) of the Act, a specified party or accountable institution shall conduct customer due diligence for a transaction of an amount equal to or above P10 000. Conduct of customer due diligence

4. (1) for the purposes of establishing the identity of a customer under section 16 of the Act, a specified party or accountable institution shall comply with these Regulations regarding ascertainment and verification of identity of a customer. Establishing identity of customer

(2) Where a specified party or accountable institution is not satisfied with the information received from a customer, the specified party or accountable institution shall —

- (a) not open an account for the customer;
- (b) not commence a business relationship with the customer;
- (c) not perform the transaction; and
- (d) consider making a suspicious transaction report in relation to the customer.

(3) Where a specified party or accountable institution cannot, establish the identity of a customer due to impossibility or reasonable impracticability, a specified party or accountable institution shall —

- (a) as far as it is reasonably possible, take steps to ascertain or verify such identity; and
- (b) without delay give written notice to the Agency of such impossibility or impracticability indicating any alternative measures used to identify or verify the identity.

(4) The steps to be taken for establishing the identity of a customer under section 16 of the Act may be completed by the employee or other representative of the specified party, but the specified party shall take reasonable steps to ensure that the person is sufficiently trained and resourced to ensure compliance with those procedures.

(5) The authority to act on behalf of another under section 16 of the Act shall be in Form A set out in the Schedule.

(6) For purpose of section 16 (5) of the Act , a specified party or accountable institution shall when verifying the identity of an existing customer, take into account —

- (a) any indication that the identity of the customer, or the customer's beneficial owner, has changed;
- (b) any transaction which is not consistent with the specified or accountable institution's knowledge of the customer;
- (c) any change in the purpose or intended nature of the specified or accountable institution's relationship with the customer; and
- (d) any other matter which might affect the specified or accountable institution's assessment of the financial offence risk in relation to the customer.

(7) Where the beneficial owner is a legal person or legal arrangement, the specified party or accountable institution shall take reasonable measures to understand the ownership and control structure of that legal person or legal arrangement.

Ascertainment
of information
concerning
natural persons

5. (1) For purposes of ensuring compliance with the Act, where a specified party seeks to establish the identity of a natural person, the specified party shall ascertain the following in relation to the natural person —

- (a) the person's full name;
- (b) the person's nationality;
- (c) where the person is a citizen or resident of Botswana, the identity card number and date of birth of such person;
- (d) where the person is not citizen or resident of Botswana the passport number and date of birth of such person;
- (e) the person's residential address in Botswana where the person is a citizen or resident of Botswana;
- (f) where the person is not a citizen or resident of Botswana, the residential address in his or her country of domicile and physical address in Botswana;
- (g) the person's contact details;
- (h) the person's occupation or source of income;
- (i) nature and location of business activities, if any; and
- (j) the source of funds involved in the transaction.

(2) If the person referred to in subregulation (1) does not have the legal capacity to establish a business relationship or conclude a transaction without the assistance of another person, the specified party shall ascertain the particulars referred to in subregulation (1) (a) to (f) in relation to the person who provided such assistance.

Ascertainment
of information
concerning
body corporate

6. (1) For the purposes of ensuring compliance with the Act, where a specified party seeks to establish the identity of a body corporate wishing to conclude a business relationship or transaction with that specified party, the specified party shall ascertain —

- (a) the registered name and registration number of the body corporate;
- (b) if the body corporate is a foreign company, the name under which such body corporate conducts business in the country in which the body corporate is incorporated;
- (c) if the body corporate is a foreign company that conducts business in Botswana using a name other than the name specified under paragraph (a) or (b), the name the body corporate uses in Botswana;

- (d) if the body corporate is a foreign company, the registered address from which the body corporate operates in the country where it is incorporated or if it operates from multiple addresses in that country, the address of its head office;
- (e) if the body corporate operates within Botswana, the address from which it operates in Botswana, or if it operates from multiple addresses within Botswana, the address of the office seeking to establish a business relationship or to conclude a transaction with the specified party;
- (f) the nature of business of the body corporate;
- (g) the income tax and value added tax registration numbers of the company or close company issued by Botswana Unified Revenue Service, or if incorporated outside Botswana, such numbers issued by a similar revenue office in the country in which it is incorporated if such numbers were issued; and
- (h) the particulars referred to in regulation 5 (1) (a), (b) or (c) whichever is applicable concerning —
 - (i) the manager of the company, or in the case of a close company, each member, or
 - (ii) each natural person who purports to be authorised to establish a business relationship or conclude a transaction with a specified party or accountable institution on behalf of a body corporate;
- (i) whether a copy of the resolution of the Board authorising the account signatories is provided;
- (j) whether copies of the powers of attorney or any other authority, affecting the operation of the account and given by the directors in relation to the company, are provided; and
- (k) whether the records submitted are sufficient to permit a reconstruction of individual transactions, including the amounts and types of currency involved, if any, so as to provide, if necessary, evidence for prosecution of criminal behaviour.

7. A specified party shall ascertain, in respect of any entity —

- (a) the registered name and registration number of the entity, if registered;
- (b) the office or place of business, if any, from which the entity operates;
- (c) the entity's principal activities;
- (d) the full name, residential address if available, and any one of the following details of the natural person purporting to be authorised to establish a business relationship or conclude a transaction with the specified party on behalf of the entity, the person's —
 - (i) identity card number and date of birth, where the natural person is a citizen of Botswana, or
 - (ii) passport number and date of birth, where the natural person is not a citizen or resident of Botswana.

Ascertainment
of information
concerning
other entities

8. A specified party shall ascertain in respect of a partnership, the partnership's —

- (a) registered name;
- (b) office or place of business, if any, or where applicable, its registered address;
- (c) registration number; and

Ascertainment
of information
concerning
partnerships

- (d) full name, residential address if available, and any one of the following details of each partner, including silent partners in a limited partnership and any other natural person purporting to be authorised to establish a business relationship or conclude a transaction with the specified party on behalf of the partnership —
 - (i) the identity card number and date of birth, where the natural person is a citizen of Botswana, or
 - (ii) the passport number and date of birth, where the natural person is a not a citizen or resident of Botswana.

Ascertainment
of information
concerning
trusts

- 9.** (1) A specified party shall ascertain in respect of a trust —
- (a) its registered name and the registration number, if any;
 - (b) the country where it was set up, if the trust was set up in a country other than Botswana;
 - (c) the management company of the trust, if any;
 - (d) the full name of the trust if not registered;
 - (e) the residential address, contact details and particulars listed in the order of preference under paragraph (f) of each natural person who purports to be authorised to establish a business relationship or to conclude a transaction with the specified party on behalf of the trust; and
 - (f) the full name of the trustee, beneficiary referred to by name in the trust deed or other founding instrument in terms of which a trust is created and the founder of the trust and any of the following details —
 - (i) identity card number and date of birth where the person is a citizen of Botswana, or
 - (ii) passport number and date of birth where the person is not a citizen or resident of Botswana.

(2) If the beneficiaries of the trust are not referred to by name in the trust deed or founding instrument in terms of which the trust is created, the specified party shall follow the procedure in regulation 4 (3) to ascertain the identity of the beneficiaries.

Application of
enhanced due
diligence
measures

10. (1) When assessing whether there is a risk of commission of a financial offence, and the extent of measures to be taken to manage and mitigate such risk, in terms of section 17 (1) (a) of the Act, a specified party or accountable institution shall take into account —

- (a) customer risk factors including whether —
 - (i) the customer is a legal person or legal arrangement that holds personal assets,
 - (ii) the customer is a company that has nominee shareholders or shares in bearer form,
 - (iii) the customer is business that is cash intensive, or
 - (iv) the corporate structure of the customer is unusual or excessively complex given the nature of the company;
- (b) product, service transaction or delivery channel risk factors including whether —
 - (i) the product involves private banking,
 - (ii) the product or transaction is the one which might favour anonymity,
 - (iii) the situation involves non-face to face business relationships or transactions, without proper safeguards, such as electronic signatures,

- (vi) payments will be received from unknown or unassociated third parties, or
- (v) new products, new business practices, new business procedures or new delivery mechanisms, are involved.

(2) The enhanced due diligence measures taken by a specified party or accountable institution in terms of section 17 (1) (e) of the Act shall include —

- (a) examining the background and purpose of the transaction; and
- (b) increasing the degree and nature of monitoring of business relationships made, to determine whether the transaction or business relationship is suspicious.

11. (1) Upon establishment of the identity of a beneficiary of a life insurance service in terms of section 19, a specified party or accountable institution shall where —

- (a) the beneficiary is a natural person, legal person or arrangement, keep the full name of the person, legal person or arrangement; or
- (b) the beneficiaries are designated by specified characteristics, as a class or any other way, obtain sufficient information concerning the beneficiaries to satisfy itself that it will be able to verify the identity of a beneficiary at the time of the payout.

(2) A specified party or accountable institution shall verify the identity of a beneficiary at the time of the payout.

(3) Where a specified party or accountable institution becomes aware that all or part of the rights under the insurance policy are being, or have been assigned to a new beneficiary, the specified party or accountable institution shall establish the identity of the new beneficiary as soon as possible after becoming aware of the assignment and at the time of the payout.

12. When assessing whether the risk of commission of a financial offence is low, in terms of section 24 (1) of the Act, a specified party or accountable institution shall take into account —

- (a) customer risk factors including, whether the customer is —
 - (i) a public administration, or a statutory body,
 - (ii) an individual resident in a low risk jurisdiction,
 - (iii) subject to regulation under this Act, or
 - (v) a company whose securities are listed on a regulated market;
- (b) product service, transaction or delivery channel risk factors, including whether the product or service is —
 - (i) a life insurance policy for which the premium is low,
 - (ii) an insurance policy for pension scheme which does not provide for an early surrender option, and cannot be used as collateral, or
 - (iii) a product where the risk of commission of a financial offence is managed; and
- (c) jurisdiction risk factors, including whether the country in which the customer is resident, established or registered or operates is not a high risk jurisdiction.

Additional enhanced due diligence measures relating to beneficiaries of life insurance services

Application of simplified due diligence measures

PART III — *Verification of Information*

13. (1) Any information or particulars ascertained by a specified party or accountable institution as required under Part II of these Regulations shall, be verified by the specified party or accountable institution by comparing such information obtained with the applicable and corresponding independent and reliable information set out in the following documentation —

Verification of information

- (a) a trust instrument or deed of trust;
- (b) a national identification document issued by the person's country of origin, domicile or citizenship;
- (c) a passport;
- (d) a birth certificate;
- (e) any document of authorisation to act on behalf of such person, company, trust or other entity;
- (f) a constitution or close company's certificate of incorporation, which shall be regarded as sufficient evidence that the body corporate has complied with the law to which it is subject, founding statement or partnership agreement, if any, or other similar documentation including notification of situation of registered and business address; or
- (g) any reliable document, data or information that reasonably serves to verify any of the information obtained by the specified party or accountable institution in ascertaining the information set out in Part II of these Regulations.

(2) If it is believed to be reasonably necessary, taking into account any guidance notes concerning the verification of identity that may apply to a specified party, the specified party shall, in addition to the verification undertaken in terms of subregulation (1), verify any of the information or particulars ascertained as part of establishing identity by comparing such particulars with any applicable and corresponding reliable document, data or information.

Verification in
absence of
contact with
person

14. (1) Where a specified party or accountable institution ascertained Information, in terms of these Regulations, about a customer without contact in person, with the natural person or with the representative of the customer, the specified party or accountable institution shall take reasonable steps to ensure the existence and to establish the identity of that customer, taking into account any guidance notes concerning the verification of identities that may apply to that specified party or accountable institution.

(2) Where the customer referred to under subregulation (1) is a natural person, the specified party or accountable institution shall ensure the existence and to establish the identity of that customer by —

- (a) obtaining a reference from a well known professional, an employer of the customer of the specified party or accountable institution, or a known customer of the specified party or accountable institution who knows the natural person; or
- (b) requesting an original recent council rates or utility bill receipt.

Maintenance of
up-to-date
particulars

15. (1) A specified party or accountable institution shall take reasonable steps, taking into account any guidance notes which may apply to that specified party in respect of an existing business relationship, to maintain up-to-date information relating to particulars which are susceptible to change and which particulars were ascertained under these Regulations or the Act for the purpose of establishing identity.

(2) A specified party or accountable institution shall update periodically particulars under subregulation (1) based on any risk assessment conducted in terms of section 11 of the Act.

Customer
acceptance
policy

16. (1) A specified party or accountable institution shall ensure that a customer acceptance policy internal rules, programmes, policies, or procedures that are to be implemented and maintained in terms of section 12 (1) (e) of the Act are comprehensive, approved by senior management and includes clear guidelines and criteria as to —

- (a) the information required and methods to be used in ascertaining and verifying the identity and acceptance of current and prospective customers in accordance with these Regulations; and
 - (b) any guidance notes which shall set out international standards to be met in respect of customer due diligence. (R.1.11)
- (2) The information required as part of the specified party or accountable institution's customer acceptance policy shall include —
- (a) relevant information pertaining to the customer's background;
 - (b) the customer's country of origin and residence;
 - (c) any linked accounts that the customer or any other party to the business relationship or transaction may have with the specified party;
 - (d) the nature and location of the customer's business activities as well as the nature and source of personal income;
 - (e) the volume or expected volume of transactions in which the customer engages or is suspected to engage in;
 - (f) the customer's business partners; and
 - (g) any other information that may assist the specified party or accountable institution to determine whether the business relationship with the customer may be vulnerable to money laundering or proceeds of any other crime.

PART IV — *Keeping of Records*

17. (1) A specified party shall in addition to its responsibility under section 27 of the Act to keep records, keep a copy of each report sent to the Agency in terms of section 33 of the Act as well as copies of records and documents supporting the report in a manner that allows any additional information requested under section 46 of the Act to be forwarded without delay to the person requesting the additional information.

Keeping of records

(2) The Agency shall keep a copy of each report received under section 46 of the Act.

(3) Every copy, record or document referred to in subregulations (1) and (2) shall be kept —

- (a) for a period of at least 20 years from the date of filing the report with the Agency; and
- (b) in the manner that protects the confidentiality of the copy, record or document involved.

18. (1) The specified party shall, where a third party keeps records on behalf of the specified party in terms of section 29 of the Act, ensure it has sufficient access to such records in order to comply with its obligations under the Act without delay.

Record keeping by third parties

(2) A specified party shall, in terms of section 29 (2) of the Act provide the Agency with the identification and contact details of the third party referred to in subregulation (1), including the following particulars —

- (a) the third party's full name, if the third party is a natural person or registered name, if the third party is a company or close corporation;
- (b) the name under which the third party conducts business;
- (c) the full name and contact details of the individual who exercises control over access to records kept under subregulation (1);
- (d) the physical address where the records are kept;

- (e) the address from where the third party exercises control over the records; and
- (f) the full name and contact details of the individual who liaises with the third party on behalf of the specified party concerning the retention of the records.

PART V — Reporting of Suspicious Transactions

Reporting cash transactions	<p>19. A specified party or accountable institution shall report to the Agency a cash transaction concluded with a customer where the amount is equal to or above P10 000 or an equivalent amount in foreign currency.</p>
Manner of reporting	<p>20. (1) Subject to subregulation (2), a suspicious transaction report required to be made under section 33 and 35 of the Act shall be made in the Form B set out in the Schedule and shall be sent electronically to the Agency by means of an internet based reporting portal provided by the Agency for this purpose.</p> <p>(2) Where a person or specified party required to make a report under subregulation (1) does not have the technical capability, or for any other reason, is unable to make a report in the manner required under subregulation (1), the person or the specified party shall complete the required form in writing and include such further information as may be requested by the Agency and —</p> <ul style="list-style-type: none"> (a) send it by facsimile to the Director General at the number specified in writing by the Agency from time to time; (b) deliver it to the Agency; or (c) send it by another method determined by the Agency whether as an alternative means or as an exclusive means. <p>(3) Where a person or a specified party makes a report to the Agency, the Director General shall for purposes of section 6 (2) (f) of the Act, ensure that feedback is given to the person making the report or the specified party within 14 working days from the date of the receipt of the report.</p>
Period of reporting	<p>21. A report made in terms of section 33 or 35 of the Act shall be sent to the Agency as soon as possible, but not later than five working days after the suspicion arose concerning the transaction that gave rise to the need to report, unless the Agency, in writing, approves the sending of the report after the expiry of the period.</p>
Intervention by Agency	<p>22. (1) For the purposes of sections 39 and 40 of the Act and in order to facilitate the recognition and handling by a specified party of a suspected financial offence, where —</p> <ul style="list-style-type: none"> (a) the suspicion arises that is a basis for the specified party making a report under section 33 or 35 of the Act regarding a transaction; and (b) it is reasonably foreseeable that carrying out that transaction or other related transaction will jeopardise any investigations or proceedings or where the transaction will or is likely to result in such proceeds being put beyond the reach of Botswana authorities, <p>the specified party shall in addition to making the report within the time period specified under regulation 21, contact as soon as reasonably possible, the Director General or officers of the Agency at such contact details as may be specified in writing by the Agency from time to time for the purposes of consultation and intervention as provided for under section 40 of the Act.</p>

(2) If after consultation, the Agency considers it necessary that the specified party may proceed with the transaction or any other transaction in respect of funds contemplated under section 40 of the Act, the specified party may continue with and carry out any such transaction as provided under section 39 of the Act.

23. (1) The Agency shall analyse all the information and reports received by it for the purpose of determining whether any information contained in a report constitutes reasonable grounds to suspect that —

Analysis of reports received and referral of suspected offences

- (a) a person, specified party or accountable institution has committed any act or omission which constitutes an offence under the Act or these Regulations; or
- (b) a person has committed an offence under the Proceeds and Instruments of Crime Act.

Cap. 08:03

(2) Where the Agency has reasonable grounds, after analysing the reports submitted to it under subregulation (1), to suspect that a person, a specified party, or accountable institution has committed an offence, it shall refer the matter, together with any recommendations the Agency may consider appropriate, to the relevant investigating authority.

PART VI — *Wire Transfers*

24. (1) For the purposes of section 37 (1) of the Act, a specified party or accountable institution that through a wire transfer, receives into or sends out of Botswana, an amount equal to or above P10 000, on behalf or on the instruction of a customer or any person, shall report to the Agency such transaction.

Reporting of wire transfers

(2) The report made in terms of subregulation (1) shall contain, in respect of —

- (a) the natural or legal person making the report or other entity on whose behalf the report is made —
 - (i) the name of the person or entity,
 - (ii) the identity card number where the natural person who makes the report is a citizen of Botswana, or passport number where the natural person is not a citizen or resident of Botswana,
 - (iii) registration number where report is made on behalf of a legal person,
 - (iv) the address of the person or entity,
 - (v) the type of business or economic sector of the specified party or accountable institution and the reporting institution,
 - (vi) where the person making the report is a natural person, the natural person's contact details, and
 - (vii) where the person making the report is a legal person or other entity, the surname, initials and contact details of a contact person;
- (b) the transaction which is reported under subregulation (1), full particulars of —
 - (i) the amount of money transferred,
 - (ii) the value date on which the electronic transfer was effected,
 - (iii) the currency transferred and value thereof in Botswana on the date of transfer,
 - (iv) the unique transaction reference number allocated to the transaction,

- (v) the account number concerned, where the money transferred is debited from an account held at a sending specified party, or where the money received is credited to an account held at receiving specified party, and
 - (vi) the intended purpose of the electronic money transfer as stated by the customer of the specified party making the report;
- (c) the customer of a specified party on whose behalf or instruction money is received into or sent out of Botswana —
- (i) where the customer is a natural person, the name and surname, or initials and surname, identity card number or passport number and date of birth,
 - (ii) where the customer is a legal person or other entity, the name of such legal person or entity, registration number if any and the name of the natural persons with authority to conduct the transaction on behalf of the legal person or other entity, and
 - (iii) business or residential address and contact details of the customer or the natural person acting on behalf of the customer where the customer is a legal person or other entity;
- (d) the beneficiary of money sent out of Botswana, or the originator of the money in excess of P10 000 received into Botswana —
- (i) the full names of the beneficiary or originator,
 - (ii) the date of birth of the beneficiary or the originator,
 - (iii) identity card number or passport number of the beneficiary or originator,
 - (iv) a business or residential address of the beneficiary or originator, and
 - (v) contact details of the beneficiary or originator.

(3) A report made under this regulation shall be sent to the Agency as soon as possible, but not later than two working days after the specified party or any of its employees has become aware of the fact that a wire transfer received into or sent out of Botswana has exceeded the amount of P10 000.

Obligations of financial institutions when undertaking wire transfer

25. (1) For the purposes of section 37 (2) of the Act, a specified party or accountable institution when undertaking a cross-border wire transfer shall include accurate originator and beneficiary information as follows —

- (a) the name of the originator;
- (b) the originator's account number or unique transaction reference number; which can permit traceability, where there is no account number;
- (c) the originator's address and national identity or customer identification number;
- (d) the name of the beneficiary;
- (e) the beneficiary account number, where such an account is used to process the transaction, or a unique transaction reference number which can permit traceability, where there is no account number; and
- (f) the source and purpose of funds.

(2) Where several individual cross-border wire transfers from a single originator are bundled in a batch file for transmission to more than one beneficiary, each beneficiary may be exempted from the requirements of subregulation (1) in respect of originator information:

Provided that such individuals include the originator's account number or unique transaction reference number and the batch file contains required and accurate originator information and full beneficiary information that is traceable within the beneficiary country.

(3) A specified party shall ensure that the information accompanying a domestic wire transfer shall include required accurate originator and beneficiary information as indicated for cross-border wire transfer under subregulation (1).

(4) The originator and beneficiary information collected under subregulation (3) shall be maintained in accordance with section 28 of the Act.

(5) A specified party or accountable institution shall not undertake a wire transfer before ensuring that the information required in terms of this regulation is obtained.

(6) The information referred to under subregulation (3) shall be made available within three working days of receiving a request from the beneficiary financial institution or a competent authority.

26. (1) A financial institution that undertakes wire transfer as an intermediary shall ensure that all originator and beneficiary information, obtained under regulation 25 is retained with the transfer.

(2) A financial institution referred to in subregulation (1) shall, where technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer, keep a record of all the information received from the ordering or other intermediary financial institution in accordance with section 28 of the Act.

(3) A financial institution referred to in subregulation (1) shall take reasonable measures to identify cross-border wire transfer that lack required originator or beneficiary information under regulation 25.

(4) The measures referred to in subregulation (3) shall be consistent with straight-through processing.

(5) For the purposes of this regulation, "straight-through processing" means payment transactions that are conducted electronically without the need for manual intervention.

(6) A financial institution referred to in subregulation (1) shall implement policies and procedures which have regard to risks identified to determine when to —

- (a) execute;
- (b) reject; or
- (c) or suspend,

a wire transfer that is not accompanied by information required under regulation 25 (1) and take appropriate follow-up action.

27. (1) A financial institution that receives a wire transfer as a beneficiary financial institution shall —

- (a) verify the identity of the beneficiary before undertaking a wire transfer where such identity was not previously verified, and maintain such information in accordance with section 28 of the Act; and
- (b) take reasonable measures, including post-event monitoring or real-time monitoring, where feasible, to identify cross border wire transfer that lack the required originator or beneficiary information.

(2) A financial institution referred to under subregulation (1) shall implement policies and procedures which have regard to risks identified to determine when to —

- (a) execute;
- (b) reject; or
- (c) suspend,

a wire transfer that is not accompanied by information required under regulation 25 (1) and take appropriate follow-up action.

Obligations of financial institutions when undertaking wire transfer as intermediary

Obligations of financial institutions that receives wire transfer

PART VII — *Compliance Programmes and group wide programmes*

Compliance programmes to be implemented by specified party

28. (1) A specified party shall adopt, develop and implement a programme which ensures compliance with obligations of the specified party under the Act and these Regulations.

(2) Subject to regulations 28 and 29, a specified party shall adopt, develop and implement as part of the compliance programme referred to in subregulation (1), internal rules which —

- (a) confirm the responsibility of the management of the specified party in respect of compliance with the Act and the internal rules;
- (b) provide for the necessary procedures to ensure that customers are identified and the required particulars concerning the identities are verified;
- (c) provide for the necessary procedures including effective ongoing monitoring systems to enable staff to recognise potentially suspicious and unusual transactions or series of transactions and to report such suspicious transactions in terms of these Regulations;
- (d) allocate responsibilities and accountability to ensure that staff duties concerning record keeping are complied with;
- (e) provide for disciplinary steps to be taken against the relevant staff members for non-compliance with the internal rules; and
- (f) take into account any guidance notes concerning duties that may apply to the specified party.

(3) Where a specified party has employees, agents or persons authorised to act on its behalf in the programme referred to in subregulation (1), the specified party shall furthermore include as far as practicable, an ongoing compliance training programme for those employees, agents or persons to ensure that they are able to comply with the duties of the specified party.

(4) A specified party that designates a compliance officer under section 12 (1) (a) of the Act shall take reasonable steps to ensure that the compliance officer has training and resources to discharge his or her obligations, and keep records of the said training for a period stipulated in section 28 of the Act.

(5) A specified party shall adopt an independent audit function to ensure compliance with this regulation.

Internal rules concerning ascertainment and verification of identities

29. A specified party shall have rules concerning the establishment and verification of identities which shall —

- (a) provide for the necessary processes and working methods which will ensure that the required particulars concerning the identities of the parties to a business relationship or transaction are obtained on each occasion when a business is established or a transaction is concluded with the specified party;
- (b) provide for the steps to be taken by the relevant staff members aimed at the verification of the required particulars concerning the identities of the parties to a business relationship or transaction;
- (c) provide for the responsibility of the management of the specified party in respect of compliance with the Act, and the internal rules regarding ascertainment and verification of identity;
- (d) allocate responsibilities and accountability to ensure that staff duties concerning the ascertainment and verification of identities are complied with;

- (e) provide for disciplinary steps against members concerned for non-compliance with the Act and the internal rules regarding the ascertainment and verification of identities; and
- (f) take into account any guidance notes concerning the ascertainment and verification of identities which may apply to the specified party.

30. A specified party shall have internal rules concerning the keeping of records in terms of section 27 of the Act which shall —

Internal rules
concerning
keeping of
records

- (a) provide for the necessary processes and working methods to ensure that relevant staff members of the specified party obtain the information pertaining to which records shall be kept on each occasion when a business relationship is established or a transaction is concluded with the specified party;
- (b) provide for the responsibility of the management of the specified party in respect of compliance with the Act and internal rules regarding the keeping of records;
- (c) allocate responsibilities and accountability to ensure that requirements concerning the keeping of records are complied with;
- (d) provide for disciplinary steps against members of staff concerned for non-compliance with the internal rules regarding the keeping of records;
- (e) provide for the necessary processes and working methods to ensure that the accuracy and the integrity of the records is maintained for the entire period for which they must be kept;
- (f) provide for the necessary processes and working methods to ensure that access required or authorised under the Act by the relevant staff members to the records can be obtained without undue hindrance; and
- (g) take into account any guidance notes concerning the keeping of records which may apply to the specified party.

31. A specified party shall have rules concerning the reporting of suspicious and unusual transactions which shall —

Internal rules
concerning
reporting of
suspicious
transactions

- (a) provide for the necessary processes and working methods which will ensure that suspicious transactions are reported without undue delay;
- (b) provide for the necessary processes and working methods to enable staff to recognise potentially suspicious transactions or series of transactions;
- (c) provide for the responsibility of the management of the specified party in respect of compliance with the Act and the internal rules;
- (d) allocate responsibilities and accountability to ensure that staff duties concerning the reporting of suspicious transactions are complied with;
- (e) provide for disciplinary steps against members concerned for non-compliance with the internal rules regarding the reporting of suspicious and unusual transactions; and
- (f) take into account any guidance notes concerning the reporting of suspicious transactions which may apply to the specified party.

32. (1) The supervisory authority shall determine whether the additional measures taken by the specified party under section 13 (7) (b) of the Act, are sufficient to counter the commission of a financial offence.

Supervisory
action
concerning
implementation
of group-wide
programmes

(2) Where the supervisory authority does not consider the measures referred to in subregulation (1) to be sufficient, the supervisory authority may direct the specified party to —

- (a) not enter into a business relationship with the foreign branch or majority-owned subsidiary operating in a foreign country;
 - (b) not to undertake transactions associated with risk of commission of a financial offence;
 - (c) cease any operation in a particular foreign country; or
 - (d) ensure that its subsidiary undertaking —
 - (i) does not enter into a business relationship with the foreign branch or majority-owned subsidiary operating in a foreign country,
 - (ii) do not undertake transactions associated with risk of commission of a financial offence, or
 - (iii) cease any operation in a particular foreign country.
- (3) The direction given under subregulation (2) shall be in writing and shall —
- (a) give details of the direction; and
 - (b) state the reasons for the direction.
- (4) The direction given under subregulation (2) shall come into effect on such date as the supervisory authority may appoint or if no date is so specified, then it shall come into effect on the date that it is issued.

PART VIII — *Miscellaneous*

Powers of
examination

- 33.** (1) In order to carry out an examination of records as contemplated under section 32 of the Act, an examiner of the Agency or supervisory authority may —
- (a) at any time during normal office hours without previous notice, enter any premises occupied by a specified party or accountable institution and require production to him or her of any or all the specified party's or accountable institution's securities, books, records, accounts or documents;
 - (b) search any premises occupied by a specified party or accountable institution for any moneys, securities, books, records, accounts or documents;
 - (c) open or cause to be opened any strong room, safe or other container in which it is suspected that any moneys, securities, books, records, accounts or documents of a specified party or accountable institution are kept;
 - (d) examine and make copies of and extracts from any securities, books, records, accounts and documents of a specified party or accountable institution or, against a full receipt issued by the Agency or supervisory authority for such securities, books, accounts or documents and remove them temporarily from the premises of the specified party or accountable institution for that purpose;
 - (e) require an explanation of any entries in the books, records accounts or documents of a specified party or accountable institution;
 - (f) against a full receipt issued by the Agency or supervisory authority, seize any securities, books, records, accounts or documents of a specified party or accountable institution which in his or her opinion may serve evidence for an offence or irregularity; and
 - (g) retain any such seized securities, books, records, accounts or documents for as long as they may be required for criminal or other proceedings.

(2) A person shall when requested under subregulation (1) by the Agency or supervisory authority to do so, produce every security, book, record, account or document of a specified party or accountable institution to which such person has access, and shall, at the request of the Agency or supervisory authority, provide any information at such person's disposal relating to the affairs of the specified party or accountable institution.

(3) The Agency or supervisory authority may further inspect the securities, books, records, accounts or documents of any person, partnership or company —

- (a) where the Agency or supervisory authority has reason to believe that a specified party or accountable institution whose affairs are being inspected has or had a direct or indirect interest in or in the business of the person, partnership or company;
- (b) where the Agency or supervisory authority has reason to believe that the person, partnership or company has or had a direct or indirect interest in the business of a specified party or accountable institution; and
- (c) where the Agency or supervisory authority considers it necessary for a proper inspection of the affairs of a specified party or accountable institution that those securities, books, records, accounts or documents be inspected, and the provisions of subregulations (1) and (2) shall with such modifications as may be necessary, apply in respect of an inspection under this subregulation:

(4) For the purposes of subregulation 3 (b), a person who holds shares as a nominee or in trust for another person in a specified party or accountable institution shall be considered to have an interest in the specified party or accountable institution and shall upon request of the Agency or supervisory authority disclose the name of that other person.

(5) A lawful representative of a specified party or accountable institution of which the securities, books, records, accounts or documents have been retained under subregulation (1) (f), may examine, make entries in and make extracts from such securities, books, records, accounts or documents during office hours and under supervision as the Agency or supervisory authority may consider necessary.

(6) Where securities, books, records, accounts or documents of a specified party or accountable institution have been seized under subregulation (1), the specified party or accountable institution may make an application to a magistrate's court for a variation order under the Proceeds and Instruments of Crime Act.

34. A certificate issued by Agency in terms of section 50 of the Act shall be in form C set out in the Schedule.

Certificate
issued by
Agency

35. Any person who contravenes these Regulations shall be guilty of an offence and liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding five years, or to both.

Offences and
penalties

36. In proceedings against a specified party or accountable institution for an offence under these Regulations, it shall be a defence for a specified party or accountable institution to show that it took all reasonable steps and exercised due diligence to comply with the requirements of these Regulations.

Defence

37. The Financial Intelligence Regulations are hereby revoked.

Revocation of
Cap. 08:07
(sub. Leg.)

SCHEDULE

FORM A

Authority to act on behalf of another

(reg. 4(5))

I.....of Identity Number /Passport Nobeing of sober and sound mind and acting wilfully do hereby appoint.....of Identity Number/Passport No..... to act for or on my behalffromuntil.....

This appointment is executed for the purpose of expediting the transaction of all investment affairs of mine and to permit action in my name and on my behalf with respect to my financial transactions or my property during this period of appointment.

I confer power on my representative to do all things deemed necessary or proper to carry out the provisions and intent of this appointment or carry out including but not limited to the following powers, all of which may be exercised from time to time at his or her discretion and with respect to.....in which I now or hereafter have any interest.

Thus signed on thisday of.....20.....at.....

Witness

*

1.....

Signature.....

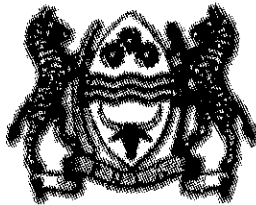
2.....

Signature.....

FORM B

Suspicious Transaction Report

(reg. 20 (1))

**SUSPICIOUS TRANSACTION REPORT**

A suspicious transaction is reportable to the Financial Intelligence Agency under the *Financial Intelligence Act (Cap.08:07)*

Report reference no. _____

Date of report: / /

INSTRUCTIONS FOR COMPLETING THE REPORT FORM:

- Complete as much of this form as possible, providing clear and accurate information
- All fields are mandatory, if you are unable to answer the question or it isn't relevant please indicate with Not Applicable (N/A)
- Complete the form in black ink and CAPITAL LETTERS
- Mark appropriate boxes with a cross (X)
- For detailed instructions on how to complete this form please refer to STR guidelines issued by the FIA
- A report must be submitted within 3 days of the suspicious transaction.

Send completed forms by Post to:

The Director
Financial Intelligence Agency
Private Bag 0190
Gaborone
Botswana

or fax to: +267 3905742

PART A: REPORT DETAILS

Is this an amendment or addition to a report previously submitted?	<input type="checkbox"/> Yes <input type="checkbox"/> No - If no, proceed to Part B.
If yes, list the reference number(s) of previous report(s)	
If yes, list the Part(s) and Section(s) of the previous report that are affected (i.e. Part A ,B or C or sections 1,2 or 3, etc.)	

PART B: DETAILS OF THE ACCOUNT / PRODUCT / PERSON / ORGANISATION TO WHICH THE SUSPICIOUS TRANSACTION RELATES

SECTION 1: DETAILS OF THE ACCOUNT / PRODUCT															
Account name and / or title															
Account number															
Name and location of specified party branch/office where the account is held Branch/office identification number Name of specified party Name of ward / suburb / city / town Village name District Country	<table border="1" style="width: 100%; height: 100%;"> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> </table>														
Account type	<input type="checkbox"/> Cheque <input type="checkbox"/> Savings <input type="checkbox"/> Credit card <input type="checkbox"/> Custodial <input type="checkbox"/> Store value card <input type="checkbox"/> Foreign currency <input type="checkbox"/> Bullion <input type="checkbox"/> Insurance <input type="checkbox"/> Lease/hire purchase <input type="checkbox"/> Loan <input type="checkbox"/> Mortgage <input type="checkbox"/> Remittance <input type="checkbox"/> Trading <input type="checkbox"/> Superannuation/ADF <input type="checkbox"/> E-currency <input type="checkbox"/> Betting <input type="checkbox"/> Investment <input type="checkbox"/> Other														
Account opening date	Day	Month	Year	Account currency											
Account closing date	Day	Month	Year	Account balance at											

			date of closure	
Name of person who closed the account and what happened to the balance of the account i.e. international transfer / transfer to another account		Does the account have any linked accounts?	<input type="checkbox"/> Yes if Yes supply account details at end of report <input type="checkbox"/> No	
Name of account signatories (if more space is required please add in the section 2 narrative or on an additional page)	1.	2.		
Description of assets				
Jurisdiction where assets are held		Estimated value of assets		

SECTION 2: DETAILS OF THE ACCOUNT OWNER/HOLDER

Given name(s) or title(s)		Surname	
Other known name(s)/alias(es)			
Business / Company name		Business / Company registration number	
Account holder type	<input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Association <input type="checkbox"/> Trust <input type="checkbox"/> Government body <input type="checkbox"/> Registered body <input type="checkbox"/> Other		
Nature of relationship to Bank			
Is the relationship current or historical?	<input type="checkbox"/> Current <input type="checkbox"/> Historical	Customer number – provided by your organisation	
Identification document type	<input type="checkbox"/> National ID card <input type="checkbox"/> Passport		
Identification number			

C.826

Identification issuer				Place of issue			
Identification issue date	Day	Month	Year	Expiry date	Day	Month	Year
Physical address							
Street number and name							
Name of ward / suburb / city / town /							
Village name							
District							
Country (if overseas)							
Telephone /Cell / email details							
Date of birth /incorporation/ Registration	Day	Month	Year	Place of birth/ incorporation/ registration			
Employment/industry type							
Employer details							
Name of employer							
Street number and name							
Name of ward / suburb / city / town							
Village name							
District							
Country (if overseas)							
If the account owner is an individual, please specify	<input type="checkbox"/> Male <input type="checkbox"/> Female		Country of citizenship				
Nature of person on whose behalf the transaction was conducted	<input type="checkbox"/> Account owner <input type="checkbox"/> Authorised agent <input type="checkbox"/> Employer <input type="checkbox"/> Other _____						

SECTION 3: DETAILS OF THE PERSON CONDUCTING THE TRANSACTION (IF DIFFERENT FROM ACCOUNT OWNER/HOLDER)					
Given name(s) or title(s)				Surname	
Other known name(s)/alias(es)					
Business / Company name				Business / Company registration number	
Identification document type	<input type="checkbox"/> National ID card <input type="checkbox"/> Passport				
Identification number					
Identification issuer				Place of issue	
Identification issue date				Expiry date	
Physical address					
Name of employer					
Street number and name					
Name of ward / suburb / city / town					
Village name					
District					
Country (if overseas)					
Telephone / Cell / Email details					
Date of birth	Day	Month	Year	Place of birth	
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female			Country of citizenship	
Details of physical profile	<input type="checkbox"/> Scar on face clothing <input type="checkbox"/> Walked with a limp <input type="checkbox"/> Dirty/heavily worn clothing <input type="checkbox"/> Tattoo(s) <input type="checkbox"/> Other _____				

If the customer is an individual, please specify	<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/>	Country of citizenship

PART C: TRANSACTION DETAILS

Amount of transaction and currency of transaction	<table border="1"> <tr> <td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td> </tr> </table>																																																																																			
Date of transaction	Day	Month	Year	Time of transaction																																																																																
Name and location of specified party branch/office where the transaction was conducted	<table border="1"> <tr> <td>Branch/office identification number</td> <td colspan="11"></td> </tr> <tr> <td>Name of specified party</td> <td colspan="11"></td> </tr> <tr> <td>Name of ward / suburb / city / town</td> <td colspan="11"></td> </tr> <tr> <td>Village name</td> <td colspan="11"></td> </tr> <tr> <td>District</td> <td colspan="11"></td> </tr> <tr> <td>Country (if overseas)</td> <td colspan="11"></td> </tr> </table>												Branch/office identification number												Name of specified party												Name of ward / suburb / city / town												Village name												District												Country (if overseas)											
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Village name																																																																																				
District																																																																																				
Country (if overseas)																																																																																				
Has the suspicion been formed as a result of multiple transactions?	<input type="checkbox"/> Yes <input type="checkbox"/> No		Period of transactions:	Day	Month	Year																																																																														
Has the suspicious activity had a material impact on the financial soundness of the Bank?	<input type="checkbox"/> Yes (if more space is required please add in the section 2 narrative or on an additional page) <input type="checkbox"/> No		From	Day	Month	Year																																																																														
			To																																																																																	

Type of transaction	<input type="checkbox"/> Account opening deposit/withdrawal <input type="checkbox"/> Telegraphic transfer <input type="checkbox"/> Account <input type="checkbox"/> Property transfer <input type="checkbox"/> Negotiable instruments <input type="checkbox"/> Disposal of securities <input type="checkbox"/> Bet placed <input type="checkbox"/> Remittance <input type="checkbox"/> E-currency transfer <input type="checkbox"/> Purchase of traveller's cheques <input type="checkbox"/> Other
Type of funds/payment instrument transacted	
Transaction channel/mechanism	<input type="checkbox"/> Face-to-face/in person <input type="checkbox"/> Electronic/internet <input type="checkbox"/> Telephone instruction <input type="checkbox"/> Other _____
Status of transaction	<input type="checkbox"/> Complete <input type="checkbox"/> Suspended <input type="checkbox"/> Processing
Remarks/comments/explanations made by the customer regarding why the transaction was conducted	

PART D: REASON FOR SUSPICION

SECTION 1: IDENTIFY YOUR CATEGORY OF SUSPICION	
<input type="checkbox"/> Suspicious behaviour <input type="checkbox"/> Large or unusual cash deposits/withdrawal <input type="checkbox"/> Irregular or unusual international banking activity <input type="checkbox"/> Inconsistent with customer profile <input type="checkbox"/> Large or unusual inward/outward remittance <input type="checkbox"/> Unusually large foreign currency transaction <input type="checkbox"/> Country/jurisdiction risk <input type="checkbox"/> Other	<input type="checkbox"/> ATM/cheque fraud <input type="checkbox"/> Unusual business/account activity <input type="checkbox"/> Known/suspected criminal <input type="checkbox"/> Avoiding reporting obligations <input type="checkbox"/> Internal fraud <input type="checkbox"/> Counterfeit currency <input type="checkbox"/> False name/identity or documents

SECTION 2: DESCRIPTION NARRATIVE

Please describe clearly and succinctly the factors or unusual circumstances that led to the suspicion of money laundering or terrorism financing activity. Provide all relevant details and explain what you found suspicious.

Note: If required additional pages can be added to this report, initialled by the authorised individual

PART E: DETAILS OF ACTION ALREADY TAKEN BY YOUR SPECIFIED PARTY

Has a law enforcement agency been contacted in regards to this suspicion?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please provide details of the law enforcement agency contacted. Name of agency Physical: Street number and name Name of ward / suburb / city / town Village name District Name of law enforcement agency contact person Contact phone	
Has any other action been taken in regards to this suspicious activity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please provide details.	