

Statutory Instrument No. 86 of 2023

BANK OF BOTSWANA ACT
(Cap. 55:01)

BANK OF BOTSWANA (DEPOSIT INSURANCE SCHEME) REGULATIONS, 2023
(Published on 21st July, 2023)

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IN EXERCISE of the powers conferred on the Minister of Finance by section 43A of the Bank of Botswana Act, the following Regulations are hereby made —

PART I — *Preliminary Provisions*

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| Citation and commencement | 1. These Regulations may be cited as the Bank of Botswana (Deposit Insurance Scheme) Regulations, 2023 and shall come into operation on 21st July, 2023. |
| Interpretation | 2. In these Regulations, unless the context otherwise requires —
“claim” means a payment of claim made in terms of regulation 26, and
“claimant” shall have a corresponding meaning;
“Committee” means the Deposit Insurance Committee established in regulation 5;
“deposit-taking institution” means a company other than a bank, which is licensed to engage in the business of accepting deposits from members of the public;
“Director” means the Director of the Scheme appointed in terms of regulation 4;
“member” means a member of the Committee in terms of regulation 5 (2);
“member institution” means a member of the Scheme in terms of regulation 17;
“premium contribution” means contributions levied on member institutions in terms of regulation 19;
“protected deposit” means a deposit covered under regulation 27, and
“protected depositor” shall have a corresponding meaning;
“Scheme” means the Deposit Insurance Scheme established in terms of regulation 3;
“seconded officers” means officers seconded by the Bank to the Scheme in terms of regulation 5 (7) (b);
“single customer view” means several depositor accounts that are aggregated and treated as one deposit account on the basis that they are associated with each other by virtue of ownership and control by one natural person or are maintained by a depositor in the same capacity and the same right for the benefit of the depositor either in the name of the depositor or in the name of any other person; and |

"target fund level" means the Fund level as determined by the Committee under regulation 11.

PART II — *Establishment of Deposit Insurance Scheme*

- 3.** (1) In pursuance of section 43A, there is hereby established a scheme to be known as the Deposit Insurance Scheme of Botswana. Establishment of Scheme
- (2) The objects of the Scheme shall be to —
- (a) guarantee repayment of a protected deposit in the event of failure of a member institution; and
 - (b) promote financial stability by enhancing public confidence in the safety of deposits and promoting the stability of member institutions.
- (3) The Scheme shall have a common seal which shall be such device as may be determined by the Committee.
- (4) The seal of the Scheme shall be authenticated by the signature of the Director.
- 4.** (1) In pursuance of section 43A (2) (c), there shall be seconded to the Scheme a Director who shall be — Administration and management of Scheme
- (a) the administrative head of the Scheme;
 - (b) responsible for the management of officers appointed to the Scheme;
 - (c) responsible for implementation of policies of the Scheme; and
 - (d) responsible for the execution of decisions of the Committee, as may be required for purposes of these Regulations.
- (2) Subject to the supervision of the Committee, the Director shall, in the discharge of his functions under subregulation (1) —
- (a) collect relevant deposit distribution and other data in terms of regulation 21, for the determination of the appropriate premiums to be levied on member institutions;
 - (b) collect premium contributions levied on member institutions in terms of regulation 19;
 - (c) in accordance with regulation 26, make payment of claims in respect of protected deposits;
 - (d) pursue claims of the Scheme against the assets of a failed member institution, as may be required for purposes of regulation 25 (1) (d);
 - (e) apply the principles of transparency and deal with a depositor's claim equitably on failure of a member institution;
 - (f) promote public awareness of the Scheme's operations; and
 - (g) carry out such activities as may be necessary in the administration and management of the Scheme.
- 5.** (1) In pursuance of section 43A (2) (c) and for purposes of ensuring operational independence of the Scheme, there is hereby established a Committee to be known as the Deposit Insurance Committee. Deposit Insurance Committee
- (2) The Committee shall consist of —
- (a) four members, not being public officers, appointed by the Minister on recommendation by the Bank; and
 - (b) three *ex-officio* members, who shall be the —
 - (i) Permanent Secretary in the Ministry responsible for finance, or his representative,
 - (ii) Governor, or his representative, and
 - (iii) Director.

(3) Members appointed under subregulation (2) (a) shall be persons with considerable knowledge and experience in finance, actuarial science, insurance, law, fund management or proven ability in related disciplines, as the Bank and the Minister may consider relevant:

Provided that one of the members shall be a representative of a recognised association of financial institutions.

(4) The Minister shall appoint a chairperson from amongst the Committee members appointed under subregulation 2 (a).

(5) A member, other than an *ex-officio* member, shall be appointed for a term not exceeding five years and be eligible for re-appointment for a further term of five years.

(6) The Committee shall regulate its own procedure.

(7) The Bank shall —

(a) provide secretarial services to the Committee; and

(b) provide such facilities, including seconded officers, as may be necessary for proper and efficient exercise of the functions of the Committee and purposes of the Scheme.

(8) The Scheme shall, by notice published in the *Gazette*, publish the names of persons appointed as members of the Committee and their dates of appointment.

Functions of
Committee

6. (1) The Committee shall —

(a) provide oversight functions on the administration of the Fund and management of the Scheme;

(b) ensure the development and implementation of effective contingency planning and crisis management policies and procedures for the Scheme;

(c) effectively respond to the risk of, and actual, failure of a member institution;

(d) approve the payment of claims;

(e) issue guidelines, circulars and directives for effective execution of its function; and

(f) have all such powers and may perform all such duties as it may consider necessary or expedient to enable it to achieve the objects of the Scheme under regulation 3 (2).

(2) The Committee may, for the purpose of performing the functions under subregulation (1), establish such subcommittees as it considers appropriate and may delegate to any such subcommittee such functions as it considers necessary.

(3) Subject to the specific or general directions of the Committee, a subcommittee may regulate its own procedure.

Agreements
with other
institutions

7. (1) The Committee may enter into an arrangement or agreement with any institution or organisation within or outside Botswana that —

(a) performs functions similar to those of the Committee;

(b) has objects similar to those of the Committee; or

(c) performs functions related to the regulation and supervision of deposit taking institutions.

(2) Where the Committee enters into an arrangement or agreement in pursuance of subregulation (1), the Committee may exchange any relevant information with the parties to the arrangement or agreement on the basis of reciprocity and on confidentiality terms as may be agreed by the parties.

8. (1) A member, Director or seconded officer shall observe and preserve the confidentiality of all matters coming before the Committee and of matters relating to the affairs of the Scheme and such confidentiality shall subsist even after termination of such member's, Director's or seconded officer's term of office. Confidentiality

(2) Any person to whom confidential information is revealed through working with Committee shall not —

(a) disclose that information to any other person unless he or she is required to do so in terms of any written law or in judicial proceedings; or

(b) use that information for personal gain.

(3) Failure to comply with this regulation shall carry the same penalty as provided under the Act.

9. A current or former member, Director or seconded officer shall not be personally held liable in respect of anything done or omitted to be done in good faith and with due care in the exercise of any power or performance of any function under these Regulations. Limitation of liability

PART III — *Deposit Insurance Fund*

10. (1) In pursuance of section 43A (2) (a), there is hereby established for purposes of financing the Scheme, a Deposit Insurance Fund. Deposit Insurance Fund

(2) There shall be paid into the Fund —

(a) an initial refundable seed capital, as may be determined by Government;

(b) monies appropriated through an Act of Parliament as an advance or grant to the Fund;

(c) membership fee paid by member institutions;

(d) funds advanced by the Bank for the administration of the Scheme;

(e) premium contributions levied on member institutions under regulation 19;

(f) interest or penalties levied on member institutions' contributions;

(g) monies recovered by the Scheme from liquidation of a member institution;

(h) monies borrowed by the Scheme in terms of regulation 12;

(i) income accruing to the Fund through investment made under regulation 13; and

(j) monies or assets lawfully paid to, received by, or vested in the Scheme for matters incidental to the objects of the Scheme, including donations.

(3) There shall be paid out of the Fund —

(a) all expenses incidental to the —

(i) day to day management of the Scheme, and

(ii) administration and management of the Fund;

(b) monies payable to a depositor in terms of regulation 26;

(c) repayment of monies borrowed by the Scheme in terms of regulation 12, including interest and charges thereon; and

(d) costs associated with resolution or liquidation of member institution.

11. (1) The Committee shall, having regard to current and potential liabilities of the Scheme — Target Fund level

(a) determine the appropriate Fund level; and

(b) where necessary, adjust premium contributions payable accordingly to build up the Fund to its target level.

- (2) Where the Fund reaches its target level, the Committee may reduce premium contributions payable by member institutions.
- Emergency liquidity funding** 12. In furtherance of the objects of the Scheme, the Director may, on such terms and conditions as may be approved by the Committee, borrow or establish pre-arranged funding agreements with the Bank for emergency liquidity purposes and *ad hoc* funding needs:
- Provided that the —
- (i) total amount outstanding at any one time shall not exceed 25 per cent of the Fund value or such amount as may be determined by the Committee, and
 - (ii) terms and conditions of any advance or funding arrangement shall be determined by the Bank.
- Fund investment** 13. (1) The Director shall, subject to the approval of the Committee, develop an investment policy for preservation of the Fund capital and maintenance of liquidity.
- (2) The investment policy under subregulation (1) shall provide for the investment of monies paid into the Fund under regulation 10 (2) in safe and liquid assets, including —
- (a) investment in treasury bills, treasury bonds or other securities issued by the Government; and
 - (b) other securities, as may be determined by the Committee:
- Provided that the Director shall publish such securities in —
- (i) the *Gazette*,
 - (ii) at least two papers of national or wide circulation, and
 - (iii) the Bank and Scheme's website.
- Financial year** 14. The financial year of the Fund shall be a period of 12 months commencing on the 1st January each year and ending on the 31st December of that year.
- Accounts and audit of Fund** 15. (1) The Committee shall maintain accounts and records of the Fund in accordance with national and international accounting standards.
- (2) The accounts and records under subregulation (1), including financial statements of the Fund, shall —
- (a) reflect the operations and financial condition of the Scheme; and
 - (b) in accordance with national and international accounting standards, be audited, once a year, by an independent external auditor of good repute and recognised experience in auditing financial institutions.
- Annual report** 16. (1) The Committee shall submit to the Minister, within a period of three months after the end of the financial year —
- (a) a comprehensive annual report on operations of the Scheme; and
 - (b) the auditor's report and audited accounts of the Fund under regulation 15 (2) (b).
- (2) The Minister shall cause the reports in subregulation (1) to be laid before the National Assembly within 30 days after receipt of the reports.
- (3) The Committee shall cause the annual report to be published within two months after submission to the Minister.

PART IV — *Membership and Premium Contributions*

- Membership** 17. (1) Membership of the Scheme shall comprise of banks and deposit-taking institutions.
- (2) For purposes of subregulation (1), a bank or deposit-taking institution —

- (a) licensed prior to the date of commencement of these Regulations shall be deemed to be a member of the Scheme on the date of commencement of these Regulations; and
- (b) issued with a licence after the date of commencement of these Regulations shall become a member of the Scheme on the date on which it is issued with a licence.

(3) The Committee shall, every year, cause to be published a list of member institutions in the *Gazette*, at least two newspapers of national and wide circulation and the Bank and Scheme's website:

Provided that the Committee shall publish the first list of member institutions within three months after the date of commencement of these Regulations.

18. (1) The Committee shall issue a certificate of membership to every member institution in such form and manner as it may determine.

Certificate of membership

(2) A member institution shall display a copy of the certificate at its main office, all its branches and outlets.

(3) A member institution that fails comply with the provisions of subregulation (2) commits an offence and is liable to a fine not exceeding P5000.

19. (1) A member institution shall, on becoming a member institution pursuant to regulation 17, pay to the Fund a membership fee and premium contribution determined in accordance with subregulation (2).

Contributions to Fund

(2) The Committee shall serve on every member institution a notice specifying –

- (a) an annual premium amount to be paid by the member institution of not less than 0.1 per cent but not exceeding 0.4 per cent of the total deposit liabilities of the member institution; and
- (b) the period within which the premium shall be paid, which shall not be later than 21 days after the date of service of the notice.

(3) For purposes of subregulation (2), the total deposit liabilities shall be for the 12 months preceding the date of notice.

(4) A member institution shall not offset a premium contribution on the basis of any claim against the Fund.

20. (1) A member institution that fails to pay its premium contribution as required under regulation 19 shall be liable to pay to the Fund a penalty interest charge not exceeding one-half per cent of the unpaid amount for every day the member institution continues to be in default:

Failure to pay premium contribution

Provided that the days the member institution continues to be in default shall not exceed 30 days.

(2) Where a member institution continues to be in default for a period exceeding 30 days, the Committee shall refer the matter to the Bank for further action as the Bank may deem appropriate.

21. (1) A member institution shall submit statutory returns showing the amount of deposits and a breakdown of relevant deposits as the Committee may require.

Maintenance of data and submission of returns

(2) The Committee may seek the opinion of an auditor as to whether the statutory returns submitted under subregulation (1) are correctly compiled in all material respects.

(3) The auditor under subregulation (2) shall be appointed by the member institution, subject to the approval of the Committee.

(4) A member institution shall, within five working days of experiencing any unusual liquidity problems in its day-to-day business, notify the Committee of such problems:

Provided that notification shall be in such form and manner as the Committee may determine.

Collaboration
with Bank

22. (1) In order to enforce provisions of these Regulations, the Committee shall collaborate with the Bank —

- (a) in conducting an examination of a member institution for purposes of analysing and auditing deposit related issues, including joint examination of a member institution with the Bank;
- (b) when investigating the conduct of parties responsible for, or contributing to the failure of a member institution;
- (c) where a member institution experiences financial difficulty, and intervene before the member institution becomes non-viable;
- (d) in sharing information that is necessary for the effective operation of the Scheme; and
- (e) on the —
 - (i) determination of premium contributions under regulations 4 (2) (a), 11 (1) (b) and 19 (2) (a),
 - (ii) most appropriate resolution method of a failing or failed member institution,
 - (iii) appointment of a liquidator, and
 - (iv) professional disciplinary measures imposed on parties identified as having contributed to, or being responsible for, the failure of a member institution following an investigation under paragraph (b)

(2) The Committee may, in collaboration with the Bank, allow a safe and sound bank to acquire a non-viable bank and takeover its deposit liabilities.

Risk based
premium
contribution

23. Where it appears to the Committee that the affairs of a member institution are conducted in a manner detrimental to its own interests or the depositors' interests, and that the continued conduct may cause loss to depositors and the Fund, the Committee may increase premium contributions of such member institution beyond the premium contribution specified in regulation 19.

Cessation of
membership

24. (1) A member institution shall cease to be a member of the Scheme upon —

- (a) surrender of its banking or deposit-taking licence; or
- (b) cancellation or revocation of its banking or deposit-taking licence by the Bank.

(2) The Committee shall, as soon as reasonably practicable, cause to be published a notice of cessation of membership under subregulation (1) in the *Gazette*, at least two papers of national and wide circulation and the Bank and Scheme's website.

Effects of
cessation of
membership

25. (1) A bank or deposit-taking institution that ceases to be a member of the Scheme in terms of regulation 24 shall —

- (a) surrender its certificate of membership to the Committee;
- (b) not assume, hold out or in any way give the impression that such bank or deposit-taking institution is a member institution;
- (c) not be relieved from its obligations or liabilities to the Scheme that accrued before the cessation of its membership; and
- (d) indemnify the Scheme of any payment made by the Scheme to depositors.

(2) For purposes of this regulation, a protected deposit shall not include monies received or held by a bank or deposit-taking institution and interest acquired on such monies subsequent to the date on which a bank or deposit-taking institution ceases to be member institution.

(3) Notwithstanding subregulation (2), a bank or deposit-taking institution shall be obligated to repay a person any monies received or held by such bank or deposit-taking institution, including interest acquired by the person on such monies.

PART V — *Payment of Claims*

26. (1) Where the Bank gives written notice to the Committee that a licence of a member institution has been cancelled or revoked, protected deposits shall, subject to provisions of this Part, become payable from the Fund. Payment of claims

(2) Upon receipt of the notification under subregulation (1), the Committee shall, in such manner as it may determine —

- (a) give notification of the unavailability of deposits to affected depositors of the member institution and members of the public;
- (b) inform protected depositors of procedures to be followed when lodging a claim from the Fund, including —
 - (i) the manner in which claims may lodged,
 - (ii) agents appointed to process claims, and
 - (iii) where claims may be lodged; and
- (c) publish any other relevant information to ensure members of the public are aware of the procedures in paragraph (b).

(3) The Committee shall, on proof of entitlement being presented by the claimant in such manner as the Committee may require, pay claims within 21 days from the date of receipt of such claims —

- (a) in cash;
- (b) through transfer of funds into an account of a protected depositor at another member institution; or
- (c) through any lawful payment method approved by the Committee.

(4) Notwithstanding subregulation (3), the Committee may withhold payment to a third party until the Committee receives written assignment from a protected depositor of his rights and interests in the protected deposit to such third party.

27. (1) A maximum amount payable to a protected depositor in respect of the aggregate credit balance of any deposit accounts maintained by the depositor with a member institution shall not exceed P250 000 or such other amount as the Committee may determine from time to time: Limit of cover

Provided that the Committee may consider the Bank closing mid exchange rate on the date of failure of a member institution to determine the extent to which a foreign currency denominated deposit shall be protected.

(2) For purposes of subregulation (1), where a protected depositor has more than one deposit account in a member institution, the deposits shall be aggregated and treated as one deposit account.

(3) The coverage limit for purposes of this Part shall be per protected depositor per bank, using a single customer view account format.

Time limit for claims	<p>(4) In the case of a merger or amalgamation of member institutions, a protected depositor shall have separate coverage for each member institution until such time that the merger or amalgamation is concluded.</p> <p>28. A claim for payment shall not be brought after expiry of two years from the date of notification under regulation 26 (2) (a):</p> <p>Provided that this regulation shall not apply where the Committee is satisfied that a claimant was, for reasons beyond his control, unable to make the claim within the specified times.</p>
Excluded deposits	<p>29. For purposes of this Part, a protected deposit shall not include —</p> <ul style="list-style-type: none"> (a) interbank deposits; (b) deposits of the Government or institutions wholly or partly owned by the Government; (c) deposits of banks and non-bank financial institutions; (d) deposits of owners, directors and senior management of a failed member institution; (e) deposits of a subsidiary or associate company of a member institution; (f) deposits held by International Financial Services Centre licensed banks; (g) negotiable certificates of deposits or any other tradable debt funding instrument; or (h) deposits arising from transactions that are linked to financial crime.
Discharge of liability	<p>30. Upon payment of a protected deposit under regulation 26, the Committee shall be discharged from all liabilities to the extent of the amount of payment made.</p>
Subrogation	<p>31. (1) Where the Committee makes payment under regulation 26, the Committee —</p> <ul style="list-style-type: none"> (a) shall be subrogated, to the extent of the amount of payment made, to all the rights and interests of the protected depositor; and (b) may maintain an action, in respect of the rights and interests, in the name of the protected depositor or in the name of the Fund. <p>(2) Upon payment of a protected deposit, the Fund shall be entitled to receive from the member institution an amount equal to the compensation paid by the Committee on account of its subrogation to the claim of any depositor or protected depositor.</p>

PART VI — Public Awareness on Deposit Insurance

Information to depositors	<p>32. (1) The Scheme shall provide member institutions with information, at least once a year, including public education material containing the following —</p> <ul style="list-style-type: none"> (a) general information about the Scheme; (b) what constitutes a protected deposit and an unprotected deposit; (c) the maximum coverage limit; (d) deposit claims procedure; and (e) any other information that the Scheme considers relevant to the depositors. <p>(2) A member institution shall permanently display brochures provided in subregulation (1) at its public entrance, exit doors and adjacent to each teller station in its banking hall and in any other conspicuous place at its head office, branch or outlet.</p>
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(3) A member institution shall inform depositors on its website, Automated Teller Machines screen saver, mobile applications, official stationery and print adverts that brochures provided in subregulation (1) are available in the member institution's banking hall, head office, branches and outlets.

(4) A member institution shall on its website, Automated Teller Machines screen saver, mobile applications, official stationery and print adverts, make the following representation —

“Member of the Deposit Insurance Scheme of Botswana”.

(5) A radio, television or podcast advertisement made by a member institution shall contain the following statement in English, with Setswana translation ---

“Deposits held by the member institution are protected by the Deposit Insurance Scheme of Botswana”.

33. A member institution shall specify the level of deposit insurance coverage in a deposit transaction document.

Information in
deposit
transaction
document

34. (1) The Scheme shall have a website, which shall include updated information on deposit insurance, advertisements and other public awareness activities.

Scheme website

(2) The Committee shall formulate a communication strategy to promote public awareness on deposit insurance.

MADE this 11th day of July, 2023.

PEGGY O. SERAME,
Minister of Finance.