FINANCIAL INTELLIGENCE (AMENDMENT) ACT, 2025

No. 1 **of 2025**

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An Act to amend the Financial Intelligence Act.

Date of Assent: 24.01.2025
Date of Commencement: 24.01.2025
ENACTED by the Parliament of Botswana.

Short title and commencement

1. This Act may be cited as the Financial Intelligence (Amendment) Act, 2025 and shall come into operation on such date as the Minister may by Order published in the *Gazette*, appoint.

General amendment of Cap. 08:07

2. The Financial Intelligence Act (hereinafter referred to as the "the Act") is amended by substituting for the words "financing of proliferation" wherever they appear in the Act, the words "proliferation financing.".

Amendment of section 2 of the Act

3. The Act is amended in section 2 by substituting for the words "accountable institution", "cash", "group-wide", "non-profit organisation" and "prominent influential person", the following new definitions —

"accountable institution" means a person referred to in Schedule III, its branches and subsidiaries;

"cash" means coin and paper money of Botswana or of another country that is designated as a legal tender and that circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue and includes fiat currency as defined in the Virtual Assets Act;

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"group-wide" means a group that consists of a parent company or any other legal person exercising control and coordinating functions over the members of the group for the application of group supervision, together with branches or subsidiaries that are subject to anti-money laundering, counter financing of terrorism, counter proliferation financing policies and procedures at the group level;

"non-profit organisation" means a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes or for the carrying out of other types of good works;

"prominent influential person" means, in relation to —

(*a*) a foreign prominent influential person, a person who is or has been entrusted with prominent public function by a foreign country;

(*b*) a domestic prominent influential person, a person who is or has been entrusted with domestically prominent public functions and includes —

(i) a President,
(ii) a Vice-President,
(iii) a Cabinet Minister,
(iv) a Speaker of the National Assembly,
(v) a Deputy Speaker of the National Assembly,

(vi) a member of the National Assembly,
(vii) a senior government official,
(viii) a judicial officer,
(ix) a *Kgosi* as defined under the *Bogosi* Act, Cap. 41:01
(x) a senior executive of a private entity where the private entity is of such turnover as may be prescribed,
(xi) a senior executive of a public body,
(xii) a senior executive of a political party,
(xiii) senior executives of international organisations operating in Botswana, or
(xiv) such person as may be prescribed; and

(*c*) international organisation, a person who is or has been entrusted with a prominent function by an international organisation.".

Substitution of section 4 of the Act

4. The Act is amended by substituting for section 4, the following new section —

"Operational independence

4. (1) The Financial Intelligence Agency is hereby continued under this section.

(2) The Agency shall consist of a Director General and such other officers of the Agency, as may be necessary for the proper performance of the functions of the Agency.

(3) The Agency shall be operationally independent in pursuit of its primary objectives, and in the performance of its functions under this Act, shall act without fear, favour or prejudice or direction of any person, authority or institution.".

Amendment of section 5 of the Act

5. Section 5 of the Act is amended by inserting immediately after subsection (7), the following new subsection —

"(8) The Director General shall have the power to appoint or re-assign staff in critical functions including senior management.".

Amendment of section 6 of the Act

6. Section 6 (2) of the Act is amended —

(*a*) in paragraph (*d*), by inserting immediately after the words "specified party", the words "or accountable institution"; and

(*b*) by inserting immediately after paragraph (*k*), the following new paragraphs —

"(*l*) conduct operational analysis, which uses available and obtainable, information to identify specific targets to follow the trail of particular activities or transactions and to determine links between those targets and possible proceeds of crime, money laundering, predicate offences and terrorist financing; and

(*m*) conduct strategic analysis which uses available and obtainable information, including data that may be provided by other competent authorities, to identify money laundering and terrorist financing related trends and patterns.".

Amendment of section 8 of the Act

7. Section 8 (2) (*c*) of the Act is amended by —

(*a*) substituting for subparagraph (ii), the following new subparagraph —

"(ii) the Ministry responsible for presidential affairs", and

(*b*) inserting immediately after subparagraph (xviii), the following new subparagraphs—

"(xviiiA) the Ministry responsible for justice,

(xviiiB) the Drug Enforcement Agency, and

(xviiiC) the Civil Aviation Authority of Botswana,".

Amendment of section 9 of the Act

8. Section 9 of the Act is amended —

(*a*) in subsection (2) —

(i) by substituting for the chapeau therein, the following new chapeau —

"(2) The Committee shall with respect to declaration of terrorists and terrorist groups under section 10 —",

(ii) in paragraph (*a*) by inserting the word "," after the word "Minister", and

(iii) by deleting paragraph (*f*), appearing therein, and

(iv) by deleting paragraph (*h*), appearing therein; and

(*b*) by substituting for subsection (3), the following new subsection —

"(3) The Committee shall formulate policies to protect the international reputation of Botswana with regard to financial offences, and generally advise the Minister in relation to such matters relating to financial offences".

Insertion of section 9A in the Act

9. The Act is amended by inserting immediately after section 9, the following new section —

"National Coordination Office

9A. (1) There is hereby established a National Coordination Office which shall report to the Committee.

(2) The National Coordination Office shall be headed by an officer appointed by the Committee and shall consist of such other officers as may be necessary.

(3) The duties of the National Coordination Office shall be to —

(*a*) assess the effectiveness of policies and measures to combat financial offences;

(*b*) make recommendations to the Committee for legislative, administrative and policy reforms;

(*c*) promote inter agency coordination and cooperation among the relevant stakeholders;

(*d*) to coordinate the national risk assessment;

(*e*) to conduct outreach activities;

(*f*) to coordinate implementation of the recommendations from mutual evaluations, follow up reports and changes in international standards; and

(*g*) to execute any other functions as may be delegated by the Committee.".

Amendment of section 10 of the Act

10. Section 10 of the Act is amended in subsections (1), (3) and (5) by inserting immediately after the word "person", the words ", entity".

Insertion of section 10A in the Act

11. The Act is amended by inserting immediately after section 10, the following new section —

"Designation for purposes of UN

10A. An individual, entity or group may be designated under the following circumstances, on the Minister's recommendation if —

(*a*) undertaking or participating in the financing, planning, facilitating, preparing or perpetrating acts or activities by or conjunction with or in support;

(*b*) supplying, directing or committing acts involving sexual and gender-based violence including rape, enslavement or persons and cases of abduction and trafficking in persons, when such acts are being used by ISIL (Da'esh), Al-Qaida and associated individuals, groups and entities as a tactic of terrorism; or

(*c*) any other prescribed criterion.".

Amendment of section 13 of the Act

12. Section 13 of the Act is amended in —

(*a*) subsection (1) by inserting immediately after paragraph (*d*), the following new paragraph —

"(*e*) customers, countries or geographic areas and services."; and

(*b*) subsection (3) by deleting the words "or accountable institutions" appearing therein.

Amendment of section 15 of the Act

13. Section 15 (4) of the Act is amended by inserting the words "and counter proliferation financing" after the words "counter financing of terrorism", wherever they appear.

Amendment of section 16 of the Act

14. Section 16 (1) of the Act is amended in —

(*a*) paragraph (*b*) by inserting before the word "carrying" the word "when"; and

(*b*) paragraph (*d*) by inserting immediately after the word "transfer" the words "equal to or in excess of the prescribed amount".

Amendment of section 17 of the Act

15. Section 17 of the Act is amended by inserting immediately after subsection (3), the following new subsection —

"(3A)A supervisory authority shall require a specified party to —

(*a*) obtain immediately from the third party the necessary information concerning identification of the customer, beneficial owner and the nature of the business;

(*b*) take steps to satisfy itself that copies of identification data and other relevant documentation relating to the customer due diligence requirements are made available from the third party upon request without delay;

(*c*) determine which country the third party it relies on is based in and have regard to information on the level of the country's risk; and

(*d*) determine whether a third party who is part of the same financial group meets the requirements.".

Amendment of section 19 of the Act

16. Section 19 (2) of the Act is amended by inserting the words ", terrorist financing and proliferation financing" after the words "money laundering".

Amendment of section 20 of the Act

17. Section 20 of the Act is amended —

(*a*) in subsection (1) by inserting immediately after paragraph (*d*), the following new paragraph —

"(*e*) establish the nature of the business and the ownership at on-boarding.";

(*b*) in subsection (2) —

(i) paragraph (*a*) by inserting the words "and verify" after the word "establish",

(ii) paragraph (*b*) by inserting the words "establish and" before the word "verify"; and

(iii) paragraph (*c*) by inserting the words "establish and" before the word "verify";

(*c*) in subsection (3) by substituting for paragraph (*c*) appearing therein, the following paragraph —

"(*c*) the other person's identity on the basis of documents or information obtained from a reliable source which is independent of both the customer and the person acting on behalf of the customer.";

(*d*) in subsection (6) by substituting for paragraph (*b*) appearing therein, the following new paragraph —

"(*b*) production of a national identity card for citizens and for nationals from specified countries.";

(*e*) by deleting subsection (9) appearing therein; and

(*f*) in subsection (10) by substituting for paragraph (*b*) appearing therein, the following new paragraph —

"(*b*) forms a reasonable suspicion of a financial offence,".

Amendment of section 22 of the Act

18. The Act is amended by substituting for section 22, the following new section —

"Enhanced due diligence measures relating to prominent influential persons

22. (1) A specified party shall, in accordance with its risk management systems and compliance programme, establish whether a customer or beneficial owner of a customer is a prominent influential person or a person entrusted with a prominent function by an international organisation.

(2) Where a specified party determines in accordance with its risk management systems and compliance programme that a customer with whom it engages to establish a business relationship or the beneficial owner of that customer is a prominent influential person or a person entrusted with a prominent function by an international organisation, the specified party shall —

(*a*) in relation to a foreign prominent influential person, in addition to performing the customer due diligence measures required under section 16, a specified party shall be required to —

(i) obtain senior management approval before establishing, or continuing, for existing customers, such business relationships,

(ii) take reasonable measures to establish the source of wealth and the source of funds of a customer and beneficial owner identified as a prominent influential person, and

(iii) conduct enhanced ongoing monitoring on that relationship, and

(*b*) in relation to a domestic prominent influential person, in addition to performing the customer due diligence measures required under section 16, a specified party shall be required to —

(i) take reasonable measures to determine whether a customer or the beneficial owner is a prominent influential person, and

(ii) in cases when there is higher risk business relationship with such a person, adopt the measures in subsection (2) (*a*) (ii) – (iv).".

Amendment of section 25 of the Act

19. Section 25 of the Act is amended in subsection (3) by substituting for the word "P 5000 000" the word "P 5 000 000".

Amendment of section 26 of the Act

20. (1) Section 26 of the Act is amended by substituting for subsection (2), the following new subsection —

"(2) A specified party shall not establish, maintain, administer, permit the use of the specified party's accounts or manage a correspondent account in Botswana for, or on behalf of, a foreign shell bank.".

Amendment of section 30 of the Act

21. The Act is amended by substituting for section 30, the following new section —

"Failure to satisfactory complete customer due diligence

30. Where a specified party is unable to comply with relevant customer due diligence measures —

(*a*) it shall not open the account, commence business relations or perform the transaction or should be required to terminate the business relationship; and

(*b*) it shall consider making a suspicious transaction report in relation to the customer.".

Amendment of section 31 of the Act

22. Section 31(1) of the Act is amended by substituting for paragraph (*d*), the following new paragraph —

"(*d*) the identity of a beneficial owner;".

Amendment of section 35 of the Act

23. Section 35 of the Act is amended by substituting for subsection (2), the following new subsection —

"(2) A person who destroys or removes any record, register or document kept in accordance with this Part commits an offence and is liable to —

(*a*) an administrative fine not exceeding P500 000 as may be imposed by the supervisory authority;

(*b*) a fine not exceeding P500 000; or

(*c*) imprisonment for a term not exceeding 10 years, or to both.".

Amendment of section 36 of the Act

24. Section 36 of the Act is amended by substituting for subsection (5), the following new subsection —

"(5) A person who intentionally obstructs an examiner in the performance of any of the examiner's duties under this section or fails, without reasonable excuse, to comply with a request of the examiner in the performance of the examiner's duties under this section, commits an offence and is liable to —

(*a*) an administrative fine not exceeding P500 000 as may be imposed by the supervisory authority;

(*b*) a fine not exceeding P500 000; or

(*c*) imprisonment for a term not exceeding 10 years, or to both.".

Deletion of section 40 of the Act

25. The Act is amended by deleting section 40.

Amendment of section 42 of the Act

26. Section 42 of the Act is amended —

(*a*) by inserting immediately after the words "financial institution" wherever they appear, the words "money value transfer service provider and virtual asset service provider"; and

(*b*) by substituting for subsection (1), the following new subsection —

"(1) A financial institution, a money value transfer service provider or a virtual asset service provider that through electronic transfer, transacts through domestic wire transfer, money or virtual assets equal to or in excess of the prescribed amount on behalf or on the instruction of a customer or any person, shall report to the Agency such particulars of the transfer as may be prescribed.".

Amendment of section 45 of the Act

27. Section 45 of the Act is amended by substituting for paragraph (*c*), the following new paragraph —

"(*c*) to submit a monitoring report to the Agency, within 10 working days, after the expiry of the 15 days' period provided under paragraph (*a*);".

Amendment of section 48 of the Act

28. Section 48 of the Act is amended by inserting immediately after the words "counter financing of terrorism", the words ", counter proliferation financing".

Amendment of section 49 of the Act

29. Section 49 of the Act is amended in —

(*a*) subsection (1) (*a*) by inserting immediately after the word "criminals", the words "or their associates";

(*b*) in subsection (2) (*a*) by —

(i) inserting immediately after the words "specified party", the words "or an accountable institution", and

(ii) substituting for the word "Part", the word "Act"; and

(*c*) subsection (3) by substituting for paragraph (*c*), the following new paragraph —

"(*c*) conduct targeted supervision and monitoring on a non-profit organisation at risk of terrorist financing abuse; and".

Amendment of section 51 of the Act

30. Section 51 of the Act is amended —

(*a*) in subsection (1) by substituting for paragraph (*b*), the following new paragraph and by inserting a new paragraph after paragraph (*b*)—

"(*b*) with respect to a trustee or a person holding an equivalent position in a similar legal arrangement —

(i) obtain and hold adequate, accurate and current beneficial ownership information regarding the trust and other similar legal arrangements on the identity of the settlor, trustee, protector, if any; each beneficiary or, where applicable, the class of beneficiaries and objects of a power; and or any other natural person exercising ultimate effective control over a trust, or a similar legal arrangement;

(ii) obtain and hold adequate, accurate and current basic and beneficial ownership information on legal structures which are party to the trust or similar legal arrangement; and

(iii) hold basic information on other regulated agents of, and service providers to the trust and similar arrangements including investment advisors or managers, donors, accountants and tax advisors."; and

"(*c*) a trustee or a person holding equivalent position in a similar legal arrangement shall ensure that all records required to be held under this Act are kept up to date and made available swiftly to a competent authority upon appropriate authority."; and

(*b*) by inserting immediately after subsection (3), the following new subsections —

"(3A) A competent authority shall have full access to information on the administration and management of particular non-profit organisation, including financial and programmatic information that may be obtained in the course of investigation.

(3B) A person who acts on behalf of a non-profit organisation that is identified to be at risk of abuse of terrorism financing, that fails to comply with the provisions of this section is liable to —

(*a*) an administrative fine not exceeding P500 000;

(*b*) cancellation of registration or licensing, as the case may be; or

(*c*) to both penalties provided under paragraphs (*a*) and (*b*), as may be imposed by the supervisory authority.".

Amendment of section 52 of the Act

31. Section 52 of the Act is amended by substituting for subsection (1), the following new subsection —

"(1) The Agency may, for the purposes of assessing whether any information should be disseminated to an investigatory or supervisory authority, comparable body or competent authority, request further information in relation to a suspicious transaction, even when there is no suspicious transaction filed, from —

(*a*) the specified party, accountable institution or person who made the report;
(*b*) any other specified party or accountable institution that is, or appears to be involved in the transaction;
(*c*) an investigatory authority;
(*d*) a supervisory authority;
(*e*) any other administrative agency of the Government; or
(*f*) an accountable institution which made the report.".

Insertion of section 52A in the Act

32. The Act is amended by inserting immediately after section 52, the following new section

"Access to database

52A. The Agency shall, for purposes of spontaneously executing its duty under this Act, have access to a database of any competent authority.".

Amendment of section 61 of the Act

33. Section 61 of the Act is amended by inserting after the words "Schedule I", wherever it appears, the words ",Schedule II".

Amendment of section 62 of the Act

34. Section 62 is amended by substituting for subsection (1), the following new subsection —

"(1) The Director General shall, within six months of the following financial year or by such later date as the Minister may allow, submit a report to the Minister, on the activities of the Agency in the previous year.".

Amendment of section 63 of the Act

35. Section 63 (3) of the Act is amended by substituting for the word "P100 000" appearing therein, the word "P1 000 000".

Amendment of Schedule I to the Act

36. Schedule I to the Act is amended —

(*a*) by substituting for paragraph 7 appearing therein, the following new paragraph —
"7. A licensed operator as licensed under the Gambling Act, Cap. 19:03.";
(*b*) by substituting for paragraph 12 appearing therein the following new paragraph —
"12. A precious stone dealer when they engage in a cash transaction with a customer equal to or above the prescribed cash limit;".
(*c*) by deleting paragraphs 9 and 17 appearing therein;
(*d*) by substituting for paragraph 20 appearing therein, the following new paragraph—
"20. A trust and company service provider, when preparing for or carrying out transaction for clients concerning the following —
(*a*) acting as a formation agent of legal persons;
(*b*) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
(*c*) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;

(*d*) acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement; and

(*e*) acting as (or arranging for another person to act as) a nominee shareholder for another person.";

(*e*) by substituting for paragraph 22, the following new paragraph —

"22. A precious metal dealer as defined under the Unwrought Precious Metals Act, Cap. 20:03, when they engage in a cash transaction with a customer equal to or above the prescribed cash limit.".

Amendment of Schedule II to the Act

37. Schedule II to the Act is amended by inserting immediately after the last entry therein, the following entry —

"13. The Companies and Intellectual Property Authority established under the Companies and Intellectual Property Authority Act, Cap. 42:13.".

PASSED by the National Assembly on this 19th day of December, 2024.

DR. GABRIEL GOITSEMODIMO
G. MALEBANG,
Clerk of the National Assembly.