

FINANCIAL INTELLIGENCE ACT
(Cap. 08:07)

FINANCIAL INTELLIGENCE (AMENDMENT) REGULATIONS, 2018
(Published on 27th August, 2018)

ARRANGEMENT OF REGULATIONS

REGULATION

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IN EXERCISE of the powers conferred on the Minister of Finance and Economic Development by section 40 of the Financial Intelligence Act, the following Regulations are hereby made —

1. These Regulations may be cited as the Financial Intelligence (Amendment) Regulations, 2018. Citation
2. The Financial Intelligence Regulations (hereinafter referred to as “the Regulations”) are amended — General amendment of Cap. 08:07 (Sub. Leg.)
 - (a) by substituting for the words “Proceeds of Serious Crime Act” wherever they appear, the words “Proceeds and Instruments of Crime Act”; and Cap. 08:03
 - (b) at regulations 11 to 21, 26 and 28 by inserting immediately after the words “specified party” wherever they appear the words “accountable institutions”.
3. Regulation 2 is amended — Amendment of regulation 2 of the Regulations
 - (a) by inserting in their correct alphabetical order, the following new definitions —
 - “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;
 - “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

“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; and

“trustee” has the same meaning assigned to it under the Trust Property Control Act; and

- (b) by deleting the definitions of “beneficial owner”, “guidance notes” and “trust”.

Amendment of regulation 3 of the Regulations

4. Regulation 3 (1) is amended by substituting for the word “may” appearing therein, the word “shall”.

Amendment of regulation 4 of the Regulations

5. Regulation 4 is amended —

- (a) in subregulation (3) by —

(i) substituting for the word “may” appearing therein, the words “shall not”, and

(ii) substituting for the word “but”, the word “and”; and

- (b) by inserting immediately after subregulation (3), the following new subregulations —

“(3A) 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.

(3B) Nothing in these Regulations shall prohibit a specified party or accountable institution from discontinuing the customer due diligence process where there is a reasonable suspicion of money laundering, the financing of an act of terrorism or the financing of proliferation of arms of war or NBC weapons.”.

Insertion of regulations 4A, 4B, 4C, 4D, 4E and 4F in the Regulations

6. The Regulations are amended by inserting immediately after regulation 4, the following new regulations —

“Conduct of customer due diligence 4A. (1) A specified party or accountable institution shall undertake due diligence measures —

(a) when establishing a business relationship;

(b) when the customer wishes to carry out a transaction in an amount equal to or above P10 000, whether conducted as a single transaction or several transactions that appear to be linked;

(c) when carrying out a domestic or international transfer of funds;

(d) where there is doubt about the veracity or adequacy of previously obtained customer identification data; and

(e) where there is a suspicion of money laundering or the financing of terrorism.

(2) A specified party or accountable institution shall —

(a) collect information regarding the anticipated purpose and intended nature of the business relationship;

- (b) exercise on-going due diligence with respect to the business relationship and closely examine the transactions carried out in order to ensure that such transactions are consistent with their knowledge of the customer's business activities, risk profile and, where necessary, the source of the customer's funds;
- (c) take specific and adequate measures to address the risk of commission of a financial offence in the event that they conduct a business relationship or execute a transaction with a customer that is not physically present for the purposes of identification; and
- (d) have the appropriate risk management systems in place to determine if a customer or a beneficial owner is a prominent influential person and if so —
 - (i) obtain approval from senior management before establishing a business relationship with the customer,
 - (ii) take all reasonable measures to identify the source of funds of the customer or beneficial owner, and
 - (iii) conduct enhanced on-going monitoring of the business relationship.

Conduct of due diligence for existing customers

4B. (1) Where a specified party has established a business relationship with a client before the commencement of these Regulations, the specified party shall not conclude a transaction in the course of the business relationship, unless he or she has —

- (a) ascertained and verified the identity of the customer;
- (b) established and verified the identity and authority of the person acting on behalf of the customer when establishing a business relationship where the other person acted on behalf of the customer in establishing the business relationship; and
- (c) established and verified the identity and authority of the customer where the customer acted on behalf of another person in establishing the business relationship.

(2) The authority to act on behalf of another under paragraphs (b) and (c) of subregulation (1) shall be in Form C set out in the Schedule.

Simplified customer due diligence

4C. (1) A specified party may conduct a simplified customer due diligence where the risks of money laundering, the financing of an act of terrorism and the financing of proliferation of arms of war or NBC weapons are considered to be low by the specified party.

(2) A specified party under subregulation (1) may —

- (a) verify the identity of a customer and the beneficial owner after the establishment of a business relationship;
- (b) reduce the frequency of customer identification updates;

- (c) reduce the degree of on-going monitoring and scrutinising of transactions; and
- (d) not collect specific information or carry out specific measures to understand the purpose and intended nature of the business relationship but shall infer the purpose and nature from the type of transaction or the business relationship established.

(3) A simplified customer due diligence measure shall not be carried out under this regulation where there is a suspicion of commission of a financial offence.

Enhanced customer due diligence 4D. (1) A specified party shall conduct an enhanced customer due diligence consistent for all complex, unusually large transactions and all unusual patterns of transactions with no apparent economic or lawful purpose.

(2) A specified party shall, for high risk business and high risk jurisdiction relationships —

- (a) obtain the following additional information on a customer —
 - (i) the occupation of the customer,
 - (ii) the assets owned by the customer,
 - (iii) the source of funds of the customer, and
 - (iv) any information available through public data bases;
- (b) obtain additional information on the intended nature of a business relationship;
- (c) obtain information on the reasons for intended or performed transactions;
- (d) obtain the approval of senior management to commence or continue a business relationship;
- (e) conduct enhanced monitoring of the business relationship; and
- (f) require the first payment under a correspondent banking relationship to be carried out through an account in the customer's name with a bank subject to similar customer due diligence standards.

(3) A specified party shall conduct an enhanced due diligence where it has determined that a legal person or legal arrangement is a beneficiary of a life insurance and other investment-related insurance policies.

Internal controls and foreign branches and subsidiaries 4E. Where the laws of a foreign country permit, a financial institution shall apply Botswana anti money laundering, counter financing of terrorism and counter financing of proliferation measures —

- (a) on a foreign branch; or
- (b) on a majority owned subsidiary operating in a foreign country, where Botswana anti money laundering, counter financing of terrorism and counter financing of proliferation measures are more strict than the measures of the foreign country.

Cross-border correspondent banking 4F. A financial institution that provides correspondent banking services shall, with respect to a cross-border correspondent banking relationship —

- (a) identify and verify the identification of respondent institutions with which it conducts cross-border correspondent banking relationships;

- (b) gather sufficient information on the nature of the respondent bank's activities;
- (c) determine from publicly available information the respondent institution's reputation and the nature of supervision to which it is subjected;
- (d) evaluate the controls implemented by the respondent institution with respect to money laundering, the financing of an act of terrorism and the financing of proliferation arms of war or NBC weapons; and
- (e) understand the responsibilities of each bank with respect to "payable through accounts" and ensure that the respondent institution —
 - (i) has verified its customer's identity;
 - (ii) has implemented mechanisms for ongoing monitoring with respect to its customers, and
 - (iii) is capable of providing relevant identifying information on request."

7. Regulation 6 is amended by inserting immediately after paragraph (h) the following new paragraphs —

Amendment of regulation 6 of the Regulations

- "(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 behavior."

8. The Regulations are amended by inserting immediately after regulation 9, the following new regulation —

Insertion of regulation 9A in the Regulations

- "Ascertainment of information for beneficiaries of life insurance and other investment-related insurance business
- 9A. (1) A specified party shall conduct the following customer due diligence measures on a beneficiary of a life insurance and other investment-related business —
- (a) obtain the name of the person; and
 - (b) obtain sufficient information concerning the beneficiary or a beneficiary designated by class to satisfy the specified party that it is able to establish the identity of the beneficiary at the time of pay-out.
- (2) The verification of the identity of the beneficiary under subregulation (1) shall occur at the time of the pay-out of the life insurance or investment."

9. The Regulations are amended by substituting for regulation 13, the following new regulation —

Amendment of regulation 13 of the Regulations

- "Specified party to maintain an up-to-date particulars
13. (1) A specified party 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 shall update periodically particulars under subregulation (1) based on any risk assessment conducted."

Amendment of regulation 18 of the Regulations

10. The Regulations are amended by substituting for regulation 18, the following new regulation —

- “Period of reporting 18.(1) A report made in terms of section 17 or 19 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.
- (2) A specified party or accountable institution shall report to the Agency any transaction concluded with a customer where —
- (a) the amount is equal to or above P10 000 or an equivalent amount in foreign currency; or
 - (b) the suspicion of money laundering or the financing of an act of terrorism and the financing of proliferation of arms of war or NBC weapons is considered to be high.”.

Amendment of regulation 19 of the Regulations

11. Regulation 19 is amended —

- (a) by substituting for the side note appearing therein, the following new side note “Reporting of wire transfers”;
- (b) by substituting for the words “money in excess of P10 000” wherever they appear, the words “an amount equal to or above P10 000”;
- (c) in subregulation (3), by substituting for the words “the amount of P10 000”, the words “an amount equal to or above P10 000”; and
- (d) by inserting immediately after subregulation (3), the following new subregulations —
 - “(4) A specified party shall ensure that the information accompanying a domestic wire transfer shall include originator information as indicated for a cross-border wire transfer.
 - (5) Where the information under subregulation (4) cannot be made to the beneficiary financial institution and appropriate competent authorities, the ordering financial institution shall include the account number or a unique transaction code.
 - (6) A cross-border wire transfer shall contain the following information —
 - (a) the name of the originator;
 - (b) the originator’s account number;
 - (c) the address and national identity number or customer identification number of the originator;
 - (d) the name of the beneficiary;
 - (e) the beneficiary’s account number; and
 - (f) the source and purpose of funds.
 - (7) A specified party shall, where there is no account with respect to a cross-border wire transfer, include a unique transaction reference number which permits traceability of the transaction.
 - (8) Where several individual cross-border wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries, such individuals may be exempted from the requirements of subregulation (6) 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.”.

12. The Regulations are amended by inserting immediately after regulation 26, the following new regulation —

Insertion of regulation 26A in the Regulations

“Certificate issued by Agency in terms of section 32 of the Act shall be in Form B set out in the Schedule.”.

13. The Schedule to the Regulations is amended by inserting immediately after Form A, the following new forms —

Amendment of Schedule to the Regulations

"FORM B
Certificate issued by Financial Intelligence Agency
(reg. 26A)

Summary of report

.....
.....
.....
.....

- (a) Reporting entity.....
- (b) Type or nature of report:
 - (i) STR (Suspicion Transaction Report)
 - (ii) LCT (Large Cash Transaction)
 - (iii) EFT (Electronic Funds Transfer)
- (c) Date of reporting
- (d) Particulars of the reporting officer.....
Designation
- (e) Annexures.....
.....
- (f) Mode of reporting
 - (i) Internet Based Reporting Portal
 - (ii) CD
 - (iii) STR Form

.....
**Date stamp/Signature of Director/
Designated office**

.....
Time

FORM C
Authority to act on behalf of another
(reg. 4B(2))

I.....of Identity Number/Passport No.being of sober and sound mind and acting willfully 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.....
2.....

Signature.....
Signature.....”.

MADE this 23rd day of August, 2018.

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