

DECLARATION OF ASSETS AND LIABILITIES ACT, 2019

No. 12



of 2019

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An Act to make provision for the declaration of interests, income, assets and liabilities of certain categories of persons; to monitor the interests, income, assets and liabilities of those persons for the purposes of preventing and detecting corruption, money laundering and the acquisition of property from proceeds of any other offence, and for matters connected therewith or incidental thereto.

Date of Assent: 28.08.2019

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Declaration of Assets and Liabilities Act, 2019, and shall come into operation on such a date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and
commencement

Interpretation

2. In this Act, unless the context otherwise requires —

“assets” means property declarable under section 7 (2);

“declaration” means a declaration of interest, income, assets and liabilities in accordance with this Act;

“Director-General” means the Director-General of the Ethics and Integrity Directorate appointed under section 5;

“Directorate” means the Ethics and Integrity Directorate established under section 4;

“investigatory authority” means an authority empowered by an Act of Parliament to investigate or prosecute unlawful practices;

“funds” means assets of any kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in such assets;

“judge” means —

(a) the President of the Court of Appeal and a justice of Appeal;

(b) the Chief Justice or a judge of the High Court; and

(c) the President and a judge of the Industrial Court;

“liabilities” includes responsibility in accordance with the law to satisfy a debt, duty or obligation quantifiable in monetary value, present and contingent, of a total value of P200 000 or above;

Cap. 36:03

“livestock” has the meaning assigned to it in the Livestock and Meat Industries Act;

“local authority” means a city council, a town council, a township authority, a district council, a sub-district council, an administrative authority or a landboard established under the Tribal Land Act;

Cap. 32:02

Cap. 04:04

“magistrate” means a magistrate as defined under the Magistrates’ Courts Act;

“money laundering” has the same meaning assigned to it under the Proceeds and Instruments of Crime Act;

Cap. 08:03

“private enterprise” means a voluntary organisation, non-governmental organisation, political party, charitable institution, society, association, company, partnership, club, trust or any other person or organisation where public moneys are used;

“public body” means any office, organisation, establishment or body created by or under any enactment or under powers conferred by any enactment, and includes any company in which Government has equity shares;

Cap. 26:01

“public officer” includes a public officer as defined under the Public Service Act, and any other person holding a public office under any other enactment;

“public register” means a register established under section 10 (3) (i);

“register” means the register established and maintained under section 10 (3) (h); and

“Registrar” means the Registrar of the Court of Appeal, the Registrar of the High Court, the Registrar of the Industrial Court, and includes their Deputy Registrars and Assistant Registrars.

3. (1) The provisions of this Act shall apply to —

Application

- (a) the President;
- (b) the Vice-President;
- (c) the Speaker of the National Assembly;
- (d) a Former President;
- (e) a Cabinet Minister;
- (f) the Deputy Speaker of the National Assembly;
- (g) an Assistant Minister;
- (h) a member of the National Assembly;
- (i) a judge;
- (j) a public officer at Deputy Director level and above;
- (k) an officer of a public body at Deputy Director level and above;
- (l) a member of a local authority at Deputy Director level and above;
- (m) a head of a private enterprise; and
- (n) such other officers as may be prescribed.

(2) The provisions of this Act shall continue to apply to a person who has held any of the positions referred to in subsection (1) for a period of five years after the person ceases to hold the office.

4. (1) There is hereby established an Ethics and Integrity Directorate.

Establishment
of Directorate

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

(3) The Directorate shall be a public office and accordingly, the provisions of the Public Service Act shall with such modifications as may be necessary, apply to the Director-General and to officers of the Directorate.

(4) Subject to the provisions of this Act, the Directorate shall not, in the performance of its functions, be subject to the direction or control of any other person or authority.

5. (1) There shall be a Director-General who shall be appointed by the President on such terms and conditions as the President may, on the recommendation of the Minister, determine.

Appointment of
Director-General

(2) A person appointed as a Director-General shall hold office for a five year renewable term or until he or she attains the age of 60 years, whichever is the earlier.

(3) A person holding the office of Director-General may be removed from office for —

- (a) inability to perform the functions of his or her office arising from infirmity of body, mind or any other cause;
- (b) gross misconduct; or
- (c) incompetence.

(4) The provisions of section 113 (3), (4) and (5) of the Constitution shall apply with necessary modifications to the removal of a person holding office of Director-General.

(5) The Director-General shall be responsible for the direction and administration of the Directorate.

- 6. (1) A declaration shall be made —**
- (a) to the Minister responsible for Presidential Affairs, Governance and Public Administration, by the Director-General;**
 - (b) to the Director-General —**
 - (i) by the President,
 - (ii) by the Vice-President,
 - (iii) by the Chief Justice,
 - (iv) by the Speaker of the National Assembly,
 - (v) by a Former President,
 - (vi) by a Minister,
 - (vii) by the President of the Court of Appeal,
 - (viii) by the Deputy Speaker of the National Assembly,
 - (ix) by an Assistant Minister,
 - (x) by the Leader of the Opposition,
 - (xi) by the Permanent Secretary to the President,
 - (xii) by a Justice of Appeal,
 - (xiii) by the Attorney-General,
 - (xiv) by the Directorate of Public Prosecutions,
 - (xv) by the Secretary to the Independent Electoral Commission,
 - (xvi) by the Ombudsman,
 - (xvii) by the President of the Industrial Court,
 - (xviii) by a Judge of the Industrial Court,
 - (xix) by the Auditor-General,
 - (xx) by a Judge of the High Court, the Registrar and a magistrate,
 - (xxi) by the Commander of the Botswana Defence Force,
 - (xxii) by the Commissioner of Police,
 - (xxiii) by the Commissioner of Prisons,
 - (xxiv) by the Director-General of Financial Intelligence Agency,
 - (xxv) by the Director-General of the Directorate of Intelligence and Security,
 - (xxvi) by a Receiver,
 - (xxvii) by a Permanent Secretary,
 - (xxviii) by the Chairperson and other members of the Public Service Commission,
 - (xxix) by a public officer appointed by the President,
 - (xxx) by an officer appointed by the Judicial Service Commission, and
 - (xxxi) by a head of a private enterprise;
 - (c) to the Speaker of the National Assembly, by a member of the National Assembly not referred to in paragraphs (b) (i), (ii), (vi), (ix) and (x);**
 - (d) to the Permanent Secretary to the President —**
 - (i) by an officer appointed by the Permanent Secretary to the President under any enactment, and
 - (ii) by a head of a Government Department;
 - (e) to the Permanent Secretary —**

- (i) by a Mayor,
- (ii) by the Chief Executive Officer of a public body,
- (iii) by a Board member of a public body,
- (iv) by a Chairperson of a local authority,
- (v) by a Board member of a local authority,
- (vi) by a soldier of the Botswana Defence Force at the rank of Colonel and above,
- (vii) by an officer of the Police Service at the rank of Assistant Commissioner and above,
- (viii) by a prison officer in the Prison Service at the rank of Senior Assistant Commissioner and above,
- (ix) by an officer of a public body at Deputy Director level and above,
- (x) by a public officer at Deputy Director level and above,
- (xi) by a District Commissioner,
- (xii) by a Deputy District Commissioner,
- (xiii) by an Assistant District Commissioner,
- (xiv) by a Councillor,
- (xv) by a Council Secretary,
- (xvi) by a Deputy Council Secretary,
- (xvii) by a Senior Assistant Council Secretary,
- (xviii) by a Town Clerk,
- (xix) by a Deputy Town Clerk,
- (xx) by a Court President (Urban), and
- (xxi) by a Deputy Court President (Urban); and

(f) to such other officers as may be prescribed.

(2) Any person to whom a declaration is made under subsection (1) (a) and (c) to (f) shall, within five working days of his or her receiving such declaration, submit the declaration to the Directorate.

7. (1) Every person to whom this Act applies shall make and submit, in accordance with the provisions of this Act, a declaration of all —

- (a) his or her interest, income, assets and liabilities; and
- (b) the interest, income, assets and liabilities of his or her spouse and children under the age of 18 years.

(2) A declaration of interests, income, assets and liabilities shall contain the following information —

- (a) full details of the declarant, including the person's identity document, taxation documents, employment documentation, occupation and position held;
- (b) the date and place for presentation of the declaration of interests, income, assets and liabilities;
- (c) details of any property, whether movable or immovable or corporeal or incorporeal, and includes money, rights, privileges, claims and securities and any interest in such property and all proceeds thereof, as well as —

Declaration of
interest, income,
assets and
liabilities

- (i) any currency, whether or not the currency is a legal tender in Botswana and any bill, security, bond, negotiable instrument or any instrument capable of being negotiated, which is payable to bearer or endorsed payable to bearer, whether expressed in Botswana currency or otherwise,
 - (ii) any balance held in Botswana currency or in any other currency in accounts with any bank which carries on business in Botswana or elsewhere,
 - (iii) any balance held in any currency with a bank outside Botswana,
 - (iv) any vehicles, ships, aircraft, boats, works of art, jewellery, precious metals or any other item of value,
 - (v) any right or interest in property,
 - (vi) any funds or other assets including all property and any interest, dividends or income on or value accruing or generated by such funds or assets,
 - (vii) any direct or indirect interest in a company, business or undertaking, and
 - (viii) any livestock;
- (d) details of the person's participation on boards of directors, administrative and supervisory boards, advisory boards, non-profit undertakings or any scholastic boards, whether remunerated or honorary;
- (e) the person's annual income derived from the position for which the declaration is made, including income from other sources and activities;
- (f) the person's annual income and investments related to pensions and insurance policies and annuities;
- (g) identification and brief description of the gifts, including travel and other activities that are used instantly or not, received as a product of or as a result of the position held;
- (h) an express declaration that the information, data and background provided are truthful and accurate; and
- (i) an express declaration that no relevant properties, information or data has been omitted.
- (3) For purposes of subsection (2) (c)(vi), "funds" means assets of any kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in such assets.
- (4) For the purposes of subsection (2) (c)(vii) —
- (a) a person subject to this Act has a direct interest in a company, business or undertaking if such person —
 - (i) is a director, trustee or holds a position in,
 - (ii) is an employee of,
 - (iii) is a shareholder in,
 - (iv) gives services for remuneration for reward to,

- (v) will or may derive a material financial benefit from,
- (vi) is a beneficial owner of,
the company, business or undertaking.
- (b) a person has an indirect interest in a company, business or undertaking if an immediate member of the family of the person has a direct interest in, or is a beneficial owner of the company, business or undertaking referred to in subsection (2) (c)(vii);
- (c) “immediate member of the family” means the spouse, son, daughter, sibling or parent of a person subject to this Act; and
- (d) “a beneficial owner” means any person who, directly or indirectly through any contract, arrangement, understanding, relationship or otherwise has —
 - (i) a voting power or the power to direct the voting over the assets of a company, business or undertaking, and
 - (ii) the power to dispose of or direct the disposition of the assets of the company, business or undertaking.
- (5) A declaration under this section shall —
 - (a) be in such form as may be prescribed; and
 - (b) specify any property sold, transferred or donated in any form or manner, including income or benefits from any bank account, partnership, society, company or trust.
- (6) Any person who makes a declaration of his or her interest, income, assets and liabilities under this section shall specify the nature of his or her interest in the assets including any joint ownership and the nature of his or her liabilities regarding those assets, including any joint liability.
- (7) Where assets declared under this section are shares or interest in a partnership, society or company, a person making the declaration shall also declare the interest, income, assets and liabilities of the partnership, society or company.

8. (1) A person to whom this Act applies shall make a declaration within 60 days after —

- (a) the coming into operation of this Act;
- (b) his or her appointment or assumption of office; or
- (c) the taking and subscribing before the National Assembly, of an oath of allegiance.

(2) Any person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P20 000 or to imprisonment for a term not exceeding two years, or to both.

9. (1) Notwithstanding the provisions of section 8 (1), a declaration shall be made every 24 months after the first declaration.

(2) Where, subsequent to a declaration made under subsection (1) and section 8 (1), the value of interest, income, assets and liabilities is so altered as to be reduced or increased in value by a minimum of P200 000, the person to whom this Act applies shall make a fresh declaration within 30 days of the alteration of his or her interest, income, assets and liabilities.

When
declarations
are made

Amendment
of declarations

Functions of
Directorate

(3) Any person who contravenes the provisions of this section commits an offence, and is liable to a fine not exceeding P20 000 or to imprisonment for a term not exceeding two years, or to both.

10. (1) The Directorate shall be responsible for —

- (a) promoting and reinforcing integrity and accountability in public office;
- (b) receiving and analysing declarations and verifying any information contained in such declarations;
- (c) issuing of notices to any person to whom this Act applies;
- (d) the safe custody of declarations made in accordance with this Act;
- (e) monitoring the assets and liabilities of any declarant for the purposes of detecting corruption, money laundering or the acquisition of property from proceeds of any other offence;
- (f) identifying persons who fail to submit a declaration;
- (g) detecting false or incomplete declarations; and
- (h) imposing any administrative penalties under section 16.

(2) For purposes of subsection (1), the Director-General may consult with and seek such guidance from government agencies and such other persons as the Directorate considers desirable.

(3) Notwithstanding the generality of subsection (1), the functions of the Directorate shall be to —

- (a) identify areas of public duty in which significant conflict of interest issues are likely to occur;
- (b) develop guidelines on conflict of interest;
- (c) develop a code of ethics and oversee the enforcement of the code of ethics;
- (d) investigate complaints on any breach or likely breach of this Act or code of ethics;
- (e) work with other entities in the development and promotion of standards and best practices to promote ethical conduct;
- (f) cooperate and collaborate with other entities in the prevention of unethical conduct;
- (g) raise public awareness and educate the public on unethical conduct and any other matter within its functions;
- (h) establish and maintain a register of declarations of interests, income, assets and liabilities in such form as may be prescribed;
- (i) establish a public registry of declarations of interest, income, assets and liabilities which shall allow unrestricted access to the following information —
 - (i) list of persons subject to the Act who submitted declaration on time,
 - (ii) list of persons who have received a notice under section 10 (1) (c) and have not complied with the notice, and
 - (iii) list of persons subject to this Act who have been subjected to penalties under sections 16 and 17;

- (j) remove from the register, the name of any person who has made a declaration under this Act upon the Act ceasing to apply to the person;
- (k) advise, on its own initiative any person on any matter within its functions; and
- (l) enforce compliance with this Act.

(5) The public register established under subsection (3) (i) shall be kept and maintained at the office of the Directorate and shall be open for inspection during office hours to any member of the public upon payment of such fee as may be prescribed.

11. (1) The Director-General may, in the performance of his or her functions under this Act —

Powers of
Director-General

- (a) conduct an inquiry on its own initiative in relation to any unethical conduct including false or incomplete declarations;
- (b) institute an inquiry into alleged or suspected non-compliance with this Act;
- (c) require any person in writing to produce within a specified time, any information, document or answer any questions which the Director-General considers necessary relating to any declaration made by any person;
- (d) require any person who has made a declaration to amend, within 30 days, any declaration that is procedurally or substantively defective; and
- (e) perform such other acts as are reasonably necessary or required.

(2) Any person who fails to provide any information or answer any questions or willfully provides any false information or makes any false statement in answer to a question under subsection (1) (c), commits an offence and is liable to a fine not exceeding P30 000 or to imprisonment for a term not exceeding five years, or to both.

12. (1) The Directorate shall review conflicts of interest declarations to determine if the interests declared by the declarant are compatible with the exercise of the declarant's functions, in accordance with the guidelines referred to under section 10 (3) (b).

Review conflict
of interest
declarations

(2) When the review of the conflicts of interest declarations provides indications of a potential or actual conflict of interest, or of actual or potential violations of the guidelines, the Directorate shall notify the declarant and the relevant authority in which that declarant performs his or her functions.

Verification procedures

13. (1) The Directorate shall verify a declaration to determine any significant and unjustified changes in the interests, income, assets and liabilities of the declarant, his or her spouse and children under the age of 18 years in order to determine —

- (a) the truthfulness of the information declared;
- (b) the origin of the properties declared; and
- (c) whether the change in the interests, income, assets and liabilities of the declarant, his or her spouse and children under the age of 18 years, in relation to the most recent declaration of interests, income, assets and liabilities, is consistent with their legitimate incomes.

(2) Verification procedures under subsection (1) may be initiated upon complaints from private individuals.

(3) Verification procedures under subsection (1) may include the verification of undeclared properties which the Directorate has sufficient grounds to believe are under the control of a person subject to this Act and the Directorate may investigate the origin of the assets with which their owners have effected the acquisition.

(4) When the verification procedures under subsection (1) provide indications sufficient —

- (a) to raise doubts about the legitimate origin of the change in the interests, income, assets and liabilities of a declarant, his or her spouse and children under the age of 18 years; or
- (b) to presume that there are undeclared properties under the control of a declarant, his or her spouse and children under the age of 18 years,

the Directorate may require the declarant to provide such explanations as it deems pertinent and such evidence as it deems necessary to substantiate those explanations.

(5) The Directorate shall verify the explanations given by a declarant, his or her spouse and children under the age of 18 years and, if they are not satisfactory, or when the declarant, his or her spouse and children under the age of 18 years have opted not to provide the information, the Directorate shall refer the matter to the relevant authority, which shall initiate the appropriate action.

Referral of information to investigatory authorities

14. Where the Directorate, on the basis of its analysis of declarations and verification of information received by it, has reasonable grounds to suspect that the information would be relevant to —

- (a) the functions of any investigatory authority; or
- (b) any investigation being conducted by any investigatory authority,

the Directorate shall disclose the information to that investigatory authority.

Prohibition of unauthorised disclosure of information

15. (1) Any person to whom a declaration is made shall observe and preserve the confidentiality of all information contained in such a declaration and such confidentiality shall subsist even after the termination of his or her term of office or mandate.

(2) Any person referred to in subsection (1), and any other person to whom the confidential information is revealed through the performance of his or her duties, shall not disclose the information to any other person unless he or she is required to do so in terms of any written law or by an order of a court of law.

(3) Any person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding nine years, or to both.

16. (1) A person subject to this Act who has not filed his or her declaration by the end of the prescribed period shall be issued with a notice in writing.

Administrative penalties

(2) A person subject to this Act who, after having received a notice under subsection (1) fails to present the declaration within the prescribed period, shall be liable to a fine of P200 for each day that the person fails to present the declaration.

(3) A person subject to this Act who, 30 days after being given a notice under subsection (1), fails to present the declaration shall be subject —

- (a) in the case of a Member of Parliament, to not sit or vote in the National Assembly until such time as the declaration has been presented;
- (b) in the case of a Former President, any pension or benefit which he or she is entitled to under the Presidents (Pensions and Retirement Benefits) Act shall be suspended for the period that the former President fails to present a declaration; and
- (c) in the case of any other person subject to this Act, to any existing disciplinary procedures of the relevant Act including removal from office or dismissal, where such penalty is applicable.

Cap. 02:03

(4) The penalties under subsections (2) and (3) shall be applied independently of any applicable criminal penalties and where the penalty is a fine it shall be recoverable by action in the High Court at the suit of the Attorney-General.

(5) It shall be the duty of the Directorate to report to the relevant authority any contravention of this section.

17. (1) A person subject to this Act who has not filed their declaration by the end of the period specified under section 16, commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding ten years, or to both.

Offences and penalties

(2) A person subject to this Act who —

- (a) makes a declaration which he or she knows or believes to be false or inaccurate;
- (b) omits information or data from the declaration;
- (c) misuses information acquired in the course of his or her duties; or
- (d) acts in a way that allows or might reasonably be thought to allow a conflict to arise between the public duties and private interests of a person subject to this Act or any other person,

commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding five years or to both.

(3) A person accessing a declaration of interests, income, assets and liabilities may not use it for —

- (a) any illegal purpose;
- (b) any commercial purpose, except by the communications and news media for the information of the general public;
- (c) to determine or establish the credit rating of any individual; and
- (d) to solicit, directly or indirectly, money for political, charitable or other purposes.

(4) A person who contravenes subsection (3) commits an offence and is liable to a fine not exceeding P50 000 and to imprisonment for a term not exceeding three years, or to both.

Confidentiality
by
Director-General,
etc.

18. (1) The Director-General and other officers of the Directorate shall —

- (a) before they begin to perform any duties under this Act, take an oath of confidentiality in such form as may be prescribed; and
- (b) during and after their relationship with the Directorate, maintain the confidentiality of any confidential information acquired in the discharge of their duties under this Act.

(2) No information from which an individual or body can be identified, which is acquired by the Directorate in the course of carrying out its functions shall be disclosed by the Director-General or other officer of the Directorate except where the disclosure is necessary —

- (a) to enable the Directorate to carry out its functions;
- (b) in the interests of the prevention or detection of any other offence;
- (c) in connection with the discharge of any international obligation to which Botswana is subject; or
- (d) pursuant to an order of court.

(3) Where the Director-General or officer of the Directorate contravenes this section he or she commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding three years, or to both.

Confidentiality
by third parties

19. (1) A third party shall not disclose confidential information received from the Directorate.

(2) A third party who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P1 000 000 or to imprisonment for a term not exceeding five years, or to both.

Indemnity of
Director-General,
etc.

20. (1) No matter or thing done or omitted to be done by the Director-General or an officer of the Directorate shall, if the matter or thing is done or omitted to be done *bona fide* in the course of the operations of the Directorate, render the Director-General or an officer of the Directorate personally liable to an action, claim or demand.

(2) The Director-General or an officer of the Directorate, who receives or makes a report under this Act shall not incur liability for any breach of confidentiality or any disclosure made in compliance with this Act.

21. The Minister may make regulations prescribing anything under this Act which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions. Regulations

PASSED by the National Assembly this 8th day of August, 2019.

BARBARA N. DITHAPO,
Clerk of the National Assembly.