

FINANCIAL INTELLIGENCE (AMENDMENT) ACT, 2021

No. 18



of 2021

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of section 2 of Cap. 08:07

An Act to amend the Financial Intelligence Act.

Date of Assent: 18.10.2021

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Financial Intelligence (Amendment) Act, 2021, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. The Financial Intelligence Act is amended by substituting for the definition of “beneficial owner”, the following new definition —

Amendment of section 2 of Cap. 08:02

““beneficial owner” means a natural person who ultimately owns or controls a customer or a natural person on whose behalf a transaction is being conducted, including a natural person who exercises ultimate effective control over a legal person or arrangement, such that —

- (a) in relation to a legal person —
 - (i) is a natural person who either directly or indirectly holds at least 10% of the shares, voting rights or other ownership interest:

Provided that to the extent that there is doubt as to whether the person identified hereunder is the beneficial owner or where no natural person is identified as the beneficial owner, the natural person exercising control of the legal person through other means shall be the beneficial owner, or

- (ii) is a person who holds the position of senior managing official where no natural person was identified as a beneficial owner in terms of subparagraph (i);
- (b) in relation to a trust is —
 - (i) the settlor,
 - (ii) a trustee,
 - (iii) a protector, if any

- (iv) a beneficiary of a trust, or a class of beneficiaries, where the individuals benefiting from the trust have yet to be determined, or
- (v) any other natural person exercising ultimate effective control over the trust by means of direct or indirect ownership or by other means, such as when he or she has the power, alone or jointly with another person or with the consent of another person, to —
 - (aa) dispose of, advance, lend, invest, pay or apply trust property or property of the trust,
 - (bb) vary or terminate the trust,
 - (cc) add or remove a person as a beneficiary or to or from a class of beneficiaries,
 - (dd) appoint or remove a trustee or give another person control over the trust, or
 - (ee) direct, withhold consent or to overrule the exercise of a power referred to in subparagraphs (aa) – (dd);
- (c) in relation to other legal arrangements similar to trusts, is the natural person holding equivalent or similar positions to those referred to in paragraph (b);
- (d) in the case of insurance, is the ultimate beneficiary of proceeds of a life insurance policy or other related investment services when an insured event covered by the policy occurs.”.

PASSED by the National Assembly this 1st day of September, 2021.

BARBARAN. DITHAPO,
Clerk of the National Assembly.