

**PROCEEDS AND INSTRUMENTS OF CRIME
(AMENDMENT) ACT, 2022**

No. 12



of 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 2 of Cap. 08:03
3. Amendment of section 20 of the Act
4. Amendment of section 30 of the Act
5. Insertion of section 46A. in the Act

An Act to Amend the Proceeds and Instruments of Crime Act.

Date of assent: 25.02.2022

Date of commencement: 25.02.2022

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Proceeds and Instruments of Crime (Amendment) Act, 2022.

Short title

2. Section 2 of the Proceeds and Instruments of Crime Act (hereinafter referred to as “the Act”) is amended in by —

Amendment
of section 2
of Cap. 08:03

(a) by substituting the following definitions —

- (i) “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 virtual, evidencing title to, or interest in such assets;
- (ii) “prescribed investigator” means a police officer, a Botswana Unified Revenue Service officer authorised to implement revenue laws, a person authorised to conduct an inquiry or investigation under section 7 of the Corruption and Economic Crimes Act or other class of persons as may be prescribed”;
- (iii) “property” means money or any other movable, immovable, corporeal, or unincorporeal thing whether located in Botswana or elsewhere and includes a virtual asset, any rights securities and any interest in privileges and claims over that thing as well as —

Cap. 08:05

- (aa) any currency, whether or not the currency is 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;
- (bb) any balance held in Botswana currency or in any other currency in accounts with any bank which carries on business in Botswana or elsewhere;
- (cc) any balance held in Botswana currency or in any other currency in accounts with a bank which carries on business in Botswana;
- (dd) any balance held in any currency with a bank outside Botswana;
- (ee) motor vehicles, ships, aircraft, boats, works of art, jewellery, precious metals or any other item of value;
- (ff) any right or interest in property;
- (gg) virtual assets; and
- (hh) funds or other assets including all property and any interest, dividends or income on or value accruing or generated by such funds or assets; and

(b) by inserting the following new definition —

“virtual asset” has the same meaning assigned to it under the Virtual Assets Act.

Act No. 3 of 2022

Amendment of section 20 of the Act

3. The Act is amended at section 20 (2) by substituting for paragraph (c) the following paragraph —

“(c) specify that property which is to be substituted for the property referred to in paragraph (a) is —

- (i) property in which the person had an interest at the time that the confiscation offence or a serious crime related activity was committed or an order under this Act was made, and
- (ii) property of corresponding value as the property referred to in paragraph (a) and (b).”.

Amendment of section 30 of the Act

4. The Act is amended at section 30 by substituting for subsection (3) the following subsection —

“(3) For purposes of this Part, any cash which is the subject of —

- (a) false import or export declaration; or
- (b) non-declaration,

under the Customs Act shall be deemed to be an instrument.”.

Insertion of section 46A. in the Act

5. The Act is amended by inserting immediately after section 46, the following new section —

“Control and possession of property of nationally listed or designated person
46A. (1) Any person other than a specified party or accountable institution, having possession of —

- (a) property or economic resources that are wholly or jointly owned, held or controlled directly or indirectly, by a nationally listed person, entity or structured group or by a designated person or entity, including property or economic resources that cannot be tied to a particular act of terrorism, plot or threat;

- (b) property or economic resources that are wholly or jointly owned or held by a person or an entity —
 - (i) acting on behalf of, or at the direction of, a nationally listed person, entity or structured group, or
 - (ii) controlled by designated person or entity; or
- (c) property or economic resources derived from or generated by property or economic resources referred, to in paragraphs (a) or (b),

shall, without delay, give control and possession thereof to the Receiver.

(2) The Receiver shall record full particulars of property or economic resources referred to in subsection (1) against the name of the owners and beneficial owners for proper management.

(3) A person who contravenes the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P1 000 000 or to imprisonment to a term not exceeding 10 years or to both.

(4) For the purposes this section, the following words have the same meaning assigned under the Financial Intelligence Act —

Cap. 08:07

- (a) “accountable institution”;
- (b) “beneficial owner”;
- (c) “designated person”;
- (d) “nationally listed person”; and
- (e) “specified party”.

PASSED by the National Assembly this 1st day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.