

**NON-BANK FINANCIAL INSTITUTIONS REGULATORY
AUTHORITY ACT, 2023**

No. 21



of 2023

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An Act to continue the establishment of the Non-Bank Financial Institutions Regulatory Authority and to provide for its powers and functions; for the purposes of improving the fairness, efficiency and orderliness of the non-bank financial sector and the stability of the financial system; and for matters incidental thereto.

Date of Assent: 13.11.2023

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I – Preliminary

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| <p>1. This Act maybe cited as the Non-Bank Financial Institutions Regulatory Authority Act, 2023, and shall come into operation on such date as the Minister may, by Order published in the <i>Gazette</i>, appoint.</p> | <p>Short title and commencement</p> |
| <p>2. (1) In this Act, unless the context otherwise requires –</p> <p>“administrator of a medical aid fund” means a person who provides administration or similar services to a medical aid fund in terms of an administration agreement;</p> <p>“administrator of a retirement fund” has the same meaning assigned to it under the Retirement Funds Act;</p> <p>“arrangement or compromise” means –</p> <p>(a) an arrangement or compromise in relation to a non-bank financial institution, as provided under the Companies Act; and</p> <p>(b) any other arrangement (however described) for the amalgamation of a non-bank financial institution with one or more other body corporates, or the reconstruction of a non-bank financial institution;</p> <p>“asset manager” has the same meaning assigned to it under the Securities Act;</p> <p>“bank” means a bank licensed in terms of the Banking Act;</p> <p>“Board” means the Non-Bank Financial Institutions Regulatory Authority Board established under section 6;</p> <p>“central counterparty” has the same meaning assigned to it under the Securities Act;</p> <p>“central securities depository” has the same meaning assigned to it under the Securities Act;</p> <p>“Chairperson” means the Chairperson of the Board appointed under section 7 (4);</p> | <p>Interpretation</p> <p>Cap. 27:03</p> <p>Cap. 42:01</p> <p>Cap. 56:08</p> <p>Cap. 46:04</p> |

Act No. 23 of
2021

“Chief Executive Officer” means the Chief Executive Officer of the Regulatory Authority appointed under section 20;

“Code of Conduct” means a Code of Conduct issued in terms of section 97;

“collective investment undertaking” has the same meaning assigned to it under the Collective Investment Undertakings Act;

“committee” means a committee of the Board established under section 17;

“custodian” means a person who holds the property, securities or money of another person for safekeeping;

“director” has the same meaning assigned to it under the Companies Act;

“finance company” means a body corporate that advances loans, invoice discounting, purchase order financing, factoring, debt financing, debt administration, project finance, loan syndication or such other facility identified as a credit facility, availed by the finance company to any client, but does not include a bank or deposit taking institution;

“financial conglomerate” means a group of companies under common control or ownership, comprised of one or more non-bank financial institutions and their subsidiaries;

“financial crime” means any of the following —

(a) a criminal offence (whether or not arising under this Act) that involves fraud or dishonesty relating to a non-bank financial institution, its controller or key person;

(b) financing or facilitating a criminal offence (whether or not it arises under this Act) relating to a non-bank financial institution, its controller or key person;

(c) dealing with the proceeds of a criminal offence (whether or not it arises under this Act, whether or not it is related to a non-bank financial institution, its controller or key person, and whether or not the Proceeds and Instruments of Crime Act applies in relation to the matter);

(d) the offence of money laundering in terms of the Proceeds and Instruments of Crime Act; or

(e) the financing of a terrorism, financing of proliferation or financing illicit dealing in arms or ammunition;

“financial services” means services relating to financial matters;

“financial services law” means any of the following —

(a) this Act;

(b) the Insurance Industry Act;

(c) the International Insurance Act;

(d) the Retirement Funds Act;

(e) the Collective Investment Undertakings Act;

(f) the Securities Act;

Cap. 08:03

Cap. 46:01

Cap. 46:07

- (g) the Banking Act;
- (h) the Bank of Botswana Act; Cap. 55:01
- (i) the Financial Intelligence Act; Cap. 08:07
- (j) the Financial Reporting Act; Cap. 46:10
- (k) the Virtual Assets Act; Act No. 3 of 2022

(l) Part XVI of the Income Tax Act, so far as it relates to non-bank financial institutions; Cap. 52:01

(m) a law that declares itself to be a financial services law for the purposes of this definition; or

(n) such law concerning financial services as the Minister may, by Order published in the *Gazette*, prescribe;

“fit and proper” means the necessary skills, competencies, knowledge, traits and any other quality that allows a controller, director or key person to perform the duties and carry out the responsibilities of his or her position with a non-bank financial institution, including integrity demonstrated in personal behaviour and personal conduct, soundness of judgment, financial soundness, sufficient degree of knowledge, experience and professional qualifications;

“friendly society” means an association of persons established with no share capital for the purpose of aiding members of the association or their dependants, being an association that does not employ a person whose main occupation is canvassing for members of, or collecting contributions or subscriptions for, the association;

“information” means a document, book, record, account, oral and written statements, testimony on oath, unsworn testimony, affirmation, testimony not affirmed, and any other information stored or recorded mechanically, electronically or in any other medium;

“insurance agent” has the same meaning assigned to it under the Insurance Industry Act;

“insurance broker” has the same meaning assigned to it under the Insurance Industry Act;

“insurer” has the same meaning assigned to it under the Insurance Industry Act;

“issuer of initial token offerings” has the same meaning assigned to it under the Virtual Assets Act;

“international insurance firm” has the same “meaning assigned to it under the International Insurance Act;

“interpretation guidance note” means a statement published by the Regulatory Authority under section 53 regarding the interpretation or application of a specified provision of a financial services law under circumstances specified in the statement;

“inter-related” means connected in such a way that each person has an effect on or depends on the other person;

“investment adviser” has the same meaning assigned to it under the Securities Act;

“key person”, in relation to a non-bank financial institution, means —

(a) a member of the governing body of the non-bank financial institution;

(b) the Chief Executive Officer of the non-bank financial institution;

(c) a person in charge of the non-bank financial institution;

(d) a person, other than a member of the governing body of the non-bank financial institution, who makes or participates in the making of decisions that —

(i) affect the whole or a substantial part of the business of the non-bank financial institution, or

(ii) have the capacity to affect significantly the financial standing of the non-bank financial institution;

(e) a person, other than a member of the governing body of the non-bank financial institution, who oversees the enforcement of policies and the implementation of strategies approved or adopted by the governing body of the non-bank financial institution; or

(f) the head of a function of the non-bank financial institution that a financial services law requires to be performed;

“leasing company” means a body corporate which engages in a contract with a person using the equipment or machinery of the leasing company, and paying an agreed fee for such use, but does not include a bank or deposit taking institution;

“licence” means the authority, regardless of its specific title or form, issued to a non-bank financial institution and in terms of which it is authorised to conduct its business;

“management company”, in relation to a collective investment undertaking, has the same meaning assigned to it under the Collective Investment Undertakings Act;

“market maker” has the same meaning assigned to it under the Securities Act;

“medical aid fund” means a scheme that provides cover for financial or other assistance to persons in connection with prescribed medical services;

“medical aid fund administrator” means a body corporate that provides administration or similar services to a medical aid fund in terms of an administration agreement and which has been licensed as such by the Regulatory Authority;

“medical aid fund broker” means a body corporate that provides broker services for a medical aid fund;

“member” means a member of the Board appointed as such under section 7;

- “micro lender” means a person who advances money to another person, where the money does not exceed the prescribed amount, but does not include a person licensed in terms of the Banking Act or the Building Societies Act;
- “micro lending agent” means any person who solicits a loan application on behalf of a micro lender;
- “non-bank financial institution” means any of the following institutions, and where relevant, shall mean a person operating the institution —
- (a) an asset manager;
 - (b) an administrator of a retirement fund;
 - (c) a central counterparty;
 - (d) a central securities depository;
 - (e) a collective investment undertaking;
 - (f) a custodian;
 - (g) a finance company;
 - (h) a leasing company;
 - (i) a financial conglomerate;
 - (j) a friendly society;
 - (k) an insurance agent;
 - (l) an insurance broker;
 - (m) an insurer;
 - (n) an international insurance firm;
 - (o) an investment adviser;
 - (p) an issuer of initial token offerings;
 - (q) a management company for a collective investment undertaking;
 - (r) a market maker;
 - (s) a micro lender;
 - (t) a retirement fund;
 - (u) a securities broker or dealer;
 - (v) a securities exchange;
 - (w) a transfer agent or transfer secretary;
 - (x) a medical aid fund;
 - (y) a medical aid fund administrator;
 - (z) a medical aid fund broker;
 - (aa) a trustee of a collective investment undertaking;
 - (bb) a securities institution;
 - (cc) a micro lending agent;
 - (dd) a participant;
 - (ee) a pawnshop;
 - (ff) a virtual asset service provider; and
 - (gg) a person declared by the Minister to be a non-bank financial institution by notice published in the *Gazette*;
- “participant” has the same meaning assigned to it under the Securities Act;

“pawn” means the delivery of personal property by a pawner to a pawnshop as security for money advanced, and includes the transaction of pawning personal property as collateral for money advanced;

“pawnshop” means a person licensed to operate a business that —

- (a) advances money on personal property that is physically delivered to him or her as security for the money advanced or advances money upon goods, wares or merchandise pledged, stored or deposited as security; or
- (b) purchases tangible personal property to be left in pawn on the condition that it may be redeemed by the seller for a fixed price within a fixed period of time;

“records”, in relation to a non-bank financial institution, means any documents and information used in the ordinary course of the business of the non-bank financial institution, whether in written form or kept on microfilm, magnetic tape or any other form of mechanical or electronic medium;

“Regulatory Authority” means the Non-Bank Financial Institutions Regulatory Authority continued under section 4;

“repealed Act” means the Non-Bank Financial Institutions Regulatory Authority Act repealed under section 109;

“retirement fund” has the same meaning assigned to it under the Retirement Funds Act;

“securities” has the same meaning assigned to it under the Securities Act;

“securities broker or dealer” has the same meaning assigned to it under the Securities Act;

“securities exchange” has the same meaning assigned to it under the Securities Act;

“securities institution” has the same meaning assigned to it under the Securities Act;

“self-regulatory organisation” means a body declared to be a self-regulatory organisation in terms of section 69 (1);

“supervisory levies” means the supervisory levies imposed and collected under Part VII;

“tax certificate” means a certificate issued in terms of the Income Tax Act as it applies to an International Financial Services Centre company;

“transfer agent or transfer secretary” has the same meaning assigned to it under the Securities Act;

“Tribunal” means the Non-Bank Financial Institutions Tribunal established under section 85;

“trustee” means a person acting as a trustee in relation to a collective investment undertaking that is a unit trust, and a person acting as a member of the board of a retirement fund;

“Vice Chairperson” means the Vice Chairperson of the Board elected as such under section 7 (5); and

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

(2) For purposes of a financial services law, each of the following is a controller of a person (in this subsection called “the relevant person”) —

- (a) a key person;
- (b) a person who, directly or indirectly, alone or together with a related or inter-related person, has the ability to materially control or materially influence the business or strategy of the non-bank financial institution;
- (c) if the relevant person is a body corporate —
 - (i) a director or member of the governing body of the body corporate,
 - (ii) a person that has the power to appoint a person to be a director or member of the governing body of the body corporate,
 - (iii) a person whose consent is needed for the appointment of a person as a director of the body corporate,
 - (iv) a person that holds at least 20 per cent of the shares of the body corporate,
 - (v) a person that has the power to control at least 20 per cent of the voting rights attached to shares or other securities of the body corporate, or
 - (vi) a person that holds rights in relation to the body corporate that, if exercised, would result in that person holding at least 20 per cent of the shares of the body corporate; or that person having the power to control at least 20 per cent of the voting rights attached to shares or other securities of the body corporate; and
- (d) if the relevant person is a subsidiary of another person, a person that is a controller of that other person.

3. (1) In the event of any conflict or inconsistency between the provisions of this Act and any other law on the supervision and regulation of a non-bank financial institution, the provisions of this Act shall take precedence.

Conflict with other laws

(2) Except as may be otherwise expressly provided by this Act, nothing in this Act shall be construed so as to relieve a non-bank financial institution from compliance with the provisions of other relevant financial services laws, the Companies Act and any other applicable laws.

(3) The issuance of a licence under this Act and any other relevant financial services law shall not be deemed to exempt a non-bank financial institution from obtaining any other licence, permit or authority under any law in respect of any activity carried out by the non-bank financial institution.

PART II — *Establishment and Functions of Regulatory Authority*

Continuation
of Regulatory
Authority

4. (1) The Non-Bank Financial Institutions Regulatory Authority, established under section 3 (1) of the repealed Act, is hereby continued as if established under this Act.

(2) The Regulatory Authority shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, of performing such acts as bodies corporate may by law perform.

Objectives and
functions of
Regulatory
Authority

5. (1) The objectives of the Regulatory Authority shall be to regulate and supervise a non-bank financial institution so as to foster the —

- (a) safety and soundness of the non-bank financial institution;
- (b) highest standards of the conduct of business by the non-bank financial institution;
- (c) fairness, efficiency and orderliness in relation to the non-bank financial sector;
- (d) stability of the financial system; and
- (e) reduction and deterrence of financial crime.

(2) Without derogating from the generality of subsection (1), the Regulatory Authority shall —

- (a) perform the functions conferred by this Act and any other financial services law;
- (b) advise the Minister on matters related to a non-bank financial institution, whether on its own accord or at the request of the Minister;
- (c) promote public understanding of the non-bank financial system and any other related matters;
- (d) make rules, set standards and provide guidelines for Regulatory Authority and a non-bank financial institution; and
- (e) give directions to any person to ensure compliance with the relevant law, rule, standard or guideline.

PART III — *Non-Bank Financial Institutions Regulatory
Authority Board*

Board of
Regulatory
Authority

6. (1) There shall be a Board of the Regulatory Authority, which shall be the governing body of the Regulatory Authority and shall be responsible for the direction of the affairs of the Regulatory Authority.

(2) Notwithstanding the generality of subsection (1), the Board shall give general policy direction to the Regulatory Authority.

(3) The Minister may, after consultation with the Board, give the Board written directions of a general or specific nature regarding the exercise of its powers and the performance of its functions, which directions shall not be inconsistent with this Act or with the contractual or other obligations of the Regulatory Authority, and the Board shall give effect to such directions.

7. (1) The members shall be appointed by the Minister and shall consist of eight members from amongst persons who have experience or expertise in business, financial markets, financial services, commercial law, economics or accounting, or any other area relevant to the objects and functions of the Regulatory Authority.

Membership
of Board

(2) Notwithstanding the generality of subsection (1) the Board shall consist of the following members —

- (a) the Chairperson;
- (b) the Vice Chairperson;
- (c) a representative of the Bank of Botswana;
- (d) a representative of the Ministry responsible for finance; and
- (e) four other persons.

(3) The Chief Executive Officer shall be an *ex-officio* member of the Board but shall not vote.

(4) The Minister shall appoint the Chairperson of the Board from amongst the members.

(5) The Vice Chairperson of the Board shall be elected by the members amongst their number.

(6) The Minister shall, within 30 days of the appointments under this section being made, by notice in the *Gazette*, publish the appointment of the members, specifying the dates of their appointments and the period for which they are appointed to the Board.

8. A member appointed in terms of section 7 (2) (a), (b) or (e) —

Tenure of
office of
members

- (a) shall hold office for a period not exceeding four years, on such terms and conditions as may be specified in their instruments of appointment; and
- (b) may be eligible for re-appointment for one further term not exceeding four years.

9. (1) A person shall not qualify for appointment as a member or continue to hold office, if he or she —

Disqualifications,
suspension and
removal of
members

- (a) has, in terms of any law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt or insolvent and has not been rehabilitated or discharged, or
 - (ii) made an assignment to, or arrangement or compromise with, his or her creditors, which has not been rescinded or set aside;
- (b) has, within a period of ten years immediately preceding the date of his or her proposed appointment, been convicted —
 - (i) in Botswana, of a criminal offence which has not been overturned on appeal or in respect of which he or she has not received a free pardon, or
 - (ii) outside Botswana, of an offence, which in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for one month or more without the option of a fine, whether that sentence has been suspended or not, and which conviction has not been overturned on appeal and in respect of which he or she has not received a free pardon;

- (c) is, at the time of appointment, a councillor, member of the National Assembly or *Ntlo ya Dikgosi*;
- (d) is a controller or key person of a non-bank financial institution;
- (e) has been dismissed for incompetence, bribery, corruption in a financial market within Botswana or outside, or has been adjudged for misconduct to the detriment of the financial market; or
- (f) has been disqualified from acting as a director or executive officer of a body corporate under a law relating to a corporation or to the provision of a financial service within Botswana or outside Botswana.

(2) The Minister may suspend from office, a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment without an option of a fine may be imposed, and while the member is so suspended, such member shall not carry out any functions under this Act or be entitled to any remuneration or allowances.

- (3) The Minister shall remove a member from office, if the member –
- (a) becomes subject to a disqualification under subsection (1);
 - (b) has failed to comply with the provisions of section 15 or 16;
 - (c) is convicted of an offence under this Act, or under any other Act and after a period of 30 days from the date that a ruling against the member is made on all appeals made in respect of the conviction, he or she is sentenced to imprisonment for a term of six months or more without an option of fine;
 - (d) is absent, without reasonable cause, from three consecutive meetings of which that member has had notice;
 - (e) is found to be physically and mentally incapable of performing his or her duties efficiently, and a medical doctor has issued a medical certificate to that effect;
 - (f) commits a material breach of the code of ethical behaviour; or
 - (g) contravenes the provisions of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Board or the Regulatory Authority.

10. A member shall vacate his or her office and his or her office shall become vacant –

- (a) if he or she is disqualified, suspended or removed in terms of section 9;
- (b) if he or she is adjudged bankrupt or insolvent;
- (c) upon his or her death;
- (d) upon the expiry of such time as the Minister may specify, in writing, notifying the member of his or her removal from office by the Minister;
- (e) upon the expiry of one month notice, in writing, to the Minister, of his or her intention to resign from office;

Vacation of
office by
members

- (f) if he or she becomes physically or mentally incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect;
- (g) if he or she is convicted of an offence under this Act for which he or she is sentenced to imprisonment for a term of six months or more without the option of a fine; or
- (h) if he or she is summarily dismissed from the Board by the Minister for contravening this Act.

11. A member may resign from his or her appointment by giving one month's notice, in writing, to the Minister.

Resignation
from Board

12. Where the office of a member becomes vacant before the expiry of the member's term of office due to death, resignation or removal from office, the Minister shall, in accordance with section 7, appoint another person to be a member in place of the member who vacates office.

Filling of
vacancy in
Board

13. A member shall be paid such remuneration, travelling expenses and other expenses and allowances, incurred in connection with his or her services on the Board, if any, as the Minister may determine.

Remuneration
and allowances

PART IV — *Meetings and Proceedings of Board*

14. (1) Subject to the provisions of this Act, the Board may regulate its own proceedings.

Meetings of
Board

(2) The Board shall meet as often as it is necessary for the discharge of its functions, which shall not be less than four times a year.

(3) The members shall, at the first meeting of the Board, elect from among their number, the Vice Chairperson.

(4) The meetings of the Board may be held virtually, or in person at such place and on such date as the Board may determine and shall be convened by the Chairperson.

(5) The Chairperson may, in writing, convene a meeting of the Board by giving the members a notice of not less than 14 days of the meeting.

(6) The Chairperson may, where a matter is urgent and does not permit the giving of a notice in terms of subsection (5), call a special meeting of the Board within a notice less than 14 days.

(7) There shall preside at any meeting of the Board —

- (a) the Chairperson;
- (b) in the absence of the Chairperson, the Vice Chairperson; or
- (c) in the absence of the Chairperson and the Vice Chairperson, such members as the members present may elect from among themselves for the purpose of that meeting.

(8) A quorum at any meeting of the Board on any matter shall be a simple majority of members.

(9) A decision of the Board on any question shall be by the majority of the members present and voting at the meeting and, in the event of an equality of votes, the Chairperson shall have a casting vote in addition to the Chairperson's deliberative vote.

(10) A decision of the Board shall not be rendered invalid by reason of a vacancy in the Board or the fact that a person who was not entitled to sit as a member did so sit.

(11) The Secretary of the Board shall cause proper minutes of the meetings of the Board to be taken and recorded, and such minutes shall be kept and confirmed by a subsequent meeting of the Board.

Disclosure of
interest

15. (1) Where a member of the Board or committee, or any person attending a meeting of the Board or committee, at which the member or immediate family member is directly or indirectly interested in a private capacity, the member shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board or committee otherwise directs, take part in any consideration or discussion of, or vote on any question concerning such matter.

(2) A disclosure of interest made in accordance with subsection (1) shall be recorded in the minutes of the meeting at which it was made.

(3) Where a member of the Board or committee, or any person attending a meeting of the Board or committee knowingly fails to disclose his or her interest in accordance with subsection (1) and a decision by the Board or committee is made benefiting such member, such decision shall be void.

(4) A member or any person who knowingly fails to comply with the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding 10 years, or to both.

(5) For purposes of this section, "immediate family member" means a spouse, son, daughter, sibling or parent of the member or any person attending a meeting of the Board or committee.

Confidentiality

16. (1) A member of the Board or committee, and any other person assisting the Board or committee, shall observe and preserve the confidentiality of all matters coming before the Board or committee, and such confidentiality shall subsist even after the termination of the member's term of office or that person's mandate.

(2) A member of the Board or committee, or a person, to whom confidential information is revealed by virtue of his or her association with the Board or committee shall not disclose that confidential information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) Upon ceasing to hold office, neither a member of the Board or committee, the Secretary of the Board and support staff nor a person co-opted by the Board, shall use to their personal advantage, confidential information acquired by them by virtue of their association with the Board or committee for a period of two years after leaving office.

(4) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P30 000 or to imprisonment for a term not exceeding three years, or to both.

17. (1) The Board may, for the purpose of performing its functions, establish such committees as it considers appropriate and may delegate to any such committee such of its functions as it considers necessary.

Committees of Board

(2) The Board may appoint, to the committees established under subsection (1), such number of persons from the members and such number of persons with specialised skills, not being members, as it considers appropriate, to be members of such committees and such persons shall hold office for such period as the Board may determine.

(3) The Board shall appoint a Chairperson and Vice Chairperson for any of its committees from amongst its members.

(4) An officer of the Regulatory Authority appointed in writing by the Chief Executive Officer shall be the secretary to any committee and shall, on the instructions of the Chairperson of the committee, convene meetings of the committee.

(5) Subject to the specific or general directions of the Board, a committee may regulate its own proceedings and the Board may attach any conditions to the delegation of any of its powers to such committees.

(6) The Board may in relation to a committee established under this section confirm, vary or revoke any decision taken in consequence of a delegation or assignment, but no variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

(7) Meetings of a committee shall be held at such times and places as the committee may determine, or as the Board may direct.

18. All documents made by, and all decisions of the Board shall be signified under the hand of the Chairperson or any two members specifically authorised by the Board.

Signification of documents

19. (1) The Board may, where it considers it necessary, co-opt any person whose presence at a meeting of the Board is deemed necessary to —

Co-option of advisory panel

(a) attend and participate in the deliberations at the meeting of the Board; or

(b) undertake occasional assignments.

(2) A person so co-opted shall —

(a) not vote; and

(b) be remunerated at the rate set by the Board.

(3) The provisions of sections 15 and 16 shall, with the necessary modifications, apply to co-opted persons.

PART V — *Chief Executive Officer and Other Employees of Regulatory Authority*

20. (1) The Minister shall, after consultation with the Board, appoint a Chief Executive Officer of the Regulatory Authority on such terms and conditions as the Minister may determine.

Chief Executive Officer

(2) A person shall not be appointed as Chief Executive Officer unless he or she possesses such experience and qualifications as the Minister may determine, and he or she has demonstrated that he or she is competent to carry out the functions of the Regulatory Authority.

(3) The Chief Executive Officer shall, subject to such directions on matters of policy as may be given by the Board, be responsible for the day-to-day management of the affairs of the Regulatory Authority.

(4) Notwithstanding the generality of subsection (3), the Chief Executive Officer shall be responsible for —

- (a) the formation and development of an efficient administration of the Regulatory Authority;
- (b) the organisation, control and management of the employees of the Regulatory Authority;
- (c) the maintenance of discipline in respect of the employees of the Regulatory Authority;
- (d) the carrying out of the decisions of the Board;
- (e) the management of the support structure of the Regulatory Authority;
- (f) all income and expenditure of the Regulatory Authority; and
- (g) the management of all assets of the Regulatory Authority and the discharge of all the liabilities of the Regulatory Authority.

(5) The Chief Executive Officer may, subject to the provisions of this Act, delegate, in writing, the exercise of any of the Chief Executive Officer's functions under this Act, to a senior officer of the Regulatory Authority.

Tenure of
office of Chief
Executive
Officer

21. (1) The Chief Executive Officer shall hold office for a term not exceeding five years and shall be eligible for re-appointment.

(2) The Minister may, in consultation with the Board, terminate the appointment of the Chief Executive Officer by giving him or her three months' notice in writing, or by paying him or her three months' salary in lieu of notice, if the —

- (a) conduct of the Chief Executive Officer is detrimental to, or undermines, the integrity, objective, or the proper performance of the functions, of the Regulatory Authority;
- (b) Chief Executive Officer has been found to be physically or mentally incapable of performing his or her duties efficiently by a medical practitioner;
- (c) Chief Executive Officer has prolonged or permanent incapacity;
- or
- (d) Chief Executive Officer is incompetent.

(3) The Chief Executive Officer may resign from office by giving three months' notice in writing, to the Minister and the Board.

Appointment
of Secretary
of Board

22. The Board shall, on the recommendation of the Chief Executive Officer, appoint a Secretary of the Board, who shall be suitably qualified and experienced in the legal discipline to a level appropriate for the seniority of the position.

23. The Secretary of the Board shall attend meetings of the Board but shall not vote, and shall —

Functions of Secretary of Board

- (a) advise the Board on all legal and procedural issues in respect of its deliberations and decisions;
- (b) be responsible for the accurate and complete recording of the Board's proceedings and decisions; and
- (c) be responsible for all legal business of the Board and in all institutional linkages and representation of the Board.

24. The Secretary of the Board shall be accountable to the Regulatory Authority for his or her functions and responsibilities.

Accountability to Regulatory Authority

25. The conditions of service, including the remuneration package of the Secretary of the Board, shall be set by the Board, on the recommendation of the Chief Executive Officer.

Conditions of service of Secretary of Board

26. (1) The Board shall, on the recommendation of the Chief Executive Officer and on the terms and conditions of the Regulatory Authority, appoint senior employees of the Regulatory Authority as it may consider necessary for the proper discharge of the functions of the Regulatory Authority, and shall determine the terms and conditions of employment of the senior employees.

Appointment of employees of Regulatory Authority

(2) The senior employees shall, under the direction of the Chief Executive Officer, assist the Chief Executive Officer in the proper administration and management of the functions and affairs of the Regulatory Authority, in accordance with the policies laid down by the Board.

(3) The Chief Executive Officer shall appoint such other employees as may be necessary for the proper discharge of the functions of the Regulatory Authority.

(4) The terms and conditions of employment of other employees of the Regulatory Authority shall be as may be determined by the Board, in consultation with the Minister.

PART VI — *Financial Provisions*

27. (1) The funds of the Regulatory Authority shall include —

Funds of Regulatory Authority

- (a) money appropriated by the National Assembly for the purposes of the Regulatory Authority;
- (b) any money accruing to the Regulatory Authority arising from the performance of its functions under a financial services law, including fees, charges and levies for services provided by the Regulatory Authority;
- (c) grants and donations as the Regulatory Authority may receive;
- (d) money paid in respect of civil penalties imposed by the Regulatory Authority under a financial services law;
- (e) money borrowed by the Regulatory Authority in accordance with section 32; and

(f) any income that the Regulatory Authority may receive from any investments.

(2) The Regulatory Authority shall maintain with a bank, a designated account into which shall be paid all sums accruing to the Regulatory Authority in respect of subsection (1) and from which all due payments shall be effected.

(3) Any money standing to the credit of a designated account shall be utilised for —

(a) meeting the expenses incurred by the Regulatory Authority in the performance of its functions; and

(b) investing in the manner as may be authorised under this Act.

Investments

28. Any money standing to the credit of the designated account maintained in terms of section 27 (2) but not immediately required for use may be invested in a commercial bank deposit or in securities issued or guaranteed by the Government, as the Regulatory Authority may determine.

Financial year

29. The financial year of the Regulatory Authority shall be a period of 12 months, beginning on the 1st April of each year and ending on the 31st March of the subsequent year.

Accounts and audit

30. (1) The Regulatory Authority shall keep and maintain proper accounts and records in respect of every financial year relating to its assets, liabilities, income and expenditure, and shall prepare in each financial year, a statement of such accounts showing —

(a) an income and expenditure statement, showing all monies that were received by and had accrued to the Regulatory Authority during the financial year, and all the expenditure incurred and payments made by the Regulatory Authority, during that year;

(b) a balance sheet, showing the Regulatory Authority's financial position and the state of its assets and liabilities as at the end of the previous financial year; and

(c) a cash flow statement for the previous year.

(2) The accounts of the Regulatory Authority in respect of each financial year shall, within three months of the end of each financial year, be audited by an auditor appointed by the Board, in accordance with the Financial Reporting Act.

(3) The auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which the auditor considers it pertinent to comment on, whether or not the —

(a) auditor has received all the information and explanation which, to the best of the auditor's knowledge and belief, were necessary for the performance of the auditor's duties;

(b) accounts and related records of the Regulatory Authority have been properly kept;

(c) Regulatory Authority has complied with all the financial provisions of this Act with which it is the duty of the Regulatory Authority to comply; and

(d) statement of accounts prepared by the Regulatory Authority was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Regulatory Authority.

(4) The report of the auditor and a copy of the audited accounts shall, within 14 days of the completion of the audit, be forwarded to the Regulatory Authority by the auditor.

31. (1) For each financial year, the Regulatory Authority shall prepare —

Annual estimates and levy structure

(a) annual estimates of its expenditure; and

(b) a proposal for supervisory levies for the financial year.

(2) An annual estimate of the Regulatory Authority's expenditure for a financial year shall include provision for a reserve of not more than 10 per cent of the total expenditure provided for in the estimate.

(3) The Regulatory Authority shall, at least two months before the start of a financial year, publish its proposal for supervisory levies, fees and charges for the financial year in the manner that the Regulatory Authority considers applicable to bring such proposal to the attention of non-bank financial institutions generally, and call for submissions.

(4) The Regulatory Authority shall, at least two months before the start of a financial year and having regard to any submissions referred to under subsection (3), received, submit annual estimates of its expenditure to the Minister for approval and a recommendation for supervisory levies for the financial year.

(5) The Regulatory Authority shall not make expenditures in relation to a financial year in excess of the total expenditures provided for in the annual estimates for the year approved by the Minister, unless the Minister approves the additional expenditures.

32. The Regulatory Authority may borrow money from the Bank of Botswana, or any other bank, only —

Borrowing

(a) to cover a short-term cash flow shortfall within the annual estimates for the year approved by the Minister in terms of section 31; or

(b) with the Minister's approval.

33. The Minister may, out of the money appropriated for the purpose, make advances to the Regulatory Authority, and may enter into agreements with the Regulatory Authority for the repayment, on terms satisfactory to the Minister, of the amount of money so advanced.

Advances from Government

34. (1) The Regulatory Authority shall, within a period of six months after the end of the financial year or within such longer period as the Minister may approve, submit to the Minister, a comprehensive report on the operations of the Regulatory Authority during such year, together with the auditor's report and the audited accounts as provided for in section 30.

Annual reports

(2) The Minister shall, within 30 days of his or her receiving the Regulatory Authority's report, lay such report before the National Assembly.

Auditing of
accounts of
Regulatory
Authority by
Auditor-
General

35. The Auditor-General shall, where the Minister so directs, audit the accounts of the Regulatory Authority on any aspects of its operations, and give the Minister a report of the audited accounts.

Pension and
other funds

36. (1) The Regulatory Authority may, out of its revenues, establish and maintain such pension, superannuation, provident or other funds as it may consider desirable or necessary for the payment of benefits or other allowances on the death, sickness, injury, superannuation, resignation, retirement or discharge of its employees and may, make rules providing for the payment of money out of its revenues to such funds and providing for contributions to such funds by its employees.

(2) The Regulatory Authority may contract with insurance companies or such other bodies as may be appropriate for the maintenance and administration of the funds authorised under subsection (1).

PART VII — *Supervisory Levies, Fees and Charges*

Supervisory
levies

37. (1) The Minister shall, for each financial year, on the recommendation of the Regulatory Authority, make regulations for or with respect to the imposition and collection of supervisory levies.

(2) The regulations shall set out the basis of calculation of supervisory levies for a financial year.

(3) The regulations may —

- (a) set different bases of calculation, and different rates of supervisory levies;
- (b) provide for different classes of non-bank financial institutions, for purposes of the calculation of supervisory levies;
- (c) provide for the imposition of interest on unpaid supervisory levies; and
- (d) provide for the imposition of a penalty levy for cases where a misstatement or other non-compliance by a non-bank financial institution leads to an under-collection of supervisory levies.

Fees and
charges

38. (1) The Minister may prescribe fees and charges for licences, and for other services provided by the Regulatory Authority.

(2) Without prejudice to subsection (1), the Minister may prescribe —

- (a) different rates of fees for different classes of non-bank financial services; and
- (b) different classes of licence or service when performing a non-bank financial institution's functions under a financial services law.

Supervisory
levies, fees,
charges and
debts to
Regulatory
Authority

39. The Regulatory Authority may recover supervisory levies, penalty levies and fees and charges owed to the Regulatory Authority by a non-bank financial institution by an action in a court of competent jurisdiction.

40. The Regulatory Authority may, on application, waive the payment of some or all of supervisory levies, penalty levies, fees or charges.

Waiver of
levies, fees
or charges

PART VIII — *Licensing of Non-Bank Financial Institutions*

41. (1) A person shall not operate a business as a non-bank financial institution without a licence issued by the Regulatory Authority in accordance with the relevant financial services law.

Non-bank
financial
institutions to
be licensed

(2) A person who operates a business as a non-bank financial institution without a licence commits an offence and is liable to a penalty as may be prescribed under the relevant financial services law.

(3) Where the penalty referred to in subsection (2) is not prescribed, a person who operates a business as a non-bank financial institution without a licence commits an offence and is liable to a civil penalty not exceeding P5 000, to be imposed by the Regulatory Authority, for each day on which the offence occurs or continues to occur.

(4) Notwithstanding subsection (3), a person who commits an offence under subsection (1) may be charged with a criminal offence and be liable to a fine not exceeding P100 000 or to imprisonment for a period not exceeding five years, or to both.

(5) Notwithstanding subsections (2) and (3), a person who operates a business as a non-bank financial institution in contravention of the conditions of a licence issued by the Regulatory Authority in accordance with the relevant financial services law, commits an offence and is liable to a civil penalty not exceeding P100 000 to be imposed by the Regulatory Authority.

(6) For the purposes of this section, “operate a business as a non-bank financial institution” includes operating a business as a non-bank financial institution by providing financial services to a person outside Botswana.

42. (1) The Regulatory Authority may, on application for a licence and accompanied by such documents and statements as may be prescribed in accordance with the relevant financial services law, and as the Regulatory Authority may direct, issue a person with the licence to operate as a non-bank financial institution specified in such licence.

Licensing

(2) Where, after receipt of an application referred to in subsection (1), the Regulatory Authority is of the opinion that, in order to consider the application, the Regulatory Authority requires further information, the Regulatory Authority may, in writing, request additional information from an applicant and may not consider such application until the applicant submits the additional information to the Regulatory Authority.

(3) An applicant shall, where the Regulatory Authority has requested for additional information under subsection (2), submit the requested additional information within 30 days from the date such additional information is requested or within such earlier period as may be prescribed.

(4) The Regulatory Authority shall, where an applicant fails to submit the additional information referred to under subsection (1), not consider an application for a licence under subsection (1), and the applicant may submit a new application for a licence to the Regulatory Authority.

(5) The Regulatory Authority shall, when considering an application for a licence under subsection (1), satisfy itself that an applicant —

- (a) shall carry out activities of the non-bank financial institution specified in the licence with integrity, prudence and professional skill;
- (b) shall maintain a sound financial position and not cause or promote instability in the financial system; and
- (c) meets and continues to meet the requirements of the financial services laws.

(6) The Regulatory Authority shall, where it is satisfied that the requirements under subsection (5) have been met, issue a licence to the applicant.

(7) The Regulatory Authority may, as it considers appropriate, issue a licence with conditions or without conditions.

(8) The Regulatory Authority shall, where an applicant has not met the requirements under subsection (5), not issue the applicant with a licence and shall inform such applicant of its decision and the reasons for such decision.

Offence of holding out as licensed

43. A person who —

- (a) not being a non-bank financial institution, portrays or holds his or her business as a licensed non-bank financial institution;
- (b) not being licensed as a non-bank financial institution of a particular kind, portrays or holds his or her business as being a non-bank financial institution of that kind; or
- (c) permits another person to do anything mentioned in paragraph (a) or (b),

commits an offence and is liable to a civil penalty not exceeding P250 000 to be imposed by the Regulatory Authority.

Display of licence

44. (1) A non-bank financial institution issued with a licence under this Act shall prominently display a copy of such licence in its business premises.

(2) A non-bank financial institution which contravenes subsection (1) is liable to a civil penalty not exceeding P30 000 to be imposed by the Regulatory Authority.

Variation, suspension or cancellation of licence upon request

45. The Regulatory Authority may, on a written request by a non-bank financial institution, by notice in writing to the non-bank financial institution and upon proof that the clients of such non-bank financial institution shall not be prejudiced —

- (a) vary the conditions of the licence of the non-bank financial institution;
- (b) suspend the licence of the non-bank financial institution for the period specified in the notice; or
- (c) cancel the licence of the non-bank financial institution.

46. (1) The Regulatory Authority may, by notice in writing to a non-bank financial institution within 14 days —

- (a) vary a licence of the non-bank financial institution by —
 - (i) restricting any activity to be carried out by such non-bank financial institution which is specified in the licence, or
 - (ii) including additional conditions on the licence;
- (b) suspend a licence of the non-bank financial institution for the period specified in the notice; or
- (c) cancel a licence of the non-bank financial institution.

(2) Subsection (1) shall apply where a non-bank financial institution —

- (a) does not operate or is likely not to operate the business for which it is licensed with integrity, prudence and professional skill;
- (b) is financially unsound or the non-bank financial institution is likely to be financially unsound;
- (c) is causing or promoting instability in the financial system, or the non-bank financial institution is likely to do so;
- (d) does not comply or is likely not to comply with a financial services law;
- (e) is involved in a financial crime or is likely to be involved in a financial crime;
- (f) has failed to submit the report referred to under section 55;
- (g) has failed to pay a civil penalty imposed by the Regulatory Authority under any financial services law;
- (h) has failed to pay any supervisory fees and charges as may be prescribed; or
- (i) has failed to comply with directive issued by the Regulatory Authority under a financial services law.

(3) The Regulatory Authority shall not act in terms of subsection (1) in relation to a non-bank financial institution unless —

- (a) the Regulatory Authority has given the non-bank financial institution a written notice of the proposed action setting out the reasons for the proposed action and notifying the non-bank financial institution to make representations to the Regulatory Authority within 21 days; and
- (b) the Regulatory Authority has taken into account any representations made by the non-bank financial institution.

(4) The Regulatory Authority may suspend a licence of a non-bank financial institution without notice in terms of subsection (3) where the Regulatory Authority is satisfied on reasonable grounds that it is necessary to do so to prevent or mitigate any damage to the interests of the clients of the non-bank financial institution or the financial system and the Regulatory Authority shall —

- (a) give the non-bank financial institution a notice as soon as it is practicable;
- (b) allow the non-bank financial institution to make representations in accordance with subsection (3) (a); and

Continuation
of licensed
activity after
suspension or
cancellation

(c) having considered any representations made by the non-bank financial institution, determine whether the suspension should be made final.

(5) A financial services law may prescribe additional criteria for variation, suspension or cancellation of a licence.

47. (1) The Regulatory Authority shall, within 14 days after the suspension or cancellation of a licence, by a written notice to a non-bank financial institution, and on conditions specified on the licence, allow the non-bank financial institution to operate any activity specified in such licence to the extent and for the period specified in the notice.

(2) The conditions on a licence referred to under subsection (1) shall be aimed at—

(a) ensuring that a client of a non-bank financial institution is treated fairly; or

(b) the facilitation of the orderly suspension or cancellation of any activity specified in the licence.

(3) A non-bank financial institution which operates any activity in a licence that has been suspended or cancelled other than in accordance with subsection (1) shall be in contravention of the relevant financial services law.

(4) A non-bank financial institution may apply to the Tribunal in accordance with section 87, for the review of a decision of the Regulatory Authority to suspend or cancel a licence of the non-bank financial institution.

(5) Where a non-bank financial institution lodges an application for review in accordance with subsection (4), the non-bank financial institution shall not continue to operate any activity specified in the licence of such non-bank financial institution, or operate any new business other than that which is permitted under subsection (1).

(6) The Regulatory Authority may, during the period of the suspension or cancellation of a licence of a non-bank financial institution, carry out an inspection to ensure that the non-bank financial institution operates its business in accordance with subsection (1).

PART IX — Approval of Controllers of Non-Bank Financial Institutions

Fit and proper
persons

48. (1) A person shall not be a controller or key person of a non-bank financial institution unless the non-bank financial institution has determined that he or she is a fit and proper person, in accordance with criteria determined by the Regulatory Authority and such criteria shall ensure that a person —

(a) is of sound mind;

(b) is qualified and has the relevant experience and academic qualifications to reasonably conclude that he or she has the ability to diligently perform the duties and responsibilities of a controller or key person;

- (c) is financially sound;
- (d) is not and has not been a controller or key person of a non-bank financial institution in Botswana or in another country, which is being wound up or compulsorily liquidated;
- (e) is rehabilitated and solvent;
- (f) does not have a conflict of interest in relation to such non-bank financial institution;
- (g) has not been convicted for an offence involving fraud or dishonesty in Botswana or outside Botswana; or
- (h) has not been or is not disqualified under a law relating to a company or a law relating to the provision of a financial service within Botswana or outside Botswana.

(2) A person shall cease to be a controller or key person of a non-bank financial institution where the non-bank financial institution determines that he or she is not a fit and proper person in terms of this section.

(3) A non-bank financial institution shall inform the Regulatory Authority immediately after the non-bank financial institution becomes aware of any material information that may negatively affect the fitness and probity of a controller or key person.

(4) Notwithstanding subsection (1), the Regulatory Authority shall upon receipt of the information referred to in subsection (3), conduct a fit and proper test on a controller or key person, or require a non-bank financial institution to conduct the fit and proper test on the controller or key person.

(5) Where the Regulatory Authority has reason to believe that any person, by virtue of such person's shareholding in a non-bank financial institution, is in a position to influence a controller or key person, and he or she is exercising his or her influence in a manner that is detrimental to the interests of a client of the non-bank financial institution, the Regulatory Authority may direct such non-bank financial institution to correct the matter.

(6) A non-bank financial institution that fails to comply with subsections (3) and (4) commits an offence and is liable to a civil penalty not exceeding P250 000 to be imposed by the Regulatory Authority.

49. (1) A non-bank financial institution shall not appoint a person to be a controller or key person of the non-bank financial institution without the approval of the Regulatory Authority.

(2) A person who is a controller or key person of a non-bank financial institution by virtue of the degree of a voting power the person has or controls in relation to the non-bank financial institution —

- (a) shall not vary the degree of the voting power by more than the percentage specified in the administrative rules without the approval of the Regulatory Authority; or
- (b) may vary the degree of the voting power in accordance with the administrative rules, and shall inform the Regulatory Authority within three days after effecting such variation.

Controllers of
non-bank
financial
institutions

(3) A person who is a controller or key person of a non-bank financial institution may effect a variation referred to under subsection (2) either by increasing or reducing the percentage of the voting power the person has or controls.

(4) A person who ceases to be a controller or key person of a non-bank financial institution shall, within three days after ceasing to be a controller or key person, notify the Regulatory Authority.

(5) A person who contravenes subsection (1), (2), (3) or (4) commits an offence and is liable to a civil penalty not exceeding P50 000 to be imposed by the Regulatory Authority.

(6) A non-bank financial institution that appoints a controller or key person, or effects a variation without the approval of the Regulatory Authority commits an offence and is liable to a civil penalty not exceeding P250 000 to be imposed by the Regulatory Authority.

(7) A non-bank financial institution that is aware of the appointment of a controller or a variation to the position of controller shall report such appointment or variation to the Regulatory Authority within three days of such appointment or variation.

(8) A non-bank financial institution that contravenes subsection (7) commits an offence and is liable to a civil penalty not exceeding P250 000 to be imposed by the Regulatory Authority.

(9) The Regulatory Authority may, where the vetting of a controller or key person is delayed, issue a conditional approval of the controller or key person.

50. (1) A person shall not effect any arrangement that may result in such person, individually or together with a related or inter-related person, to be a controller of a non-bank financial institution, without the prior written approval of the Regulatory Authority.

(2) A controller of a non-bank financial institution shall not, without having obtained a prior written approval from the Regulatory Authority, effect any arrangement that may result in a person, individually or together with a related or inter-related person, to cease to be a controller of the non-bank financial institution.

(3) A person shall not, without having obtained a prior written approval from the Regulatory Authority, effect any arrangement that may result in such person, individually or together with a related or inter-related person, to increase or limit the extent of the ability of such person, individually or together with a related or inter-related person, to control or influence materially a business or strategy of a non-bank financial institution.

(4) An approval in terms of subsections (1) and (2) shall not be given unless the Regulatory Authority is satisfied that a person —

(a) who is to be a controller, or an arrangement, or any increase or limit in the extent of the ability of the controller to control or influence a business or strategy of a non-bank financial institution shall not negatively affect or is not likely to affect the prudent management and the financial soundness of the non-bank financial institution; and

(b) meets and is reasonably likely to continue to meet the applicable requirements for a fit and proper person.

(5) An administrative rule referred to in section 52 may provide for procedures in respect of applications for approvals and notifications in terms of this section.

(6) This section does not affect any other requirement in terms of a financial services law to obtain approval or consent in respect of an acquisition or disposal.

51. The Regulatory Authority shall not issue a directive in accordance with this Part, that requires the removal of a person from the position of a controller, or the functions of the controller in relation to a non-bank financial institution unless such controller —

Removal of persons from position of controller

(a) has contravened a financial services law;

(b) has been involved in a financial crime;

(c) is responsible for, or in any way participated in, or failed to take steps to prevent the —

(i) contravention of a financial services law by the non-bank financial institution, or

(ii) non-bank financial institution from being involved in a financial crime; or

(d) no longer complies with the applicable requirements for a fit and proper person.

PART X — *Supervision and Regulation of Non-Bank Financial Institutions*

52. (1) The Regulatory Authority may issue administrative rules setting out the requirements relating to the operation of any activity of a —

Administrative rules

(a) non-bank financial institution or a financial conglomerate, which the non-bank financial institution is part of, in order to ensure that such non-bank financial institution or the financial conglomerate, as the case may be, maintains a sound financial position and does not cause or promote instability in the financial system; or

(b) non-bank financial institution with integrity, prudence and professional skill.

(2) Without prejudice to subsection (1), the administrative rules may provide for matters relating to —

(a) the fit and proper requirements for a controller and a key person of a non-bank financial institution;

(b) the governance of a non-bank financial institution, its capital and liquidity requirements;

(c) the valuation requirements and methods;

(d) the standards of business conduct;

(e) the requirements for a controller of a non-bank financial institution;

- (f) the use of financial instruments, including derivatives, and off-balance sheet transactions by a non-bank financial institution;
 - (g) any insurance, and in the case of an insurer, re-insurance arrangement;
 - (h) any outsourcing of the functions of a non-bank financial institution as may be approved by the Regulatory Authority;
 - (i) the manner in which a non-bank financial institution manages any risk associated with its business;
 - (j) an extension, exemption and a waiver relating to a non-bank financial institution; and
 - (k) any other matter that the Regulatory Authority may deem necessary.
- (3) The Regulatory Authority shall not make any administrative rule unless —
- (a) the Regulatory Authority has published, a draft of the administrative rule in the manner that the Regulatory Authority considers applicable to bring the draft to the attention of a non-bank financial institution to which such administrative rule applies;
 - (b) the Regulatory Authority gives an affected non-bank financial institution 60 days after the publication of the administrative rule, to make representations to the Regulatory Authority on such administrative rule; and
 - (c) the Regulatory Authority has considered the representations referred to in paragraph (b) in deciding whether to make the administrative rule.
- (4) The Regulatory Authority may make an administrative rule after it has considered on reasonable grounds that it is urgent and necessary to make such administrative rule without the application of subsection (3).
- (5) An administrative rule made in terms of subsection (4) shall be valid for a period of 180 days.
- (6) The Regulatory Authority may amend or vary an administrative rule.

Interpretation
guidance notes

53. (1) The Regulatory Authority may publish an interpretation guidance note relating to the interpretation or application of a provision in any financial services law, under circumstances that may be specified in the interpretation guidance note.

(2) The purpose of the interpretation guidance note shall be to promote clarity, consistency and certainty in the interpretation and application of any financial services law.

(3) The Regulatory Authority shall interpret and apply any provision of any financial services law to which an interpretation guidance note relates.

(4) An interpretation guidance note shall cease to be effective from the date —

- (a) any provision of any financial services law that is the subject of the interpretation guidance note is repealed, or amended in a manner that materially affects the interpretation guidance note; or
- (b) of a judgment of a court, where the court overturns or modifies any interpretation of the financial services law on which the interpretation guidance note is based, unless the decision of the court is appealed.

54. The Regulatory Authority may at any time give a written direction to a non-bank financial institution requiring it to submit any information to the Regulatory Authority that is relevant to the performance of the Regulatory Authority's functions under a financial services law.

Information to be submitted to Regulatory Authority

55. (1) The Minister may prescribe the requirements for —

Reporting

- (a) submission of reports to the Regulatory Authority, in connection with the Regulatory Authority's performance of its functions under any financial services law by —
 - (i) a non-bank financial institution,
 - (ii) a controller or key person of a non-bank financial institution,
 - (iii) a service provider of a non-bank financial institution,
 - (iv) an affiliate of a non-bank financial institution,
 - (v) a former affiliate of a non-bank financial institution,
 - (vi) a former service provider of a non-bank financial institution, or
 - (vii) a former controller or key person of a non-bank financial institution; and
 - (b) disclosure of information to a client or any other person relating to a financial service by —
 - (i) a non-bank financial institution,
 - (ii) a controller or key person of a non-bank financial institution,
 - (iii) a service provider of a non-bank financial institution,
 - (iv) an affiliate of a non-bank financial institution,
 - (v) a former affiliate of a non-bank financial institution,
 - (vi) a former service provider of a non-bank financial institution, or
 - (vii) a former controller or key person of a non-bank financial institution.
- (2) Without prejudice to subsection (1), the requirements to be prescribed may include the —
- (a) lodgement of periodic returns and any other returns, with the Regulatory Authority;
 - (b) reporting of changes in the management and control of a non-bank financial institution to the Regulatory Authority;
 - (c) reporting of financial difficulties or suspected financial difficulties in a non-bank financial institution to the Regulatory Authority; and
 - (d) reporting of any contravention or suspected contravention of any financial services law in relation to a non-bank financial institution to the Regulatory Authority.

- (3) A person who reports to the Regulatory Authority —
- (a) any financial difficulties or suspected financial difficulties in a non-bank financial institution;
 - (b) a contravention or suspected contravention of a financial services law in relation to a non-bank financial institution, its controller or key person; or
 - (c) the involvement or suspected involvement of a non-bank financial institution, its controller or key person in a financial crime, whether or not the reporting is required by law,

shall not be liable for damages or any other sanction in relation to any loss caused by such reporting, unless it is established that the report was made in bad faith.

(4) A person who subjects another person who reports in accordance with subsection (3), to any prejudice in his or her employment, or penalises the person who reports in any way on the ground that such person reported, whether or not the reporting is required by law, commits an offence and is liable to a civil penalty not exceeding P50 000 to be imposed by the Regulatory Authority.

Power to give directions

56. (1) The Regulatory Authority may give a non-bank financial institution a written direction on the manner in which the affairs of the non-bank financial institution may be conducted if it appears to the Regulatory Authority that —

- (a) such non-bank financial institution has contravened a financial services law;
- (b) such non-bank financial institution is likely to contravene a financial services law;
- (c) such non-bank financial institution is conducting its affairs in an improper or unfair manner, or in a financially unsound manner;
- (d) such non-bank financial institution is causing or promoting instability in the financial system, or is likely to do so;
- (e) such non-bank financial institution is involved in a financial crime; or
- (f) the direction is necessary to protect the interests of clients of such non-bank financial institution and the public.

(2) Without prejudice to subsection (1), a direction may require a non-bank financial institution to —

- (a) comply with the whole or a specified part of a financial services law;
- (b) cause an auditor selected by the Regulatory Authority to audit the records of the non-bank financial institution at the expense of such non-bank financial institution and submit a report of the audit to the Regulatory Authority;
- (c) ensure that a specified director or employee of the non-bank financial institution does not take part in the management or conduct of the business of such non-bank financial institution except when permitted to do so by the Regulatory Authority;

- (d) appoint a specified person to a specified office, including the office of a director of the non-bank financial institution, for a period to be specified in the direction;
 - (e) remove an auditor or actuary of the non-bank financial institution from office;
 - (f) not borrow a specified amount or any amount;
 - (g) not pay a dividend;
 - (h) not pay or transfer an amount to a person, or create an obligation, whether contingent or otherwise, to do so;
 - (i) not undertake a financial obligation, whether contingent or otherwise, on behalf of another person; or
 - (j) take any other action the Regulatory Authority considers necessary or desirable to deal with a case in the interests of the non-bank financial institution, the clients of such non-bank financial institution or the financial system, or the public.
- (3) Subsection (2) (h) shall not apply to the payment or transfer of money under an order of a court or a process of a court execution.

(4) The Regulatory Authority may, in giving the direction referred to under subsection (1), remove a director or an officer of a non-bank financial institution from office if the Regulatory Authority is satisfied that —

- (a) the non-bank financial institution has contravened a financial services law or has been involved in a financial crime and the director or officer was involved in, or aware of, the financial crime or the contravention of the financial services law; or
- (b) the director or officer has contravened a financial services law or has been involved in a financial crime, whether or not such crime is related to the non-bank financial institution.

(5) The direction referred to under subsection (1) may specify the period by which, or the period during which, such direction is to be complied with.

(6) A non-bank financial institution that has been given a direction in terms of this section shall comply with the direction notwithstanding anything contained in its documents of incorporation issued in terms of the Companies Act, or any other documents, or any contract or arrangement to which the non-bank financial institution is a party.

(7) A person who, without reasonable cause, fails to comply with a direction given in terms of this section commits an offence and is liable to a civil penalty not exceeding P250 000 to be imposed by the Regulatory Authority.

(8) The Regulatory Authority may vary or revoke a direction given in terms of this section at any time, by giving a written notice to a non-bank financial institution.

57. (1) A person shall not engage in a conduct that is misleading or deceptive in relation to a financial service, including a financial service provided by another person.

Prohibition
of misleading
and deceptive
conduct

(2) Notwithstanding the generality of subsection (1), a person shall not —

- (a) falsely represent a financial service to be of a particular standard, quality, value or grade;
- (b) falsely represent a particular person to have agreed to acquire a specified financial service;
- (c) falsely represent a financial service to have been licensed or approved in terms of the provisions of this Act or any other financial services law;
- (d) falsely represent a financial service to have a sponsorship, or good performance characteristics or benefits;
- (e) falsely represent a person to have, in relation to a financial service, a sponsorship, approval or an affiliation;
- (f) make a false or misleading representation with respect to the price of a financial service;
- (g) make a false or misleading representation concerning the need for a specified financial service; or
- (h) make a false or misleading representation concerning the existence, exclusion or effect of a condition, warranty, guarantee, right or remedy in relation to a financial service.

(3) A person who contravenes this section commits an offence and is liable to a civil penalty not exceeding P50 000 to be imposed by the Regulatory Authority.

Unfair practices

58. (1) The Regulatory Authority may, by public notice published in accordance with section 89, determine that a specified practice in relation to a financial service is an unfair practice.

(2) A determination made in terms of subsection (1) may relate to any specified financial service.

(3) The Regulatory Authority shall, before making a determination in terms of subsection (1), consult any relevant organisation unless the Regulatory Authority is satisfied that it is necessary to make the determination urgently to protect the interests of a client and a potential client of a non-bank financial institution.

(4) A non-bank financial institution that engages in an unfair practice in relation to a financial service commits an offence and is liable to a civil penalty not exceeding P100 000 to be imposed by the Regulatory Authority.

PART XI — *Regulation of Market Practices of Non-Bank Financial Institutions*

Arrangements or compromises involving non-bank financial institutions

59. (1) A non-bank financial institution shall not enter into an arrangement or compromise without the written approval of the Regulatory Authority.

(2) A non-bank financial institution that is party to a proposed arrangement or compromise shall submit to the Regulatory Authority, copies of all —

- (a) documents to be submitted to a director, shareholder or creditor of each party to the arrangement or compromise, either in relation to a meeting involving the director, shareholder or creditor, or otherwise; and
 - (b) proposed court documents relating to the arrangement or compromise.
- (3) The Minister may prescribe any other requirements related to an arrangement or compromise.

60. (1) A non-bank financial institution shall not transfer a business, whether directly or indirectly through a change of a beneficial owner to another person, or amalgamate with another business, except under a scheme for the transfer or amalgamation approved by the Regulatory Authority in accordance with any relevant financial services law.

Transfer of business of non-bank financial institutions

(2) A transfer or amalgamation that contravenes subsection (1) shall be void.

(3) For purposes of this section, “beneficial owner” has the same meaning assigned to it under the Financial Intelligence Act.

61. In the event of any conflict or inconsistency between the provisions of this Act and the Companies Act in relation to an arrangement, compromise or transfer of the business of a non-bank financial institution, the provisions of this Act shall take precedence.

Inconsistencies with Companies Act

62. (1) The Regulatory Authority may appoint a statutory manager for a non-bank financial institution if it appears to the Regulatory Authority that —

Appointment of statutory managers

- (a) the non-bank financial institution is not complying with any financial services law;
- (b) the non-bank financial institution is in an unsound financial position;
- (c) the non-bank financial institution is involved in a financial crime; or
- (d) such appointment is necessary to protect the —
 - (i) interests of a client of the non-bank financial institution,
 - (ii) stability, fairness, efficiency and orderliness of the financial system, or
 - (iii) safety and soundness of a non-bank financial institution.

(2) The Regulatory Authority shall, within five days after appointing a statutory manager in accordance with subsection (1), apply to the High Court for an order confirming the appointment.

(3) The Regulatory Authority shall, by a public notice made in accordance with section 89, publish the appointment of a statutory manager of a non-bank financial institution under this section.

63. (1) A person shall not hold office as a statutory manager of a non-bank financial institution unless the Regulatory Authority has approved such person as the statutory manager of the non-bank financial institution.

Statutory management

- (2) A statutory manager of a non-bank financial institution shall —
 - (a) manage the affairs of the non-bank financial institution —

- (i) with the greatest economy possible and with efficiency, and
 - (ii) to the exclusion of a director or any other person of such non-bank financial institution;
 - (b) have the power to repudiate a contract to which the non-bank financial institution is a party, if the statutory manager considers the contract to be detrimental to the interests of any client of such non-bank financial institution; and
 - (c) be entitled to receive such remuneration from the non-bank financial institution as the court of competent jurisdiction may order.
- (3) The repudiation of a contract in terms of subsection (2) (b) shall not affect any rights of any party that has accrued before such repudiation.
- (4) A statutory manager of a non-bank financial institution shall, as soon as practicable after his or her appointment, advise the Regulatory Authority on the procedure to be used to ensure that a non-bank financial institution –
- (a) complies with a financial services law;
 - (b) is financially sound; or
 - (c) is not involved in a financial crime.
- (5) Where a statutory manager determines that it is not practicable to use the procedure referred to in subsection (4), the statutory manager may direct that –
- (a) the business of a non-bank financial institution be transferred to another person, and state the terms of such transfer; or
 - (b) where such statutory manager determines that it is not practicable to use the procedure referred to in subsection (4), the statutory manager may recommend that a non-bank financial institution be wound up.
- (6) A statutory manager of a non-bank financial institution shall comply with the directions of the Regulatory Authority in relation to the statutory manager's functions.
- (7) Notwithstanding subsection (6), a statutory manager of a non-bank financial institution may apply to the High Court at any time for directions.
- (8) The Regulatory Authority may –
- (a) where necessary, limit the powers of a statutory manager of a non-bank financial institution to the extent it considers appropriate; and
 - (b) at any time, remove a statutory manager from office, and appoint another person as the statutory manager of a non-bank financial institution.
- (9) The Regulatory Authority shall, in accordance with section 62 (2), apply to the High Court for an order confirming the appointment referred to in subsection (8) (b).

(10) A statutory manager of a non-bank financial institution shall not be liable for any loss incurred by the non-bank financial institution unless it can be established that the loss was caused by the statutory manager's fraudulent, dishonest or negligent act, or wilful failure to comply with the law.

(11) The cost of statutory management shall be borne by the non-bank financial institution concerned.

64. (1) The Regulatory Authority shall, where it has appointed a of statutory manager to a non-bank financial institution, ensure that the statutory manager remains appointed as such until the Regulatory Authority —

- (a) is satisfied that the purpose for the appointment of such statutory manager no longer exists; or
- (b) applies to the High Court for the non-bank financial institution to be wound up on the basis that such non-bank financial institution is insolvent and is unlikely to return to solvency within a reasonable time.

(2) The Regulatory Authority shall, by a public notice made in accordance with section 89, publish the termination of the appointment of a statutory manager of a non-bank financial institution.

65. (1) A resolution, demand or other step to wind up a non-bank financial institution shall have no effect unless the Regulatory Authority has approved the resolution, demand or other step to wind up the non-bank financial institution.

(2) The Regulatory Authority shall, where the winding up of a non-bank financial institution is initiated by a third party, not approve such winding up unless —

- (a) a licence of the non-bank financial institution has been or is to be revoked; or
- (b) the Regulatory Authority is satisfied that adequate provision has been made to protect the interests of any client of the non-bank financial institution.

(3) The Regulatory Authority may apply to the High Court for an order that a non-bank financial institution be wound up if the Regulatory Authority —

- (a) has appointed a statutory manager to the non-bank financial institution; and
- (b) is satisfied that the non-bank financial institution is insolvent and may not financially recover within a reasonable time.

66. The provisions of sections 62, 63, 64 and 65 shall, with the necessary modifications, apply to a person who carries out a business as a non-bank financial institution without a licence required in terms of the relevant financial services laws.

Termination of
office statutory
manager

Winding up of
non-bank
financial
institutions

Statutory
management
and winding up
of unlicensed
non-bank
financial
institutions

Enforceable
undertakings

67. (1) The Regulatory Authority may accept a written undertaking from a person in connection with a matter in which the Regulatory Authority has a function under a financial services law.

(2) A person may, at any time, with the approval of the Regulatory Authority, withdraw or vary an undertaking referred to in subsection (1).

(3) The Regulatory Authority may, where it has determined that a person referred to under subsection (1) has breached the undertaking, apply to the High Court for an order directing the person to –

- (a) comply with such undertaking;
- (b) carry out, or cease, any act as may be prescribed, for one or more of the following reasons –
 - (i) to remedy the effects of the breach,
 - (ii) to compensate any person who has suffered a loss as a result of the breach, or
 - (iii) to ensure that such person does not commit any further breach of such undertaking or of a financial services law; or
- (c) carry out any other act that the Regulatory Authority considers appropriate.

(4) The Regulatory Authority may make available to any person, a copy of the undertaking referred to under subsection (1).

(5) The Regulatory Authority shall exclude from the copy referred to under subsection (4), information that a person referred to under subsection (1) has requested the Regulatory Authority not to disclose, on condition that the Regulatory Authority is satisfied that the –

- (a) information is confidential;
- (b) information has a commercial value that may be diminished if such information is disclosed;
- (c) information consists of personal details of any person; or
- (d) disclosure of the information is not in the public interest.

(6) Where the Regulatory Authority has excluded any information from a copy referred to under subsection (4), the Regulatory Authority shall attach a note to the copy, stating that the information has been excluded.

Exemptions and
modifications
of financial
services laws
for non-bank
financial
institutions

68. (1) The Regulatory Authority may, on application by a non-bank financial institution or on its own initiative, exempt the non-bank financial institution from the application of this Act, or a Part or provision of this Act or related law, where –

- (a) the application of this Act, or Part or provision of this Act or related law is not proportionate to the nature, size, scale or complexity of the risks or business of such non-bank financial institution or activity or type of person conducting the activity;
- (b) practicalities impede the application of a Part or provision of this Act or related law; or
- (c) there is any other law regulating an activity.

(2) An exemption or declaration referred to subsection (1) may apply

- (a) generally or to a specified case or class of cases, as may be prescribed; or
- (b) unconditionally or subject to any specified condition.

(3) A person who wishes to be exempted in accordance with this section may apply to the Regulatory Authority for such exemption.

(4) An application referred to under subsection (3) shall be accompanied by a fee as may be prescribed.

PART XII — *Self-Regulatory Organisations*

69. (1) The Minister may by order, on the recommendation of the Regulatory Authority, declare a person that performs the functions related to a class of non-bank financial institutions to be a self-regulatory organisation for the purposes of this Act.

Self-regulatory organisations

(2) The Minister shall not make a declaration in terms of subsection (1) unless the Regulatory Authority has entered into an arrangement with a person for the performance by the person of regulatory or supervisory functions in relation to the class of non-bank financial institutions.

(3) An arrangement may, if the Regulatory Authority considers it appropriate, involve the delegation of the Regulatory Authority's powers under financial services laws to a self-regulatory organisation.

(4) An arrangement shall provide for the —

- (a) supervision by the Regulatory Authority of a self-regulatory organisation's performance of regulatory or supervisory functions by the self-regulatory organisation;
- (b) approval by the Regulatory Authority of any rules, the amendment of the rules, of a self-regulatory organisation for or with respect to the matters for which the self-regulatory organisation has regulatory or supervisory functions, including such functions as may be delegated by the Regulatory Authority; and
- (c) variation or termination of the arrangement, where the Regulatory Authority is not satisfied that a self-regulatory organisation is performing, or is able to perform, regulatory or supervisory functions to the satisfaction of the Regulatory Authority.

70. (1) The Regulatory Authority may, at any time, recommend to the Minister, the revocation of a declaration referred to under section 69 (1).

Revocation of declarations

(2) The Regulatory Authority shall, before making the recommendation referred to under subsection (1), notify a self-regulatory organisation of its intention to do so and the reasons for such recommendation, and shall give the self-regulatory organisation 14 days to make representations on the recommendation to the Regulatory Authority.

(3) Where the Regulatory Authority revokes a declaration, such revocation shall not affect the right of a person to apply to the Tribunal in terms of section 87 for a review of the decision to revoke the declaration.

(4) Where a person applies for review of the decision of the Regulatory Authority to the Tribunal, the Tribunal shall send a copy of the application to the Regulatory Authority, which shall be entitled to be a party to the review proceedings in the Tribunal.

Rules of self-regulatory organisations

71. (1) Subject to subsection (2), a self-regulatory organisation may make rules for or with respect to any matter for which the self-regulatory organisation has regulatory or supervisory functions, including functions delegated by the Regulatory Authority:

Provided that such rules are consistent with a financial services law.

(2) The rules made in terms of subsection (1), and any amendment to such rules, shall be of no effect unless approved by the Regulatory Authority.

Due process by self-regulatory organisations

72. A self-regulatory organisation shall not make a decision under its rules that adversely affects the rights of a person unless the self-regulatory organisation —

(a) has given the person an opportunity to make representations to it about the matter; or

(b) considers, on reasonable grounds, that any delay in making the decision will prejudicially affect the protection of investors and consumers of securities services.

Reporting of appointment of directors or executives of self-regulatory organisations

73. A self-regulatory organisation shall, as may be prescribed, inform the Regulatory Authority of the appointment of the director or executive of the self-regulatory organisation within three days after such appointment.

Amendment of self-regulatory organisations' constitutions

74. Notwithstanding anything in the Companies Act, an amendment to the memorandum or articles of association, or other constituent documents, of a self-regulatory organisation shall be of no effect unless approved by the Regulatory Authority.

Exemption from liability of self-regulatory organisations, etc.

75. (1) A self-regulatory organisation shall not be liable in civil or criminal proceedings in respect of any act done in good faith in the performance of its functions as a self-regulatory organisation under a financial services law.

(2) A director, executive, employee or member of a committee of a self-regulatory organisation acting under the direction of the Regulatory Authority of the self-regulatory organisation shall not, in his or her personal capacity, be liable in civil or criminal proceedings in respect of any act done in good faith in the performance of his or her duties under this Act.

PART XIII — *Supervision of Financial Conglomerates*

76. (1) The Regulatory Authority may designate members of a group of companies as a financial conglomerate.

Designation of financial conglomerates

(2) A financial conglomerate designated as such under subsection (1) shall include both an eligible non-bank financial institution and a holding company of the eligible non-bank financial institution, as may be prescribed, and may not include all the members of the group of companies.

77. The power of the Regulatory Authority to issue a directive under this Act shall extend to the issuance of a directive to a holding company of a financial conglomerate, and shall impose requirements on the holding company to manage and mitigate risks to the prudent management or financial soundness of a non-bank financial institution in the financial conglomerate arising from the other members of such financial conglomerate.

Directives to holding companies

PART XIV — *Regulation of International Financial Services Centre Non-Bank Financial Institutions*

78. Notwithstanding anything contained in any relevant law, this Part shall apply to an International Financial Services Centre non-bank financial institution that has been issued with, a tax certificate in accordance with the Income Tax Act.

Application of Income Tax Act to non-bank financial institutions

79. (1) A non-bank financial institution shall comply with the conditions, if any, imposed on its tax certificate.

Tax certificate compliance

(2) The functions of the Regulatory Authority in relation to a non-bank financial institution to which this Part applies may be performed for the purpose of enforcing Part XVI of the Income Tax Act.

80. (1) The Regulatory Authority may recommend to the Minister that a tax certificate of a non-bank financial institution be revoked, if it is satisfied that —

Revocation of tax certificate

(a) a non-bank financial institution has failed or refused to comply with the conditions imposed on its tax certificate; or

(b) the grounds for the revocation of licence issued to a non-bank financial institution under a financial services law exist.

(2) The Regulatory Authority shall not act in terms of subsection (1) unless the Regulatory Authority has —

(a) given the non-bank financial institution a written notice of the proposed recommendation, setting out the reasons for the proposed recommendation and stating that the non-bank financial institution has 21 days within which to make a representation to the Regulatory Authority on such proposed recommendation; and

(b) taken into account any representations made by or for the non-bank financial institution within the period referred to under paragraph (a).

PART XV – *Inspections and Investigations*

Appointment
of inspectors
and
investigators

81. (1) The Regulatory Authority may, by instrument, appoint an —
(a) inspector; and
(b) investigator.

(2) The Regulatory Authority shall issue to each inspector and investigator an identity card.

(3) The Regulatory Authority may undertake an on-site inspection of the operations and affairs of a non-bank financial institution, including any office of the non-bank financial institution whose operations are in another country, in order to determine whether the non-bank financial institution is conducting its business in a lawful and prudent manner.

(4) An employee of the Regulatory Authority or of any third party in an inspection or investigation of the Regulatory Authority, may conduct the inspection or investigation.

Inspections of
non-bank
financial
institutions

82. (1) An inspector may at any time inspect the affairs or any part of the affairs of a person who is, or at any time has been, a non-bank financial institution to find out whether the non-bank financial institution —

(a) complies with a financial services law and the conditions of its licence;

(b) satisfies the criteria or standards made under a financial services law;

(c) is, or has been, involved in financial crime; or

(d) has information that, upon request by a regulatory authority of another country, which would assist such regulatory authority of another country to secure compliance with financial services law of another country.

(2) For purposes of an inspection under subsection (1), the inspector may —

(a) enter any premises of a non-bank financial institution for business purposes; and

(b) inspect and make copies of, or take extracts from, any relevant records, documents or things in those premises.

(3) The Regulatory Authority shall provide an inspector with an instrument in the prescribed form, authorising the inspector to conduct an inspection.

(4) An inspector shall, when exercising his or her powers under this Act, produce his or her identity card for inspection to a non-bank financial institution under inspection, but failure to do so shall not render the inspection invalid.

(5) A non-bank financial institution, its key person, officer and employee, shall afford an inspector full and free access to the premises of the non-bank financial institution, records and documents of such non-bank financial institution as are relevant to the inspection under any financial services law.

(6) A person who contravenes subsection (5) commits an offence and is liable to a civil penalty not exceeding P2 500 for each day on which the contravention occurs or continues to occur, up to a maximum period of 90 days, to be imposed by the Regulatory Authority.

(7) Where a person continues to contravene subsection (5) after a period of 30 days, the Regulatory Authority shall cancel the licence with immediate effect.

83. (1) This section shall apply if the Regulatory Authority —

Investigations

(a) has reasonable grounds to believe that —

- (i) an offence under a financial services law has been or may have been committed,
- (ii) a non-bank financial institution is not complying with, or has not complied with, a financial services law, or
- (iii) a regulatory authority of another country has requested for assistance to enforce and secure compliance with a financial services law of another country in accordance with a cooperation arrangement entered into under section 91 (5);

(b) suspects on reasonable grounds that a person is able to furnish any information on a subject of an investigation or has in his or her possession or under his or her control, information that has a bearing on the subject; and

(c) suspects on reasonable grounds that a person has in his or her possession or under his or her control, anything that may afford evidence relevant to the matter.

(2) Subsection (1) shall apply whether or not a person being investigated is a licensed non-bank financial institution, and where the investigation of an unlicensed non-bank financial institution reveals that a criminal activity is being carried out, inform and hand over the investigation, together with any evidence that the investigator may have collected, to the Botswana Police Service.

(3) The Regulatory Authority shall provide an investigator with an instrument in the prescribed form, authorising the investigator to conduct an investigation.

(4) An investigator shall, when exercising his or her powers under this Act, produce his or her identity card for investigation to a non-bank financial institution under investigation, but failure to do so shall not render the investigation invalid.

(5) An investigator may use the powers under this section or a financial services law to assist a regulatory authority of another country to enforce and secure compliance with a financial services law of another country in accordance with a cooperation arrangement referred to under subsection (1) (a) (iii).

(6) An investigator may, for the purposes of investigating an offence or suspected offence, or to assist a regulatory authority of another country to enforce and secure compliance with a financial services law of another country, do any of the following —

- (a) enter any premises used or apparently used by any non-bank financial institution for business purposes, at any reasonable time and search for any record, document or other thing that the investigator considers may be relevant to the investigation;
- (b) inspect and make copies of, or take extracts from, and where necessary in an appropriate case, take possession of such records, documents or any other related information;
- (c) summon any person, including any non-bank financial institution or any bank that is believed to be able to give any information, including bank secret information or any confidential information of the non-bank financial institution, that has a bearing on the subject of any investigation authorised under this Act, or to have in such person's possession or under such person's control, any document which has a bearing upon that subject, to produce such document to the investigator, or to appear at a time and place specified in the summons, to be interrogated, to explain or give any additional information, or to produce such document;
- (d) interrogate any person under oath or affirmation in a manner and form as may be determined by the Regulatory Authority, and examine or retain for examination, any document; or
- (e) in relation to a matter being investigated on the authority of an instrument issued under this section, at any time without prior notice –
 - (i) enter any premises and require the production of any document,
 - (ii) enter and search any premises for any document,
 - (iii) open any storeroom, safe or other container which the inspector suspects contains any document,
 - (iv) examine, make extracts from, and copy, any document, or against the issuing of a receipt, remove such document temporarily for that purpose,
 - (v) against the issue of a receipt, seize any document, and
 - (vi) retain any seized document for any period as may be required, for criminal or any other proceedings:

Provided that the Regulatory Authority may proceed without an instrument, if the person in control of any premises consents to the actions contemplated under this section or if there are reasonable grounds to suspect that it is necessary to do so to prevent loss, destruction or damage of any relevant evidence.

(7) A person who has been duly summoned under subsection (6) (c), who without sufficient cause –

- (a) fails to appear at the time and place specified in summons;
- (b) fails to remain in attendance until exempted by the Regulatory Authority from further attendance;
- (c) refuses to take the oath or to make the affirmation as contemplated under subsection (6) (d);
- (d) fails to answer any lawful question under subsection (6) (d); or

(e) fails to give information or to produce a document in terms of subsection (6) (c), commits an offence and is liable to a civil penalty not exceeding P200 000 to be imposed by the Regulatory Authority.

(8) A person who makes a statement in response to a question by an investigator in terms of this section —

(a) that the person knows to be false or misleading; or

(b) that is reckless as to whether it is false or misleading,

commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a period not exceeding five years, or to both.

(9) A non-bank financial institution, and its director or employee, shall afford an investigator full and free access to the premises, records and documents of the non-bank financial institution as are relevant to an investigation under this section.

(10) The Regulatory Authority shall, where a non-bank financial institution, its director or employee continues to contravene subsection (9) for a period of 90 days or more, cancel the licence of the non-bank financial institution with immediate effect.

84. (1) An inspector acting in terms of section 82, or an investigator acting in terms of section 83, shall have all the powers and protections of a Commissioner in terms of the Commissions of Inquiry Act.

(2) The Regulatory Authority, any employee of the Regulatory Authority, or any person acting under the direction of the Regulatory Authority, shall not be liable in civil or criminal proceedings in respect of any act or thing done in good faith for purposes of carrying into effect the provisions of this Act or any other financial services law.

(3) The powers to conduct an inspection or investigation under a financial services law shall not constitute a warranty as to the solvency or viability of a non-bank financial institution.

Powers of
inspectors and
investigators
Cap. 05:02

PART XVI — *Non-Bank Financial Institutions Tribunal*

85. (1) There shall be the Non-Bank Financial Institutions Tribunal which shall be responsible for the review of the decisions made by the Regulatory Authority or a self-regulatory organisation under this Act.

Non-Bank
Financial
Institutions
Tribunal

(2) The Minister may make regulations to provide for the constitution, composition and jurisdiction of the Tribunal.

86. Every decision of the Regulatory Authority, or of a self-regulatory organisation, made in accordance with the relevant financial services law may be subject to a review by the Tribunal.

Review of
decisions

87. (1) A person who is aggrieved, or whose interests are affected, by a decision made by the Regulatory Authority or self-regulatory organisation under a financial services law may apply to the Tribunal for the review of the decision of the Regulatory Authority or self-regulatory organisation.

Application
for review of
decisions

(2) An application referred to under subsection (1) shall be made within 28 days of the making of the decision, in the prescribed form.

(3) The Tribunal may, on application by the person aggrieved, or whose interests are affected by the decision of the Regulatory Authority or self-regulatory organisation, extend the period referred to under subsection (2), either before or after it has ended, as it considers appropriate.

(4) Where a person referred to under subsection (1) has applied to the Tribunal in accordance with this section, the Tribunal may —

(a) without hearing the review, refer the matter to the Regulatory Authority or a self-regulatory organisation in accordance with any directions or recommendations the Tribunal may deem necessary; or

(b) hear the application and call new evidence where necessary.

Implementation
of decisions
pending review

88. An application for a review of a decision of the Tribunal shall not affect the implementation of the decision but the Tribunal may, on application, suspend the implementation of the decision as may be specified, and on terms determined, by the Tribunal.

PART XVII — *Miscellaneous Provisions*

Public notices

89. Where, pursuant to a financial services law, the Regulatory Authority is required to publish a public notice of any matter affecting a non-bank financial institution, the public notice shall be published in —

(a) the *Gazette*;

(b) a newspaper of national circulation, including a Government newspaper; or

(c) any other medium in Botswana, including electronically, as the Regulatory Authority may consider necessary.

Advisory
bodies

90. The Minister may, on the recommendation of the Regulatory Authority, by Order published in the *Gazette*, establish advisory bodies to assist it in the performance of its functions under this Act.

Arrangements
with other
agencies

91. (1) In carrying out its functions under a financial services law, the Regulatory Authority may consult with the Bank of Botswana and any other agency of the Government that has functions related to the regulation or supervision of a financial service.

(2) The Regulatory Authority may enter into arrangements with the Bank of Botswana and any other agency of the Government that has functions related to the regulation or supervision of financial services, taxation, social security or the financial system.

(3) Without limiting the generality of subsection (2), an arrangement with the Bank of Botswana and any other agency of the Government may make provision for the —

(a) exchange of information between the Regulatory Authority and any other agency, with due regard for the need to protect personal information about persons;

- (b) consultation between the Regulatory Authority and any other agency;
- (c) enforcement of a financial services law and assistance with enforcement of other laws; and
- (d) conduct of examinations and investigations on a joint basis.

(4) The Regulatory Authority may enter into an arrangement with any other organisation outside Botswana to carry out its regulatory and supervisory functions under a financial services law.

(5) The Regulatory Authority may enter into an arrangement for cooperation, consultation and exchange of information with an organisation outside Botswana where such arrangement would assist the Regulatory Authority in carrying out its functions under a financial services law and assist a regulatory authority of another country to enforce and secure compliance with a financial services law of another country.

92. (1) The Board may delegate any of its functions or powers under this Act to — Delegations

- (a) a member;
- (b) an employee of the Regulatory Authority;
- (c) the Bank of Botswana;
- (d) an inspector;
- (e) an investigator; or
- (f) a self-regulatory organisation.

(2) In performing or exercising a delegated function or power, a person who has been delegated functions or powers under subsection (1) shall comply with directions given.

(3) A delegation in terms of this section may be subject to conditions specified in the instrument of delegation.

(4) A delegated power or function shall be exercised or performed in accordance with the instrument of delegation.

(5) The Board may vary or revoke a delegation under this section.

(6) A delegation of power or function under this section shall not prevent the Board from exercising the delegated power or performing the delegated function.

93. (1) The Regulatory Authority may, on application, extend any period provided under this Act for compliance with, or any period that may be prescribed by, a financial services law, and may do so before or after the expiration of such period. Extension of period

(2) The extension given under subsection (1) shall not exceed 90 days.

94. (1) The Regulatory Authority may temporarily close the business or freeze the bank account of a non-bank financial institution, upon reasonable suspicion that the non-bank financial institution is not complying or is not likely to comply, with a financial services law: Temporary closure for non-compliance

Confidentiality
by employees
of Regulatory
Authority,
inspectors and
investigators

Cap. 53:03

Provided that the Regulatory Authority may authorise urgent legitimate transactions which are necessary to maintain the financial obligations of a non-bank financial institution, where there is a temporary closure or freezing of such bank account under this section.

(2) Notwithstanding subsection (1), the Regulatory Authority shall within five days after temporarily closing the business or freezing the bank account of a non-bank financial institution, apply to the High Court for a confirmation order.

95. (1) An employee of the Regulatory Authority, an inspector or investigator appointed in terms of this Act shall not disclose confidential information with respect to any non-bank financial institution or self-regulatory organisation, or an individual, that has been obtained in terms of the provisions of this Act or from the regulatory authority of another country, while the business of the non-bank financial institution or self-regulatory organisation continues to be carried on or during the lifetime of the individual.

(2) Subsection (1) shall not apply to a disclosure of information relating to —

- (a) a summary of information that is prepared in such manner that the identity of any particular person the information relates to cannot be determined from it;
- (b) the name of a licensed non-bank financial institution;
- (c) the addresses at which a licensed non-bank financial institution carries on business;
- (d) any other information reasonably necessary to enable members of the public to contact any non-bank financial institution; or
- (e) any information that is submitted to the Commissioner General appointed as such under the Botswana Unified Revenue Service Act.

(3) It shall be a defence to a charge relating to the provisions in terms of subsection (2) that the disclosure was —

- (a) for the purposes and in the course of the exercise of the officer's duties or the performance of the officer's functions under a financial services law;
- (b) made to or with the consent of the non-bank financial institution or the person concerned;
- (c) made in accordance with an order of a court of competent jurisdiction;
- (d) authorised by a financial services law;
- (e) required by any other law; or
- (f) authorised by regulations made for the purposes of this section.

(4) The Regulatory Authority shall, upon receipt of any confidential information from a regulatory authority of another country —

- (a) keep the information confidential in accordance with a cooperation arrangement, entered into by the Regulatory Authority and the regulatory authority of another country, under which such confidential information was received from such regulatory authority of another country;

- (b) not disclose the confidential information to the members of the public or an agency of the Government, except where provided in a cooperation arrangement; and
- (c) where required by a cooperation arrangement —
 - (i) assert appropriate legal exemption and privilege before complying with any court order or any other legally enforceable demand for access to the confidential information, and
 - (ii) notify the regulatory authority of another country of any court order or any other legally enforceable demand for access to the confidential information, before complying with the court order or any other legally enforceable demand.

(5) A person appointed or employed in accordance with this Act shall take an oath or declaration of secrecy in the manner and form as may be prescribed.

96. A member of the Board or of the committee, or any person assisting the Board or committee, an employee of the Regulatory Authority or any other person acting under the direction of the Regulatory Authority or the Board, or a member of the Tribunal, shall not, in his or her personal capacity, be liable in civil or criminal proceedings in respect of any act done in good faith in the performance of his or her duties under this Act.

Exemption
from personal
liability

97. (1) The Regulatory Authority shall issue a Code of Conduct, which shall apply to the employees of the Regulatory Authority, and the members of the Board and a committee.

Code of
Conduct

(2) The Code of Conduct shall be consistent with this Act and any other financial services law, and shall make provision for the —

- (a) use and disclosure of information by employees of the Regulatory Authority and members of the Board and of a committee;
- (b) reduction or elimination of improper influence on the Regulatory Authority, employees of the Regulatory Authority, members of the Board and committee in carrying out their functions under a financial services law;
- (c) trading in and ownership of securities or other financial instruments by employees of the Regulatory Authority, members of the Board and of the committee;
- (d) conflicts of interest; and
- (e) receiving, keeping, holding and reporting gifts of any description by members and employees of the Regulatory Authority.

(3) The Regulatory Authority shall review the Code of Conduct at least once a year.

(4) An employee of the Regulatory Authority, member of the Board and of the committee shall adhere to the Code of Conduct.

(5) Any failure to adhere to the Code of Conduct shall not in itself be an offence, but without limiting any other law —

Conduct of directors, employees and agents of non-bank financial institutions

- (a) failure to adhere to the Code of Conduct by an employee of the Regulatory Authority, a member of the Board and of a committee may be evidence that such employee or member is not fit and proper to be an employee of the Regulatory Authority, or member of the Board or of the committee; and
- (b) an employee of the Regulatory Authority who does not adhere to the Code of Conduct commits a breach of his or her contract of service with the Regulatory Authority.

98. (1) Where it is necessary for a person to establish, for the purposes of a financial services law, the state of a non-bank financial institution in relation to a conduct of the business of the non-bank financial institution, it shall be sufficient to show that the —

- (a) conduct of the business of such non-bank financial institution was carried out by the director, employee or agent of the non-bank financial institution within the scope of his or her powers; and
- (b) director, employee or agent had an intention.

(2) An “intention” referred to in subsection (1) (b) includes —

- (a) the knowledge, opinion, belief or purpose of a person; and
- (b) a person’s reasons for the opinion, belief or purpose.

(3) A reference in this section to engaging in a conduct includes a reference to failing or refusing to engage in the conduct.

Liability of directors of non-bank financial institutions

99. (1) Where a non-bank financial institution is convicted of an offence under this Act, every person who —

- (a) is a director, or otherwise concerned with the management of the non-bank financial institution; and
- (b) knowingly authorises or permits an act or omission constituting an offence,

commits an offence unless the person referred to under paragraphs (a) and (b) shows proof that he or she took reasonable precautions and exercised due diligence to avoid the commission of the offence.

(2) A non-bank financial institution which commits an offence under this section is liable to a fine not exceeding P1 500 000 or, in the case of a person referred to under subsection (1), to a fine not exceeding P500 000 or to imprisonment for a term not exceeding five years, or to both.

Administrative penalties

100. (1) Where the Regulatory Authority is satisfied, on reasonable grounds, that a person has contravened a financial services law for which a civil penalty is to be imposed by the Regulatory Authority, the Regulatory Authority may —

- (a) give such person a written warning;
- (b) direct such person to do a specified act, or refrain from doing a specified act, for one or more of the following purposes, to —
 - (i) remedy the effects of the contravention,
 - (ii) compensate persons who have suffered loss because of the contravention, or
 - (iii) ensure that the person does not commit further contraventions of financial services laws; or

(c) impose a civil penalty as stipulated in the provision contravened.

(2) Without limiting subsection (1) (b), a direction may require the establishment of compliance programs, corrective advertising, or in the case of a direction to a non-bank financial institution, changes in the management of the non-bank financial institution.

(3) The Regulatory Authority shall, before it applies subsection (1), give a person 21 days written notice of its intended action specifying the grounds for the action and the facts supporting such grounds, upon which such person may request for the hearing of the matter, or give the Regulatory Authority a response.

(4) Where a person requests for a hearing in terms of subsection (1), the Regulatory Authority shall hold a hearing before applying subsection (1), and such hearing shall be held in private unless the person consents to the hearing being held in public.

(5) A person who has been given a notice under this section, who fails to comply with a direction of the Regulatory Authority commits an offence and is liable to a civil penalty not exceeding P100 000 to be imposed by the Regulatory Authority.

(6) The Regulatory Authority may, in accordance with section 89, publish a notice of any administrative action taken in terms of this section.

101. A person who, without reasonable cause, fails to answer a question by the Regulatory Authority, statutory manager, an inspector or investigator relating to the performance of the functions and activities of a non-bank financial institution under a financial services law, is liable to a civil penalty not exceeding P50 000 to be imposed by the Regulatory Authority.

Failure to respond to questions by Regulatory Authority

102. A person who, for any purpose connected with a financial services law –

False and misleading statements to Regulatory Authority

(a) knowingly gives false or misleading information or statement to the Regulatory Authority;

(b) authorises or influences another person to make false or misleading statement or information to the Regulatory Authority;

(c) in connection with an application for a licence under a financial services law, omits to state any information required by the Regulatory Authority knowing that such omission is misleading in a material respect; or

(d) produces or gives, or causes or knowingly allows to be produced or given, a document that the person knows or ought reasonably to have known to be false in a material respect,

commits an offence and is liable to a civil penalty not exceeding P100 000 to be imposed by the Regulatory Authority.

Destruction of documents

103. A person who destroys, falsifies, conceals or disposes of, or causes or permits the destruction, falsification, concealment or disposal of, a document or any other information that the person knows or ought reasonably to have known is relevant to the performance or exercise of the Regulatory Authority's functions or powers commits an offence and is liable to a fine not exceeding P250 000 or to imprisonment for a period not exceeding five years, or to both.

Obstruction of functions of Regulatory Authority

104. A person who, without any lawful excuse, obstructs —
(a) the Regulatory Authority in the exercise of its functions under this Act;
(b) an employee of the Regulatory Authority in the exercise of his or her functions; or
(c) an investigator, statutory manager or any other person, in the exercise of his or her functions under a financial services law, commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a period not exceeding five years, or to both.

Hindering compliance

105. (1) A person who knowingly hinders compliance with a direction, order or requirement given under a financial services law commits an offence and is liable to a civil penalty not exceeding P100 000 to be imposed by the Regulatory Authority.

(2) Notwithstanding subsection (1), a person who commits an offence under this section may be charged with a criminal offence and be liable to a fine not exceeding P50 000 or to imprisonment for a period not exceeding five years, or to both.

Offences committed partly within and partly outside Botswana

106. Where an act that, if wholly done within Botswana, would be an offence under a financial services law, is done partly within and partly outside Botswana, a person who within Botswana carries out any part of the act commits an offence under a financial services law in the same manner as if such act had been done wholly within Botswana.

General penalties

107. Any person who contravenes or fails to comply with any provision of this Act or other relevant financial services law, or any requirement of the Regulatory Authority under a financial services law, with which it is his or her duty to comply, and for which no penalty has been provided, commits an offence and is liable to a civil penalty not exceeding P100 000 to be imposed by the Regulatory Authority.

Regulations

108. (1) The Minister may make regulations providing for any matter 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 the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for the —

- (a) fees and charges for services provided by the Regulatory Authority;
- (b) different rates of fees for different classes of non-bank financial services;

- (c) manner in which any matter to be heard and determined by the Tribunal shall be brought and continued before it;
- (d) fees payable in respect of the service or execution of any process of the Tribunal;
- (e) submission to the Regulatory Authority of financial statements, reports, statistics, accounts and other documents;
- (f) imposition and collection of supervisory levies;
- (g) imposition of administrative penalties;
- (h) power to give directions to non-bank financial institutions;
- (i) criteria with which an organisation shall comply in order to qualify to be declared a self-regulatory organisation; and
- (j) requirements for compliance by non-bank financial institutions dealing with the proceeds of financial crime.

109. The Non-Bank Financial Institutions Regulatory Authority Act is hereby repealed.

110. (1) Notwithstanding the effect of the repeal under section 109, any subsidiary legislation made under the repealed Act and in force immediately before the coming into operation of this Act shall, in so far as the subsidiary legislation is consistent with the provisions of this Act, continue to be in force as if made under this Act.

(2) All rights, obligations, assets and liabilities which have accrued to the Non-Bank Financial Institutions Regulatory Authority in terms of the repealed Act, shall, upon this Act coming into force, pass and accrue to the Regulatory Authority and be dealt with in terms of this Act.

(3) Any disciplinary proceedings which, before the coming into operation of this Act, were pending shall continue or be enforced by or against the Regulatory Authority, in the same manner as they would have been continued or enforced before the coming into operation of this Act.

(4) Any action, suit or legal proceedings by or against the Regulatory Authority under the repealed Act which were pending on the date of the commencement of this Act shall continue to be carried out or prosecuted by or against the Regulatory Authority and no such suit, action or legal proceedings shall abate or be affected by the coming into operation of this Act.

(5) Any right of appeal which subsisted immediately before the commencement of this Act is to be treated as subsisting by virtue of the corresponding provisions of this Act.

(6) Any appeal which commenced under the repealed Act shall be prosecuted and disposed of as though commenced in terms of the provisions of this Act.

(7) A licence granted to any non-bank financial institution under the repealed Act, shall remain valid until its expiry date whereupon the non-bank financial institution shall apply for a licence to the Regulatory Authority in terms of the relevant financial services law.

Repeal of Cap.
46:08

Savings and
transitional
provisions

(8) The Board, established under the repealed Act, shall continue as if established under this Act.

(9) The Tribunal, established under the repealed Act, shall continue as if established under this Act.

(10) A member of the Board, Tribunal or committee appointed as such under the repealed Act shall continue in office for the period for which, and be subject to the conditions under which, the member of the Board, Tribunal or committee was appointed as a member of the Board, Tribunal or committee.

(11) All employees of the Regulatory Authority appointed under the repealed Act shall continue in office for the period for which, and be subject to the conditions under which, they were appointed, as employees of the Regulatory Authority.

PASSED by the National Assembly this 10th day of August, 2023.

BARBARA N. DITHAPO,
Clerk of the National Assembly.