

BANKING ACT (ActNo. 13 of 1995)

BANKING (ANTI-MONEY LAUNDERING) REGULATIONS, 2003

– (Published on 17th April, 2003)

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IN EXERCISE of the powers conferred by section 51 of the Banking Act, the Minister of Finance and Development Planning, after consultation with the Bank of Botswana, hereby makes the following Regulations —

1. These Regulations may be cited as the Banking (Anti-Money Laundering) Regulations, 2003, and shall come into operation on 1st March, 2003.
2. These Regulations apply to banks.
3. In these Regulations, unless the context otherwise requires —
"anti-money laundering measures and practices" means appropriate procedures and controls put in place by a bank to prevent money laundering;
"Financial Intelligence Agency" means the Directorate on Corruption and Economic Crime established under section 3 of the Corruption and Economic Crime Act;

"law enforcement agencies" means the Bank of Botswana, the Botswana Police, the

Financial Intelligence Agency, the Department of Customs and Excise, the Department of Taxes and the Immigration Department;

" money laundering" has the meaning assigned to it in section 14 of the Proceeds of

Serious Crime Act, 1990, and includes —

(a) where the conduct is of a natural person, failing, without reasonable excuse, to take steps to ascertain whether or not the property is derived or realised, directly or indirectly, from an unlawful activity; or

(b) where the conduct is of a bank, failing to implement or apply anti-money laundering measures and practices;

"opening an account" means establishing a business relationship with a bank to operate a current account, a deposit account, a savings account or a loan account, or any other obligation arising out of the contractual relationship between a bank and a customer and includes buying and selling of foreign currency to a customer by a bank, transmission of money and investment of funds;

"principal officer" has the meaning assigned to it in section 2 of the Act;

"property" means money or any other movable, immovable, corporeal or unincorporeal-thing, and includes any rights, securities and any interest in and privileges and claims over that thing and all proceeds thereof;

"suspicious transaction" means a transaction which is inconsistent with a customer's known legitimate business or personal activities or with the normal business for the type of account which the customer holds, and includes, but is not limited to, the activities listed in the First Schedule hereto; and

"transaction" means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any share, stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to, a bank, by whatever means effected.

4. A bank shall put in place such anti-money laundering measures and adopt such practices as are necessary for the prevention of money laundering as

are set out in these Regulations.

5. (1) A bank shall require its personal customers, when establishing business relations, or conducting transactions, with it, to produce the following documents for

identification purposes —

(a) Omang identity card for a citizen of Botswana above the age of sixteen years; or

(b) a valid passport for a foreign national.

(2) Whenever a bank has doubts as to the identity of a customer in the course of its business relationship with that customer, the bank shall require that customer to renew his identification.

(3) A bank shall identify the beneficial owner of an account opened with it and any person using remittance and safe custody facilities, and if the bank fails to ascertain the identity of such owner or person, it shall close the account or deny the facilities concerned.

6. A bank shall verify the names and addresses of its customers by any of the following methods —

(a) obtaining a reference from a well known professional, an employer of the customer, a known customer of the bank who, or a customary authority that, knows the applicant;

(b) in the case of non-residents, obtaining references from their foreign banks, where possible;

(c) making a credit reference agency search;

(d) requesting an original recent council rates or utility bill receipt;

(e) using one of the address validation or verification services on offer; or (/)

conducting a personal visit to the home of the applicant where appropriate, or possible.

7. (1) Where a corporate body opens an account with a bank, the bank shall verify the legal existence of the corporate body and identify the directors, the beneficial owners and the management of that corporate body.

(2) A bank shall obtain the following information and documentation from a corporate body before it allows the corporate body to open an account with it

—
(a) the certificate of incorporation or equivalent, details of the registered office and the place of business;

(b) details of the nature of the corporate body's business, the reason for the account being opened, an indication of the expected turnover, the source of funds, and a copy of the last available accounts, where appropriate;

(c) where there is more than one signatory to the account, satisfactory evidence of the identity of at least two signatories and, where necessary, two directors, one of whom shall be an executive director;

(d) a copy of the resolution of the Board authorising the account signatories; and

(e) copies of powers of attorney, or any other authority, affecting the operation of

the account, given by the directors in relation to the corporate body.

8. Where a person opens a trust account with a bank, the bank shall endeavour to know and understand the structure of the trust sufficiently to

determine the provider of funds and those who have control over the funds.

9. A bank shall take reasonable measures to obtain information about the true identity of the person on whose behalf an account is opened or a transaction conducted if there is any doubt as to whether any customer is acting on his own behalf.

10. A bank shall not open or keep anonymous accounts or accounts in obviously fictitious names.

11. A bank shall establish clear procedures on how to identify a customer who applies for financial services through the internet or other electronic means, and shall not permit a customer to conduct business through this means unless the identity documents of the customer have been verified or confirmed.

12. (1) In addition to the requirements in sections 18(1) and 44(4) of the Act, a bank shall keep a record of copies of identification documents presented by customers when they first establish a business relationship with it, for a period of at least five years from the date the identification documents were presented to it.

(2) A bank shall keep records under this regulation by way of original documents, either in the form of hard copies or by using electronic storage devices.

(3) Where the records referred to in this regulation relate to an on-going investigation or transaction, which has been the subject of a disclosure, a bank shall retain those records until, in the case of an on-going investigation, the law enforcement agencies confirm that the investigation has been closed or completed, as the case may be, or, in the case of an on-going transaction, the bank confirms that the transaction has been completed.

(4) A bank shall maintain, for a period of at least five years, all records on transactions, both domestic and international, to enable it to comply expeditiously with information requests from the Financial Intelligence Agency and other competent authorities.

(5) The records referred to in sub regulation (4) shall be sufficient to permit a reconstruction of individual transactions, including the amounts and types of currency involved, if any, so as to provide, if necessary, evidence for prosecution of criminal behavior.

13. A bank shall complete such form as the Central Bank may prescribe to record an outward transfer or a foreign currency payment and such other form

as

the Central Bank may prescribe for any foreign currency receipts or funds from external sources where the transaction involves an amount of P10,000 or more; and shall require a customer to provide full details of the transaction including the name, identity number and full address of the customer and the beneficiary, as well as the purpose of the transaction.

14. A bank shall report to both the Central Bank and the Financial Intelligence

Agency, in the Form set out in the Second Schedule hereto, any transaction involving

large amounts of money or suspicious activities by its customers and shall, for this

purpose, send to those institutions copies of the relevant documents and retain the originals.

15. (1) For the purposes of making reports in terms of regulation 14, a bank shall designate an employee, at management level, as a money laundering reporting officer who shall serve as a contact person on money laundering matters between the bank, the Central Bank and the Financial Intelligence Agency. (2)

A Money Laundering Reporting Officer shall keep a register of all reports made to him by employees of the bank and of all reports that he makes to the Central Bank and the Financial Intelligence Agency, and shall, on written request

by the other law enforcement agencies —

(a) provide to them an acknowledgment receipt of the reports, from the Central Bank and the Financial Intelligence Agency; and (b) make available to those law enforcement agencies copies of reports he makes to the Central Bank and the Financial Intelligence Agency and those made to him by employees of the bank.

(3) An employee of a bank shall promptly report to a money laundering reporting officer all cases where —

(a) he becomes aware, has knowledge or suspects or has reasonable grounds to believe, that a customer has been or is involved in an illegal activity or crime;

(b) a customer in respect of whom the employee becomes aware, has knowledge or suspects or has reasonable grounds to believe, that another customer has been engaging in illegal activities or crime, deposits, transfers or

seeks to invest funds or obtain credit against the security of funds obtained from

such illegal activities or crime; or

(c) the bank holds funds on behalf of a customer who has been, is suspected to

have been or in respect of whom there exist reasonable grounds to believe that such customer has been engaging in illegal activities or crime.

(4) A money laundering reporting officer shall, after receiving a report in terms of sub regulation (3), promptly evaluate whether or not there are reasonable grounds for believing that a customer has been engaging in illegal activities or crime, and if after such evaluation he finds that such grounds exist, he shall immediately report the case to the Central Bank and the Financial Intelligence Agency.

(5) A bank shall ensure that all employees concerned with the holding, receipt, transaction or investment of funds, whether in cash or otherwise, obtained or suspected to have been obtained from illegal activities or crime, or

the making of loans against the security of such funds are aware of the procedures set out in this regulation and in regulation 14.

16. (1) A bank shall -

(a) cooperate with the law enforcement agencies to facilitate the exchange of information relating to money laundering; and

(b) comply with any law which requires the provision of information to the law enforcement agencies to assist in an investigation.

(2) No person shall institute any civil or criminal proceedings against any bank which, or any director, principal officer or employee of a bank who, cooperates with the law enforcement agencies and reports any information relating to money laundering, relating to that person.

17. (1) The board and principal officers of a bank shall put in place an antimoney

laundering programme, consisting of the anti-money laundering measures to be put in place and practices to be adopted in order to detect and prevent the commission of the offence of money laundering; and shall ensure that the staff of the bank is familiar with and comply with the programme.

(2) The measures and practices referred to in sub-regulation (1) shall include -

(a) the development of internal policies, procedures and controls with due regard to the risks posed by money laundering;

(b) the establishment of "know your customer" procedures, which shall include knowing the customer's business, establishing systems that would recognise suspicious activities and having in place internal suspicious reporting procedures;

(c) the appointment of the Money Laundering Reporting Officer;

(d) the establishment of a sound anti-money laundering compliance policy;

(e) procedures to be followed by directors, principal officers, officers and employees of a bank in the conduct of their business of the bank;

(/) instructions given to directors, principal officers, officers and employees of

a bank on the prevention of the use of the bank for the purpose of

engaging in activities of money laundering; and

(g) training of directors, principal officers, officers and employees of a bank for the purpose of enabling them to identify transactions which may relate to the commission of the offence of money laundering.

18. All employees of a bank concerned with holding, receipt, transaction or investment of funds, whether in cash or otherwise, obtained or suspected to have

been obtained from illegal activities or crime, or the making of loans against the security of such funds shall report to the bank either knowledge or circumstances which give rise to a reasonable belief that an offence against these Regulations has been committed, or is about to be committed.

19. The Money Laundering Reporting Officer shall prepare, for the board of the bank, an annual compliance report, relating to, among others —

- (a) changes in legislation or industry rules on money laundering issues;
- (b) compliance deficiencies in relation to money laundering; and
- (c) number of internal reports received on money laundering and the percentage of reports that have been submitted to law enforcement agencies.

20. A bank shall train its staff, irrespective of the level of seniority, on what money laundering is and the importance of reporting any suspicious transactions to its money laundering reporting officer, and shall draw up a programme for the training of the staff of the bank.

21. (1) The programme referred to in regulation 20 shall include —

- (a) indicators that may give rise to suspicion and the procedures to be adopted when a transaction is considered to be suspicious;
- (b) a component to train the staff of a bank on how to make a report on suspicious activities;
- (c) the identification and prevention of money laundering for employees of the bank who have contact with clients and compliance personnel;
- (d) instruction, covering all aspects of money laundering procedures, to those with the responsibility for supervising or managing staff, and
- (e) an in-depth training for the money laundering reporting officer on all legislation relating to money laundering and the bank's internal policies on money laundering.

(2) A bank shall hold refresher courses at regular intervals of not less than annually for principal officers of a bank, to remind them of their responsibilities in relation to money laundering and to make them aware of any changes in the antimoney laundering measures and internal procedures.

(3) Notwithstanding the provisions of sub regulations (1) and (2), each bank shall tailor its training programme to suit its own needs depending on the size, the resources available and the type of business it undertakes.

22. No staff of a bank shall disclose to any customer that the customer is being investigated for money laundering activities.

23. Every member of staff of a bank shall report to any principal officer of the bank any money laundering offence in which he is involved.

24. (1) The Central Bank may require independent external auditors, at the expense of the concerned bank, to conduct a special audit on the adequacy of auditors antimoney laundering measures and practices and enforcement hereof.

(2) The external auditors referred to in sub regulation (1) shall report in writing to the Central Bank any finding resulting from any audit, or contact by any person with the bank which suggests the commission of the crime of money laundering by that person in that bank; and the Central Bank shall, where such a crime has been committed, take all necessary action to prosecute the crime.

25. A person who contravenes the provisions of these Regulations shall be guilty of an offence and liable —

(a) if that person is a bank, to a fine of P 10,000;

(b) if that person is an employee of a bank, to a fine of P15,000 and to imprisonment for five years; or

(c) if that person is a bank or an affiliate, subsidiary, or parent bank of a bank which has been convicted of the crime of money laundering and such conviction is not overturned on appeal, to revocation of a licence.

FIRST SCHEDULE

Examples of suspicious activities
(regulation 3)

Suspicious Customer Behaviour

(a) Customer has an unusual or excessively nervous demeanor;

(b) Customer discusses your record keeping or reporting duties with the apparent intention of avoiding them;

(c) Customer threatens an employee attempting to deter a record keeping or reporting duty;

(d) Customer is reluctant to proceed with a transaction after being told it must be reported;

(e) Customer suggests payment of a gratuity to an employee of the bank;

(f) Customer appears to have a hidden agenda or behaves abnormally, such as bypassing

the chance to obtain a higher interest rate on a large account balance; or (g) Customer who is a public official opens an account in the name of a family

member

who begins making large deposits not consistent with the known legitimate sources of income of the family.

Suspicious Customer Identification Circumstances

(a) Customer claims to be a law enforcement agent conducting an undercover operation

when there are no valid indications to support that;

(b) Customer furnishes unusual or suspicious identification documents and is unwilling to

provide personal background information;

(c) Customer is unwilling to provide personal background information when opening an

account;

(d) Customer opens an account without identification, references or a local address;

(e) Customer's permanent address is outside the bank's service area or outside Botswana;

(f) Customer's home or business telephone is disconnected;

(g) Business customer is reluctant to reveal details about the business activities or to

provide financial statements or documents about a related business entity; or

(h)

Customer provides no record of past or present employment on a loan application.

Suspicious Cash Transactions

(a) Customer comes in with another customer and they go to different tellers to conduct

currency transactions of less than P 10 000;

(b) Customer makes large cash deposit without counting the cash;

(c) Customer opens several accounts in one or more names, and then makes several cash

deposits that are less than P 10 000;

(d) Customer conducts unusual cash transactions through night deposit boxes, especially

large sums that are not consistent with the customer's business;

(e) Customer makes frequent deposits or withdrawals of large amounts of currency for no

apparent business reason, or for a business that generally does not generate large

amounts of cash; (f) Customer conducts several large cash transactions at different

branches on the same

day, or orchestrates persons to do so on his behalf; (g) Customer deposits cash into several accounts in amounts below P10 000, and then consolidates the funds into one account and wire transfers them outside of Botswana; (A) Customer attempts to take back a portion of a cash deposit that exceeds P10 000 after learning that a currency transaction report will be filed on the transaction; (i) Customer conducts several cash deposits below P10 000 at automated teller machines; (/) Corporate account has deposits or withdrawals primarily in cash rather than cheques; (k) Customer's cash deposits often contain counterfeit notes or musty or extremely dirty notes; (/) Customer frequently deposits large sums of cash wrapped in currency straps stamped by other banks; (m) Customer makes frequent purchases of monetary instruments for cash in amounts less than P10 000; or (n) Customer conducts an unusual number of foreign currency conversion transactions.

Suspicious Wire Transfer Transactions

(a) Non-account holder sends wire transfer with funds that include numerous monetary instruments of less than P 10 000 each;

(b) An incoming wire transfer has instructions to convert the funds to cashier's cheques and mail them to a non-account holder;

(c) A wire transfer that moves large sums to secrecy havens such as the Cayman Islands, Hong Kong, Luxembourg, Panama or Switzerland;

(d) An incoming wire transfer followed by an immediate purchase by the beneficiary of monetary instruments for payment to another party;

(e) An increase in international wire transfer activity in an account with no history of such activity or where the stated business of the customer does not warrant it; (/) Customer frequently shifts purported international profits by wire transfer out of Botswana; (g) Customer receives many small incoming wire transfers and then orders a large outgoing wire transfer to another country; or (h) Account in the name of a currency

exchange house receives wire transfers or cash deposits of less than P10 000.

Suspicious Safe Deposit Box Activity

(a) Customer's activity increases in the safe deposit box area, possibly indicating the safekeeping of large amounts of cash.

(b) Customer rents multiple safe deposit boxes.

Suspicious Activity in Credit Transactions

(a) Customer's financial statement makes representations that do not conform to generally accepted accounting principles;

(b) Transaction is made to appear more complicated than it needs to be by use of impressive, but nonsensical terms such as "emission rate" prime bank notes, "standby commitment," "arbitrage" or hedge contracts";

(c) Customer requests loans to offshore companies or loans secured by obligations of offshore banks;

(d) Customer suddenly pays off a large problem loan with no plausible explanation for the source of funds;

(e) Customer collateralizes a loan with cash deposits;

(f) Customer uses cash collateral located offshore to obtain a loan; or

(g) Customer's loan proceeds are unexpectedly transferred offshore.

Suspicious Commercial Account Activity

(a) Business customer presents financial statements noticeably different from those of similar businesses;

(b) Large business presents financial statements that are not prepared by an accountant;

(c) Retail business that provides cheque cashing service does not make large withdrawals of cash against cheque deposits, possibly indicating that it has another source of cash;

(d) Customer maintains an inordinately large number of accounts for the type of business purportedly being conducted;

(e) Corporate account shows little or no regular, periodic activity; or (/)

Transaction includes

circumstances that would cause a banker to reject a loan application because of doubts about the collateral's validity.

Suspicious Trade Financing Transactions

- (a) Customer seeks trade financing on the export or import of commodities whose stated prices are substantially more or less than those in a similar market situation;
- (b) Customer makes changes to a letter of credit beneficiary just before payment is to be made;
- (c) Customer changes the place of payment in a letter of credit to an accountant in a country other than the beneficiary's stated location; or
- (d) Customer's standby letter of credit is used as a bid or performance bond without the normal reference to an underlying project or contract, or in favour of unusual beneficiaries.

Suspicious Investment Activity

- (a) Customer uses an investment account as a pass-through vehicle to wire funds particularly to off-shore locations;
- (b) Investor seems unconcerned about the usual decisions to be made about an investment account such as fees or suitable investment vehicles;
- (c) Customer wants to liquidate a large position through a series of small transactions; or
- (d) Customer deposits cash, money order, traveller's cheques or counter cheques in amounts under P 10 000 to fund an investment account.

Suspicious Deposits

- (a) Customer deposits a large number of traveller's cheques often in the same denomination and in sequence; or
- (b) Customer deposits money orders bearing unusual markings.

Miscellaneous Suspicious Customer Activity

- (a) Customer who is a student uncharacteristically transfers or exchanges large sums of money;
- (b) Account shows high velocity in the movement of funds, but maintains low beginning and ending daily balances;
- (c) Transaction includes correspondence received that is a copy rather than original letterhead;
- (d) Transaction involves offshore institutions whose names resemble those of well known

legitimate banks;

(e) Transaction involves unfamiliar countries or islands that cannot be found on a world atlas or map; (/) Agent, attorney or financial advisor acts for another person without proper documentation

such as a power of attorney.

Suspicious Employee Activity

(a) Employee exaggerates the credentials, background or financial ability and resources of a

customer in written reports the bank requires;

(b) Employee is frequently involved in unresolved exceptions or recurring exceptions on exception reports;

(c) Employee lives a lavish lifestyle that can not be supported by his or her salary;

(d) Employee frequently overrides internal controls or established approval authority or circumvents policy;

(e) Employee uses co sources to further private interests;

(/) Employee assists transactions where the identity of the ultimate beneficiary or counter

party is undisclosed; or (g) Employee avoids taking versions.

Suspicious activity report (regulation 14)

This form provides an effective means for a bank to notify the appropriate authorities of known, or suspected, criminal conduct or suspicious activities, that may be associated with violations of the law, that come to their notice.

Authority for making the Report

In addition to regulation 14(1) of these Regulations, this Report is made under the authority of section 16A(14) and (15) of the Proceeds of Serious Crime Act, 1990. The Act provides complete protection from civil liability for any bank, its directors and its employees arising as a result of any disclosure of suspected violations of the law made by way of this Report.

Part I – Reporting Bank

Regulating agency:

Bank of Botswana

