

**NON-BANK FINANCIAL INSTITUTIONS REGULATORY
AUTHORITY ACT, 2016**

No. 3



of 2016

ARRANGEMENT OF SECTIONS

SECTION

PART I — *Preliminary*

1. Short title and commencement
2. Interpretation

PART II — *Establishment and Functions of the Regulatory Authority*

3. Continuation of establishment of Regulatory Authority
4. Objectives and functions of Regulatory Authority

PART III — *Constitution and Qualifications of Board*

5. Establishment of Board
6. Directions by the Minister
7. Tenure of office
8. Qualifications, removal and suspension of members
9. Vacation of office by members
10. Filling of vacancy
11. Remuneration and allowances

PART IV — *Meetings and Proceedings of Board*

12. Election of Vice Chairperson
13. Meetings of Board
14. Quorum and procedure at meetings
15. Committees of Board
16. Disclosure of interest
17. Confidentiality

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

18. Chief Executive Officer
19. Appointment of Secretary of Board
20. Appointment of senior and other staff

PART VI — *Financial Provisions*

21. Funds of the Regulatory Authority
22. Financial year
23. Annual estimates and levy structure
24. Supervisory levies
25. Supervisory levy, fees and charges, debts to Regulatory Authority
26. Waiver of levies or fees
27. Borrowings
28. Advances from Government
29. Levies Account
30. Investments
31. Record keeping
32. Accounts and audit
33. Auditor-General may examine Regulatory Authority
34. Annual report
35. Pension and other funds

PART VII — *Self-Regulatory Organisations*

36. Self-regulatory organisations
37. Rules of self-regulatory organisations
38. Due process by self-regulatory organisations
39. Reporting by self-regulatory organisations
40. Termination of arrangements and revocation of declaration
41. Amendments of self-regulatory organisations' constitutions
42. Protections for self-regulatory organisations, etc.

PART VIII — *Taxation Status of Non-Bank Financial Institutions*

43. Application of Part
44. Tax certificate compliance
45. Power to recommend revocation of tax certificate

PART IX — *Inspections and Investigations*

46. Appointment of Inspectors and Investigators
47. Routine inspections of licensed non-bank financial institutions
48. Investigations
49. Investigators' powers

PART X — *Establishment of the Tribunal*

- 50. Establishment of Tribunal
- 51. Review of decisions
- 52. Application for review of decisions
- 53. Implementation of decisions pending review

PART XI — *Miscellaneous Provisions*

- 54. Advisory bodies
- 55. Arrangements with other agencies
- 56. Delegations
- 57. Temporary closure for non-compliance
- 58. Exemption from personal liability
- 59. Code of Conduct
- 60. Administrative penalties
- 61. Regulations
- 62. Repeal of Cap. 46:08
- 63. Transitional and savings

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: 05.08.2016

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

Short title and commencement	1. This Act may be cited as the Non-Bank Financial Institutions Regulatory Authority Act, 2016, and shall come into operation on such a day as the Minister may, by Order published in the <i>Gazette</i> , appoint.
Interpretation	2. (1) In this Act, unless the context otherwise requires —
Act No. 27 of 2014	“administrator of a retirement fund” has the meaning assigned to it in the Retirement Funds Act;
	“asset manager” means a person who, under an agreement with another person, applies assets of the other person by way of investment, whether the asset manager makes those investments in its own name or not, but does not include a custodian or a trustee;
Cap. 46:04	“bank” means — (a) a bank licensed in terms of the Banking Act; (b) the Botswana Savings Bank; and (c) the National Development Bank;
	“Board” means the Board of the Regulatory Authority established under section 5;
Act No. 26 of 2014	“central counterparty” has the same meaning assigned to it in the Securities Act;
	“central securities depository” has the meaning assigned to it in the Securities Act;
	“Chairperson” means the Chairperson of the Board appointed under section 5 (2) (c);
	“Chief Executive Officer” means the person appointed as Chief Executive Officer in terms of section 18 (1);
	“Code of Conduct” means a code formulated in terms of section 59;
	“controller”, of a non-bank financial institution, has the meaning assigned to it under subsection (2);
Cap. 56:09	“collective investment undertaking” has the meaning assigned to it in the Collective Investment Undertaking Act;

“custodian” means a person who holds property of another person for safekeeping;

“Director” has the meaning assigned to it in the Companies Act;

Cap. 42:01

“finance or leasing company” means a body corporate that provides loans, advances or leasing products, but does not include a bank or a deposit-taking institution;

“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;
- (b) financing or facilitating a criminal offence (whether or not it arises under this Act) relating to a non-bank financial institution;
- (c) dealing with the proceeds of a criminal offence (whether or not it arises under this Act, whether or not related to non-bank financial institution 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 terrorist activity in any place;

Act No. 28
of 2014

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

“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) Botswana Stock Exchange Act;
- (f) the Collective Investment Undertakings Act;
- (g) Part XVI of the Income Tax Act, so far as it relates to non-bank financial institutions;
- (h) the Securities Act;
- (i) a law that declares itself to be a financial services law for the purposes of this definition; or
- (j) such legislation concerning financial services as the Minister may, by Order, prescribe;

Cap. 46:06

Cap. 46:07

Cap. 56:08

Cap. 52:01

“fit and proper” means the necessary qualities and traits that will allow a controller, or director, to perform the duties and carry out the responsibilities of his or her position with the regulated entity, including integrity demonstrated in personal behaviour and personal conduct, soundness of judgement, 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;
- “insurance agent” has the meaning assigned to it in the Insurance Industry Act;
- “insurance broker” has the meaning assigned to it in the Insurance Industry Act;
- “insurer” has the meaning assigned to it in the Insurance Industry Act;
- “international insurance firm” has the meaning assigned to it in the International Insurance Act;
- “investment adviser” means a person who gives advice on the placement of monetary resources into the creation or acquisition of assets as specified by the Regulatory Authority, including the purchase of real and personal property and securities;
- “key person” means the chief executive officer, directors, chief financial officer, company secretary, compliance officer, internal auditor of a company or any person carrying out similar functions;
- “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”, for a collective investment undertaking, has the meaning assigned to it in the Collective Investment Undertakings Act;
- “market maker” has the meaning assigned to it in 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;
- “member” means a member of the Board or of a duly constituted committee of the Board;
- “micro lender” means a person who advances loans to persons, where the loans do 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 loan applications on behalf of micro lenders;
- “non-bank financial institution” means any of the following institutions, which may be prudentially regulated, 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 or leasing company;
- (h) a friendly society;
- (i) an insurance agent;
- (j) an insurance broker;
- (k) an insurer;
- (l) an international insurance firm;
- (m) an investment adviser;
- (n) a management company for a collective investment undertaking;
- (o) a market maker;
- (p) a micro lender;
- (q) a retirement fund;
- (r) a securities broker or dealer;
- (s) a securities exchange;
- (t) a transfer agent or transfer secretary;
- (u) a pawnbroker;
- (v) a medical aid fund;
- (w) a trustee of a collective investment undertaking or a retirement fund;
- (x) a securities institution;
- (y) a financial group;
- (z) a micro lending agent;
- (aa) a participant;
- (bb) a pawnshop;
- (cc) a trustee; and
- (dd) a person declared by the Minister to be a non-bank financial institution by notice published in the *Gazette*;

“participant” has the meaning assigned to it in the Securities Act;

“pawn” means personal property delivered by the pawner to the pawnee as security for a loan, it also refers to the transaction of pawning an item of personal property as collateral for a loan advance;

“pawnbroker” means a person engaged in the business of lending or the act of advancing money on the deposit, pledge or security left in pawn;

“pawnshop” means a person licensed to engage in the business of lending money on personal property that is physically delivered to him or her as security for the loan transaction or lends money upon goods, wares or merchandise pledged, stored or deposited as security or engages in the business of purchasing 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” of a non-bank financial institution means documents and information used in the ordinary course of the business of the 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 established under section 3;

Cap. 46:06

- “repealed Act” means the Non-Bank Financial Institutions Regulatory Authority Act repealed under section 62;
- “retirement fund” has the meaning assigned to it in the Retirement Funds Act;
- “securities” has the meaning assigned to it in the Securities Act;
- “securities broker or dealer” has the meaning assigned to it in the Securities Act;
- “securities exchange” has the meaning assigned to it in the Securities Act;
- “securities institution” has the meaning assigned to it in the Securities Act;
- “self-regulatory organisation” means a body declared to be a self-regulatory organisation in terms of section 36 (1);
- “self-regulatory organisation arrangements” means the arrangements entered into in terms of section 36 (2);
- “supervisory levy” means a levy imposed by regulations made under section 24;
- “tax certificate” means a certificate issued in terms of section 138 (2) of the Income Tax Act;
- “transfer agent or transfer secretary” has the meaning assigned to it in the Securities Act;
- “Tribunal” means the Tribunal established under section 50;
- “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; and
- “Vice Chairperson” means the person elected as Vice Chairperson in terms of section 12 (1).
- (2) For the purposes of a financial services law, each of the following is a controller of a person (in this section called “relevant person”) —
- (a) a person who is in a position to control or exert significant influence over the business or financial operations of the relevant person;
- (b) 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;

- (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
- (c) if the relevant person is a subsidiary of another person, a person that is a controller of the other body.

PART II — *Establishment and Functions of the Regulatory Authority*

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

Continuation of establishment of Regulatory Authority

(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.

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

Objectives and functions of Regulatory Authority

- (a) safety and soundness of non-bank financial institutions;
- (b) highest standards of conduct of business by non-bank financial institutions;
- (c) fairness, efficiency and orderliness of 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 perform the following functions —

- (a) the functions conferred by this Act and other financial services laws;
- (b) advising the Minister on matters related to non-bank financial institutions, whether of its own accord or at the request of the Minister;
- (c) promoting public understanding of the non-bank financial system;
- (d) making rules, setting standards and providing guidelines for itself and non-bank financial institutions; and
- (e) giving directions to any person to ensure compliance with a relevant law, rule or guideline.

PART III — *Constitution and Qualifications of Board*

5. (1) There shall be a Board of the Regulatory Authority, which shall be the governing body of the Regulatory Authority.

Establishment of Board

(2) The Board shall consist of the following eight members appointed by the Minister —

- (a) a representative of the Bank of Botswana;
- (b) a representative of the ministry responsible for finance; and
- (c) six other persons appointed by the Minister, one of whom shall be appointed by the Minister to be Chairperson of the Board.

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

Directions
by the
Minister

6. The Minister may, after consultation with the Board, give the Board 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 any such directions.

Tenure of office

7. A member appointed in terms of section 5 (2) (c) shall hold office for a period not exceeding four years and may be eligible for re-appointment for one further term.

Qualifications,
removal
and
suspension
of members

8. (1) The Minister shall not appoint a person to be a member in terms of section 5 (2) (c) unless satisfied that the person is qualified for appointment by virtue of his or her knowledge of, or experience in, one or more of the following fields —

- (a) business;
- (b) financial markets;
- (c) financial products and financial services;
- (d) financial or commercial law;
- (e) economics; and
- (f) accounting.

(2) A person shall not be appointed as a member or be qualified to continue to hold office where the person —

- (a) has, in terms of a law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt and has not been discharged, or
 - (ii) made an assignment to, arrangement or composition with his or her creditors, which has not been rescinded or set aside; or
- (b) has, within a period of 10 years immediately preceding the date of his or her appointment, been convicted —
 - (i) of a criminal offence within Botswana, or
 - (ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence,

and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon;

- (c) is a member of the National Assembly, a Councilor in a local authority or the holder of an office in a political party;
- (d) is a key person of a non-bank financial institution;
- (e) has been dismissed for incompetence, bribery, corruption in financial markets within Botswana or outside or has been judged for misconduct to the detriment of financial markets; or
- (f) has been disqualified from acting as a director or executive officer of a body corporate under a law relating to corporations or to the provision of financial services within Botswana or outside Botswana.

(3) The Minister may, in writing, suspend from office, a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties under this Act or be entitled to any remuneration or allowances as a member of the Board.

(4) The Minister shall remove a member from office, if the member —

- (a) is absent without reasonable cause from three consecutive meetings of the Board of which he or she has had notice;
- (b) has been found to be physically or mentally incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect;
- (c) contravenes the provisions of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Board;
- (d) has failed to comply with the provisions of sections 16 and 17; or
- (e) has been convicted of an offence under this Act, or under any other Act for which he or she is sentenced to imprisonment for a term of six months or more without an option of a fine.

9. A member shall vacate his or her office and his or her office shall become vacant —

- (a) if he or she becomes disqualified in terms of section 8 to hold office as a member of the Board;
- (b) if he or she is adjudged bankrupt or insolvent;
- (c) if he or she is absent from three consecutive meetings of the Board without reasonable excuse;
- (d) upon his or her death;
- (e) 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;
- (f) upon the expiry of one months' notice, in writing, to the Minister, of his or her intention to resign from office;
- (g) if he or she becomes mentally or physically incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect;

Vacation of
office by
members

- (h) 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
- (i) if he or she is summarily dismissed by the Minister on the grounds of contravening the provisions of this Act.

Filling of
vacancy

10. (1) Where the office of a member becomes vacant before expiry of the member's term of office, the Minister shall appoint another person in terms of section 5, to be a member in place of the member who vacates office, until the expiry of a period during which such member would have otherwise continued in office.

(2) Subsection (1) shall not apply where the remainder of the period for which the member whose office has been vacated would otherwise have held office is less than six months.

Remuneration
and
allowances

11. 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.

PART IV — *Meetings and Proceedings of Board*

Election of
Vice
Chairperson

12. (1) At the first meeting of the Board, the members shall elect from among their number, a Vice Chairperson.

(2) The Chairperson and Vice Chairperson shall hold office for a period of not more than eight years.

(3) On the expiry of the terms of office of the Chairperson or the Vice Chairperson, or where the Chairperson or the Vice Chairperson vacates office, a new Chairperson shall be appointed by the Minister and a new Vice Chairperson shall be elected by the members from among their number at the next meeting of the Board or as soon thereafter as may be convenient.

(4) The Chairperson or Vice Chairperson may vacate his or her office as such even though he or she remains a member.

(5) The Vice Chairperson shall exercise the functions of the Chairperson during the period that the Chairperson is absent or unable to act as Chairperson.

Meetings of
Board

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

(2) The Board shall meet at least four times in a year to discharge its functions.

(3) Upon giving notice, in writing, of not less than 14 days, a meeting of the Board may be called by the Chairperson, but if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon the giving of a shorter notice.

(4) The notice referred to under subsection (3) shall state —

- (a) the place and time for the meeting; and
- (b) the agenda for the meeting.

- (5) 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 Vice Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

(6) The Secretary shall cause to be recorded and kept, minutes of all proceedings of meetings of the Board.

14. (1) The quorum at any meeting of the Board shall be a simple majority of the members.

Quorum and
procedure at
meetings

(2) 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 member presiding shall have a casting vote in addition to that member's deliberative vote.

(3) 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.

(4) The Board may invite any person whose presence it deems necessary, to attend and participate in the deliberations of a meeting of the Board, but such person shall have no vote.

15. (1) The Board may, for the purpose of performing its functions, establish such committees of the Board 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 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 of the Board may regulate its own procedure 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 of the Board shall be held at such times and places as the committee may determine, or as the Board may direct.

Disclosure of
interest

16. (1) Where a member, or any person attending a meeting of the Board, at which meeting a matter which is the subject of consideration is one in 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 otherwise directs, take part in any consideration or discussion of, or vote on any question touching upon, 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 is made.

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

(4) A member or any person attending the meeting of the Board who fails to comply with the provisions of 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.

(5) For the purposes of this section "immediate family member" means the spouse, son, daughter, sibling or parent of the member.

Confidentiality

17. (1) A member, any other person assisting the Board and any person employed by the Regulatory Authority in the carrying out of the provisions of this Act shall regard, and deal with, as confidential, all documents and information relating to the affairs of any non-bank financial institution or other person involved in any operations in furtherance of the purposes of this Act, and all confidential instructions in respect of the administration of this Act which may come into his or her possession or to his or her knowledge in the course of his or her duties, and such confidentiality shall subsist even after the termination of their term of office or their mandates.

(2) 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.

(3) Subsection (1) does not prevent —

- (a) disclosure of a summary or collection of information that is prepared so that information relating to any particular person cannot be found out from it;
- (b) disclosure of the name of a licensed non-bank financial institution;
- (c) disclosure of the addresses at which licensed non-bank financial institutions carry on business;
- (d) disclosure of any other information reasonably necessary to enable members of the public to contact non-bank financial institutions; or

- (e) disclosure of information to the Commissioner General of the Botswana Unified Revenue Service.
- (4) It is a defence to a charge in terms of subsection (2) that —
 - (a) the disclosure was 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) the disclosure was made to or with the consent of the non-bank financial institution or the person concerned;
 - (c) the disclosure was made in accordance with a lawful requirement of a court of competent jurisdiction;
 - (d) the disclosure was authorised by a financial services law;
 - (e) the disclosure was required by another law; or
 - (f) the disclosure was authorised by regulations made for the purposes of this section.
- (5) Every person appointed under or employed in carrying out the provisions of this Act, except the Minister, shall make an oath or declaration of secrecy in the manner and form prescribed.

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

18. (1) The Minister shall, in consultation with the Board, appoint a Chief Executive Officer of the Regulatory Authority for a fixed contract period not exceeding five years, who shall be eligible for re-appointment.

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

(5) The Minister may, in consultation with the Board, remove the Chief Executive Officer from office 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 Chief Executive Officer —

- (a) conducts himself or herself in a manner that is detrimental to the objective of, or the proper performance of the functions of the Regulatory Authority;
- (b) has been found to be physically or mentally incapable of performing his or her duties efficiently by his or her medical doctor or psychiatrist, as well as an independent medical doctor or psychiatrist;

- (c) becomes bankrupt or is declared insolvent by a court of law; or
- (d) absents himself or herself from office without reasonable excuse.
- (6) The Chief Executive Officer may delegate, in writing, to any senior officer of the Regulatory Authority, the exercise of any powers which he or she is authorised to exercise under this Act.
- (7) 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 all staff of the Regulatory Authority;
 - (c) the maintenance of discipline in respect of the staff 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.
- (8) The Chief Executive Officer shall receive such remuneration, allowances and other benefits, as the Board, in consultation with the Minister, may determine.

Appointment
of
Secretary of
Board

19. (1) The Board shall, on the recommendation of the Chief Executive Officer, appoint a Secretary, who shall be suitably qualified and experienced.

(2) The Secretary of the Board shall attend meetings of the Board but shall have no right to vote, and shall be responsible for the recording of the Board's proceedings and decisions.

(3) The Secretary of the Board shall be accountable to the Board for his or her functions and responsibilities, and shall report directly to the Chairperson.

(4) The Secretary shall assist the Board on all legal and procedural issues in respect to its deliberations.

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

Appointment
of senior and
other staff

20. (1) The Board shall, on the recommendation of the Chief Executive Officer, appoint the senior staff of the Regulatory Authority.

(2) The senior staff 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 staff as may be necessary for the proper discharge of the functions of the Regulatory Authority.

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

PART VI — *Financial Provisions*

21. (1) The funds of the Regulatory Authority shall consist of —
- (a) such monies as may be appropriated by the National Assembly for the purposes of the Regulatory Authority;
 - (b) such grants and donations as the Regulatory Authority may receive;
 - (c) supervisory levies imposed on financial institutions in terms of section 24, and interest in respect of unpaid supervisory levies;
 - (d) money raised as fees and charges, and interest from unpaid fees and charges, in respect of services rendered by the Regulatory Authority in performing its functions under a financial services law;
 - (e) money paid in respect of civil penalties imposed by the Regulatory Authority under this Act;
 - (f) money borrowed by the Regulatory Authority in terms of section 27; and
 - (g) any income that the Authority may receive from investments.

Funds of the
Regulatory
Authority

22. 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.

Financial year

23. (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 draft annual estimates and its proposal for supervisory levies for the financial year in a way that the Regulatory Authority considers will bring them to the attention of non-bank financial institutions generally, and call for submissions on the draft estimates.

(4) The Regulatory Authority shall, at least two months before the start of a financial year and having regard to any submissions received as mentioned in subsection (3), 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.

Supervisory
levies

24. (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 set different bases of calculation, and different rates of supervisory levy, may also be prescribed for different classes of non-bank financial institutions.

(4) The regulations may include provision for imposing interest on unpaid supervisory levy, and for imposing penalty levy for cases where a misstatement or other non-compliance by a non-bank financial institution leads to an under-collection of supervisory levy.

Supervisory
levy, fees and
charges, debts
to Regulatory
Authority

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

Waiver of
levies or
fees

26. The Regulatory Authority may, on application, waive payment of some or all of a supervisory levy, a penalty levy, a fee or a charge.

Borrowings

27. The Regulatory Authority may borrow money from the Bank of Botswana, or from a bank, but only —

(a) to cover a short-term cash flow shortfall within the annual estimates for the year approved by the Minister in terms of section 23; or

(b) with the Minister's approval.

Advances from
Government

28. The Minister may, out of 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 amount so advanced.

Levies Account

29. (1) The Regulatory Authority shall establish an account, to be called the Levies Account.

(2) The following shall be paid into the Levies Account —

(a) money paid to the Regulatory Authority as supervisory levies, penalty levies, fees or charges;

(b) money received by the Regulatory Authority as interest or profits from the investment of money standing to the credit of the Levies Account; and

(c) money paid to the Regulatory Authority for the purposes of meeting the expenses of the Regulatory Authority incurred in performing its functions.

(3) Money standing to the credit of the Levies Account shall be utilised for the following purposes —

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

(b) making investments authorised in terms of this Act.

30. Money standing to the credit of the Levies Account but not immediately required may be invested in commercial bank deposits or in securities issued or guaranteed by the Government, as the Regulatory Authority may determine.

Investments

31. (1) The Regulatory Authority shall keep written financial records that —

Record keeping

(a) correctly record and explain the transactions, financial position and performance of the Regulatory Authority; and

(b) will enable a true and fair financial report about the Regulatory Authority to be prepared and audited.

(2) The records shall be kept for at least seven years after the date of the transactions to which they relate.

(3) The records shall be kept in English.

(4) The records may be kept electronically, but shall be able to be readily produced in hard copy.

32. (1) The Regulatory Authority shall keep and maintain proper accounts and records of accounts 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.

Accounts and
audit

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

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

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

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

(d) the statement of accounts prepared by the 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 auditor's report and a copy of the audited accounts shall, within 14 days of completion, be forwarded to the Regulatory Authority by the auditor.

33. The Auditor-General shall, if the Minister so directs, examine and report on the accounts of the Regulatory Authority on any aspects of its operations, and the Regulatory Authority shall give the Auditor-General all necessary facilities for that purpose.

Auditor-
General
may
examine
Regulatory
Authority

Annual report

34. (1) The Regulatory Authority shall, within a period of six months after the financial year or within such longer period as the Minister may approve, submit, to the Minister, a comprehensive annual report of its operations during that year, consisting of the auditor's report and the audited accounts as provided for in section 31 and the report shall be published in such manner as the Minister may require.

(2) The Minister shall lay the annual report of the Regulatory Authority in Parliament, within three months of its receipt.

Pension and other funds

35. (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 staff 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 staff.

(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 — *Self-Regulatory Organisations*

Self-regulatory organisations

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

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

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

(4) The arrangements shall provide for —

- (a) the supervision by the Regulatory Authority of the self-regulatory organisation's performance of regulatory or supervisory functions by the self regulatory organisation;
- (b) the approval by the Regulatory Authority of any rules, and amendments of rules, of the 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 delegate of the Regulatory Authority; and
- (c) the variation or termination of the arrangements where the Regulatory Authority is not satisfied that the self-regulatory organisation is performing, or is able to perform, regulatory or supervisory functions to the satisfaction of the Regulatory Authority.

37. (1) Subject to subsection (2), a self-regulatory organisation may make rules, not inconsistent with the financial services laws, for or with respect to any matters for which the self-regulatory organisation has regulatory or supervisory functions, including functions delegated by the Regulatory Authority.

Rules of self-regulatory organisations

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

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

Due process by self-regulatory organisations

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

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

39. A self-regulatory organisation shall notify the Regulatory Authority, as prescribed, as soon as practicable after a person is appointed a director or executive of the organisation.

Reporting by self-regulatory organisations

40. (1) The Regulatory Authority may recommend to the Minister the revocation of a declaration in terms of section 36 (1) at any time, but shall not do so unless the Regulatory Authority has notified the self-regulatory organisation of its intention and the reasons for the Regulatory Authority's action, and given the organisation at least 14 days to make representations to the Regulatory Authority about the matter.

Termination of arrangements and revocation of declaration

(2) The revocation of a declaration shall not affect a right of a person to apply to the Tribunal in terms of section 52 for a review of a decision or action.

(3) In a case mentioned in subsection (2), 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.

41. 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.

Amendments of self-regulatory organisations' constitutions

42. The following shall not be liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by them in the performance in good faith of their powers, functions and duties in connection with the regulatory or supervisory functions the self-regulatory organisation performs as self-regulatory organisation, including those delegated to it by the Regulatory Authority —

Protections for self-regulatory organisations, etc.

(a) a self-regulatory organisation;

(b) a director, executive or employee of a self-regulatory organisation; or

(c) a member of a committee of a self-regulatory organisation.

PART VIII — *Taxation Status of Non-Bank Financial Institutions*

- Application of Part
43. Notwithstanding the provisions of relevant laws, this Part applies to the taxation status of a non-bank financial institution that has applied for, or has been issued with, a tax certificate.
- Tax certificate compliance
44. (1) A non-bank financial institution shall comply with the conditions, if any, imposed on its tax certificate.
- (2) The functions and powers of the Regulatory Authority in relation to a non-bank financial institution to which this Part applies may be performed and exercised for the purpose of enforcing Part XVI of the Income Tax Act.
- Power to recommend revocation of tax certificate
45. (1) The Regulatory Authority may, if it is satisfied that —
- (a) a non-bank financial institution has failed or refused to comply with the conditions imposed on its tax certificate; or
- (b) grounds exist for the revocation of a licence granted to a non-bank financial institution under a financial services law, recommend to the Minister that the institution's tax certificate be revoked.
- (2) 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 institution written notice of the proposed action, setting out the reasons for the proposed action and stating that the institution has 21 days within which to make representations to the Regulatory Authority about the matter; and
- (b) the Regulatory Authority has taken into account any representations made by or for the institution within that period.

PART IX — *Inspections and Investigations*

- Appointment of Inspectors and Investigators
46. (1) The Regulatory Authority may, by instrument in writing, appoint a person to be an inspector or an investigator.
- (2) The Regulatory Authority shall provide to each inspector and investigator an identity card approved by the Regulatory Authority.
- (3) An inspector or investigator, when exercising a power conferred by this Act, shall, on reasonable demand, produce his or her identity card for inspection, but failure to do so shall not make the exercise of the power invalid.
- Routine inspections of licensed non-bank financial institutions
47. (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 licensed non-bank financial institution to check whether the institution —
- (a) is complying or has complied with the financial services laws and the conditions of its licence;
- (b) satisfies criteria or standards set out in or made under a financial services law; or
- (c) is, or has been, involved in financial crime.

(2) For the purpose of an inspection under subsection (1) —

(a) the inspector may enter any premises used or apparently used by the licensed non-bank financial institution for business purposes, at any reasonable time; and

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

(3) A licensed non-bank financial institution, and its key person, shall afford an inspector full and free access to the premises, records and documents of the institution as are relevant to the inspection.

(4) A person who contravenes subsection (3) shall be 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.

(5) Where a person continues to contravene subsection (3) after a period of 90 days, the Regulatory Authority shall cancel the licence with immediate effect.

48. (1) This section applies if an investigator —

Investigations

(a) has reasonable grounds to believe that —

(i) an offence under a financial services law has been or may have been committed, or

(ii) a licensed non-bank financial institution is not complying with, or has not complied with, a financial services law; and

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

(2) The provisions of subsection (1) shall apply whether or not the person is a licensed non-bank financial institution, and where the inspection of an unlicensed non-bank financial institution reveals a cause for concern, the matter shall be handed over to the Police for their action, along with the evidence collected.

(3) For the purpose of investigating the offence or suspected offence, the investigator may do any of the following —

(a) subject to subsection (8), enter any premises used or apparently used by the licensed 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 inspection;

(b) inspect and make copies of, or take extracts from, and where necessary in an appropriate case to take possession of, such records, documents or things;

(c) give a direction (orally or in writing) to the licensed non-bank financial institution, to a director or employee of the institution, or to the relevant person, to produce the relevant evidence to the investigator as specified in the direction; or

- (d) give a direction (oral or written) to a relevant person to do any of the following —
 - (i) produce to the investigator, at a reasonable time and place specified in the direction, any relevant evidence,
 - (ii) give the investigator explanations or further information about the relevant evidence, or
 - (iii) attend before the investigator at a reasonable time and place specified by the authorised person, and answer under oath questions relating to the matter.

(4) A licensed non-bank financial institution, and its directors, officers and employees, shall afford an inspector full and free access to the premises, records and documents of the institution as are relevant to an investigation under this section.

(5) A person who refuses or fails to comply with a direction in terms of subsection (3) shall be liable to a civil penalty not exceeding P2, 500 for each day on which the refusal or failure to comply occurs or continues to occur, up to a maximum period of 90 days, to be imposed by the Regulatory Authority.

(6) Where a person continues to contravene subsection (3) after a period of 90 days, the Regulatory Authority shall cancel the licence with immediate effect.

(7) A person who says anything, in answering a question put to the person by an investigator in terms of this section —

- (a) that the person knows to be false or misleading in a material particular; or
- (b) that is reckless as to whether it is false or misleading in a material particular,

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.

(8) An investigator shall not enter premises in terms of subsection (3) (a) unless —

- (a) with the consent of the person apparently in charge of the premises at the time of entry;
- (b) in accordance with a warrant under subsection (9); or
- (c) in an emergency, under subsection (11).

(9) A warrant for the purposes of this section is a warrant issued by a magistrate on application by an investigator.

(10) A magistrate shall not issue a warrant under this section unless satisfied that this section applies to the case, as provided in subsection (1).

(11) An investigator may enter premises and exercise powers under this section without the consent mentioned in subsection (8) (a) or a warrant mentioned in subsection (9) in an emergency, only if there are reasonable grounds to suspect that it is necessary to do so to prevent loss or destruction of, or damage to, relevant evidence.

49. An inspector or investigator acting in terms of sections 47 and 48 shall have all the powers and protections of a Commissioner in terms of the Commissions of Inquiry Act.

Investigators' powers
Cap. 05:02

PART X — *Establishment of the Tribunal*

50. (1) There shall be established a Tribunal which shall be responsible for reviewing decisions made by the Regulatory Authority or self-regulatory organisation under this Act.

Establishment of Tribunal

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

51. Every decision of the Regulatory Authority, or of a self-regulatory organisation, made in terms of the relevant financial service law may be subject to a review by the Tribunal.

Review of decisions

52. (1) A person aggrieved by, or whose interests are affected by, a decision referred to in section 51 may apply to the Tribunal for a review of the decision.

Application for review of decisions

(2) An application to the Tribunal for a review of a decision shall be made within 28 days of the making of the decision.

(3) The Tribunal may, on application extend that period, either before or after it has ended, and may do so in terms it thinks proper.

53. An application for a review of a decision under this Part shall not affect the operation of the decision but the Tribunal may, on application, suspend the operation of the decision as specified by, and on terms determined by, the Tribunal.

Implementation of decisions pending review

PART XI — *Miscellaneous Provisions*

54. The Minister may, on the recommendation of the Regulatory Authority, by order, establish advisory bodies to assist it in the performance of its functions under this Act.

Advisory bodies

55. (1) In carrying out its functions under financial services laws, the Regulatory Authority shall consult with the Bank of Botswana and other agencies of the Government that have functions related to the regulation or supervision of financial services, taxation, social security or the financial system.

Arrangements with other agencies

(2) The Regulatory Authority may enter into arrangements with the Bank of Botswana and other agencies of the Government that have 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), such arrangements may make provision for —

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

- (b) consultation between the Regulatory Authority and the other agencies;
 - (c) enforcement of financial services laws and assistance with enforcement of other laws; and
 - (d) the conduct of examinations and investigations on a joint basis.
- (4) The Regulatory Authority may enter into similar arrangements with organisations outside Botswana in carrying out its regulatory and supervisory functions under financial services laws.

Delegations

56. (1) The Board may delegate any of its functions or powers under this Act (other than this power of delegation) to —

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

(2) In performing or exercising a delegated function or power, the delegate shall comply with directions given by the person delegating the function or power.

(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) A delegation may be varied or revoked at will and does not prevent the Board from exercising the delegated power or performing the delegated function.

Temporary closure for non-compliance

57. (1) The Regulatory Authority may temporarily close the business or freeze the bank accounts of a prudentially regulated non-bank financial institution, upon reasonable suspicion that the institution is not complying or is not likely to comply, with a financial services law:

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

(2) Notwithstanding subsection (1), the Regulatory Authority shall as soon as practicable within five days apply to the High Court for a confirmation order.

(3) On hearing the application the High Court shall, by order, confirm or set aside the decision of the Regulatory Authority in terms of subsection (1).

Exemption from personal liability

58. No member or any other person assisting the Board or any committee of the Board, or an employee of the Regulatory Authority shall, 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.

59. (1) The Regulatory Authority shall formulate a Code of Conduct, to apply to the members and employees of the Regulatory Authority. Code of
Conduct

(2) The Code of Conduct shall be consistent with this Act and other financial services laws, and shall make provision for at least the following matters —

- (a) use and disclosure of information by members and employees of the Regulatory Authority;
 - (b) reducing or eliminating improper influence on the Regulatory Authority and on members and employees of the Regulatory Authority in carrying out their functions under financial services laws;
 - (c) trading in and ownership of securities or other financial instruments by members and employees of the Regulatory Authority;
 - (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) A member or employee of the Regulatory Authority shall not contravene the Code of Conduct.

(5) Contravention of the Code of Conduct shall not of itself be an offence, but, without limiting any other law —

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

60. (1) If 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 give the person notice by doing one or more of the following —

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

(3) Before taking action in terms of subsection (1), the Regulatory Authority shall give the person written notice of the proposed action, specifying the grounds for it and the facts supporting those grounds, and allowing 21 days after the notice is given for the person to request for a hearing on the matter.

(4) If the person requests a hearing on the matter, the Regulatory Authority shall hold a hearing before taking an action in terms of subsection (1), and such hearing shall be held in private unless the person consents to the hearing being held in public.

(5) A person to whom a notice in terms of subsection (1) has been given who fails or refuses to comply with a direction of the Regulatory Authority commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding five years, or to both.

(6) A civil penalty imposed under this Act shall be recoverable as a fine imposed by a court under section 303 (1) to (4) (inclusive) of the Criminal Procedure and Evidence Act, and an affidavit sworn by a member or employee of the Regulatory Authority shall be sufficient proof of the lawful imposition of the monetary penalty to enable a court to issue a warrant under that section, but no warrant is to be issued until any review under Part X of this Act in relation to the matter has been disposed of or the time for applying for such a review has expired.

Cap. 08:02

Regulations

61. (1) The Minister may by statutory instrument make regulations providing for any matter which under this Act is to be provided for by regulations or is to be prescribed for the better carrying out of the objects and purpose of this Act or to give force or effect to its provisions or for its better administration.

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

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

Repeal of
Cap. 46:08

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

63. (1) Any subsidiary legislation made under the repealed Act and in force immediately prior to the coming into operation of this Act shall, in so far as such 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, simultaneously pass and accrue to the Authority and be dealt with in terms of this Act.

(3) 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.

(4) Any disciplinary proceedings which, before the coming into operation of this Act, were pending shall be continued or 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.

(5) Any legal proceedings which, before the coming into operation of this Act, were pending shall be continued or 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.

(6) The Board of the Regulatory Authority, established under the repealed Act, shall continue as if established under this Act.

(7) 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 7th day of April, 2016.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

