

NON -BANK FINANCIAL INSTIUTIONS REGULATORY AUTHORITY ACT, 2023

SUMMARY OF CHANGES

Parts	Summary	Change in NBFIRA ACT	Comment
Part I Preliminary	Preliminary matters: Short title & commencement, definitions and conflict with other laws.	<p>Added new definitions such as:</p> <p>*(ensuring that NBFIs were correctly defined e.g. separating finance company from leasing company)</p> <p>renamed financial group to financial conglomerate.</p> <p>Ensuring that Financial Services Laws were accurately defined e.g. Removed BSE Act & added Banking Act, FI Act & Virtual Assets Act.</p>	To provide for common understanding of key words.
Part II Establishment and Functions of the Regulatory Authority	Continuation and objectives of NBFIRA	Reworded to align with drafting best practice, otherwise substance remains the same.	
Part III NBFIRA Board	Establishment of NBFIRA Board, composition, tenure of members, qualifications & removal of Board members, remuneration & allowances.	<p>Changed title of part from: "Constitution Qualifications of Board" to "Non-Bank Financial Institutions Regulatory Authority Board".</p> <p>Election of Vice Chairperson moved from Part IV to part III.</p>	

		No major substantive changes.	
Part IV Meetings and Proceedings of Board	Meetings and proceedings of the Board, including disclosure of interest, confidentiality, Board committees and co-option of advisory panel.	Included new provisions on signing of Board resolutions and Board documents by the Chairperson and 2 Board members. New provision on co-option of persons at Board meeting in advisory capacity.	
Part V CEO and Other Employees of the Regulatory Authority	Appointment of CEO, Board Secretary and other NBFIRA employees	No substantive changes, save that appointment of the CEO is by the Minister on recommendation of the Board, as compared to "in consultation with the Board" in the current Act.	
Part VI Financial Provisions	Financial provisions, including source of funds of NBFIRA, investments by NBFIRA, financial year provisions, accounts & audit, levies, annual reports, auditing by the auditor general, staff pension funds.	Combined levies account and designated account, to just be a designated account to remove duplication. NBFIRA to publish proposal for levies & other fees for NBFIs attention, instead of the budget.	
Part VII Supervisory Levies, Fees and Charges	Supervisory levies, fees & charges	This part was initially under financial provisions. No substantive changes	
Part VIII Licensing of Non-Bank Financial Institutions	Licensing of NBFIs	New licensing provisions to provide an overarching licensing framework for NBFIs. Includes offences relating to licensing	This allows for standardisation of provisions on licensing of NBFIs across the sectors.

		<p>(carrying on business without a licence, failure to display licences).</p> <p>Includes NBFIRA's ability to vary, suspend or cancel licences in cases of non-compliances, financial unsoundness, NBFI causing instability in the financial system, involvement in financial crime.</p>	
Part IX Approval of controllers of NBFIs.	Approval and removal of controllers of NBFIs. Includes requirement of controllers to be fit and proper, and NBFIs obligation to ensure that controllers are fit and proper.	This is a new part and introduces overarching provisions on approval and removal of controllers, including fit and proper requirements.	This allows for standardisation of provisions on approval and removal of controllers of NBFIs across the sectors.
Part X Supervision and regulation of NBFIs	Supervision and regulation of NBFIs.	<p>Provides for NBFIRA's powers to make administrative rules.</p> <p>Introduces interpretation guide notes to provide for clarity on financial services laws.</p> <p>Expands on NBFIRA's powers to give directions to NBFIs in cases of non-compliance, where an NBFI is causing instability in the financial system, financial unsoundness, in instances of financial crime, where it is necessary to protect clients & the public.</p> <p>Creates offences pertaining to misleading & deceptive conduct, failure to comply with directives, unfair practices.</p>	These provisions allow stronger enforceability of FSL by NBFIRA.

<p>Part XI Regulation of Market Practices of NBFIs</p>	<p>Regulation of Market Practices of NBFIs</p>	<p>New part introducing provisions on NBFIRA involvement where NBFIs are involved in financial compromises or arrangements.</p> <p>Includes overarching provisions of statutory management & winding up of NBFIs.</p> <p>Includes provisions relating to enforceable undertakings by NBFIs.</p>	<p>This allows for standardisation of provisions on statutory management across the non-bank sectors.</p> <p>Enforceable undertakings allow NBFIRA to enforce formal undertakings made by NBFIs in Court.</p>
<p>Part XII Self-Regulatory Organisations</p>	<p>Declaration of Self-Regulatory Organisations, including rules for SROs, SROs to regulate following due process, & termination of SRO status.</p>	<p>No substantive changes</p>	
<p>Part XIII Supervision of Financial Conglomerates</p>	<p>Designation & supervision of financial conglomerates.</p>	<p>Supervision of financial groups have been changed to financial conglomerates and new provisions on NBFIRA designating a group of companies as financial conglomerates and supervision of the financial conglomerates.</p>	<p>This allows for better regulation of conglomerates to curb misconduct of companies related to the NBFi.</p>
<p>Part XIV Regulation of International Financial Services Centre (IFSC) Accredited NBFIs</p>	<p>Regulation of International Financial Services Centre (IFSC) Accredited NBFIs</p>	<p>This is an existing Part in the current Act. Has changed from: Taxation status of NBFIs to Regulation of International Financial Services Centre (IFSC) accredited NBFIs.</p>	<p>The title was changed to align to the sections under it.</p>
<p>Part XV Inspections and Investigations</p>	<p>Inspections and Investigations on NBFIs: includes appointment of inspectors & investigators and their powers.</p>	<p>These provisions have been expanded to include NBFIRA's powers to inspect all offices of an NBFi, including outside Botswana (this can be carried out through MoUs), further includes powers for NBFIRA to</p>	<p>In alignment with IOSCO MMoU requirements.</p>

		carry out investigations & inspections on behalf of foreign regulators who it has a foreign cooperation with. Expanded the scope of investigation documents to include bank documents.	
Part XVI Non-Bank Financial Institutions Tribunal	Provides for an NBFITribunal for review of NBFIRA & Self-Regulatory Organisation (SRO) decisions.	No substantive changes.	
Part XVII Miscellaneous Provisions	Miscellaneous Provisions	Miscellaneous provisions have been expanded to include offences such as failure to respond to questions by NBFIRA, giving of false and misleading statements, obstruction of the function of NBFIRA and hindering compliance. It also provides for general penalties and provides for transitional arrangements.	