

## SECURITIES (AMENDMENT) ACT, 2023

No. 16



of 2023

## ARRANGEMENT OF SECTIONS

## SECTION

1. Short title and commencement
2. Amendment of section 2 of Cap. 56:08
3. Amendment of section 3 of the Act
4. Amendment of section 5 of the Act
5. Insertion of section 7A. in the Act
6. Amendment of section 9 of the Act
7. Amendment of section 20 of the Act
8. Amendment of section 21 of the Act
9. Amendment of section 22 of the Act
10. Amendment of section 23 of the Act
11. Amendment of section 33 of the Act
12. Amendment of section 34 of the Act
13. Amendment of section 42 of the Act
14. Deletion of Part VIII of the Act
15. Amendment of section 55 of the Act
16. Insertion of section 57A. in the Act
17. Amendment of section 58 of the Act
18. Insertion of section 58A. in the Act

**An Act to amend the Securities Act consequent to re-enactment of the Non-Bank Financial Institutions Regulatory Authority Act.**

*Date of Assent:* 13.11.2023

*Date of Commencement:* ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Securities (Amendment) Act, 2023, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. Section 2 of the Securities Act (hereinafter referred to as “the Act”) is amended by —

Amendment of section 2 of Cap. 56:08

(a) inserting, in their correct alphabetical order, the following new definitions —

““asset manager” —

(a) means a person who manages the assets of another person by way of an investment or through an agreement with the person; but

(b) does not include a custodian or trustee;

“commercial bearing” —

(a) means a transaction that attributes commercial benefits to parties involved in the transaction; but

(b) does not include a gift or transfer conferred by a court order; “investment adviser” —

(a) means a person who, for remuneration —

- (i) advises another person on investment matters,
- (ii) issues or promulgates analysis or reports on securities,
- (iii) offers advice on the placement of monetary resources for the creation or acquisition of assets, including purchase of property or securities,
- (iv) acts as adviser or underwriter for long term finance, equity and debt in relation to the public issue of securities, or
- (v) acts as a consultant, financial planner, corporate advisor or in such capacity as the Regulatory Authority may determine; but

(b) does not include —

- (i) an officer, director, trustee, member of an advisory body or employee of a bank, company or association registered under the Insurance Industry Act,
- (ii) an attorney, accountant or company secretary, or
- (iii) a proprietor of a newspaper who issues investment advice, analysis or reports solely for general publication in the newspaper;

“off-market transaction” means a transaction in listed securities which is not executed through a licensed securities exchange; and

“securities service” means the buying and selling of unlisted securities;”;

(b) deleting the definitions of “Botswana Stock Exchange” and “statutory manager”;

(c) substituting for the definition of “controller”, the following new definition —

““controller” has the meaning assigned to it under the Non-Bank Financial Institutions Regulatory Authority Act;”;

(d) substituting for the definition of “custodian”, the following new definition —

““custodian” has the meaning assigned to it under the Non-Bank Financial Institutions Regulatory Authority Act, and “custodial business” shall have a corresponding meaning;”;

(e) inserting, in the definition of “nominated transfer agent or transfer secretary”, immediately after the word “maintain”, the words “an electronic or”;

(f) substituting for paragraph (e), in the definition of “requirements”, the following new paragraph —

“(e) takeover and mergers requirements, including guidelines and rules developed or made in terms of section 58 (7);”;

(g) substituting for paragraph (a), in the definition of “securities business”, the following new paragraph —

“(a) securities service;”.

3. Section 3 (4) of the Act is amended by substituting for paragraph (a), the following new paragraph —

- “(a) five years, with respect to securities exchange, securities infrastructure business or a central securities depository; or”.
4. Section 5 of the Act is amended by substituting for subsection (2), the following new subsection —
- “(2) The Regulatory Authority shall publish notice of the grant of a licence in —
- (a) the *Gazette*;
  - (b) a newspaper with wide circulation in Botswana; and
  - (c) any other medium, including electronic media, as the Regulatory Authority may determine.”.

5. The Act is amended by inserting immediately after section 7, the following new section —

“Removal of officer 7A. Where the appointment or continuing in office of an officer employed by an issuer or a securities infrastructure business is likely to be detrimental to the issuer or securities infrastructure business, or such appointment or continuing in office may be prejudicial to the interests of investors, clients or other persons in the financial services, the Regulatory Authority may, pursuant to section 58A —

    - (a) prohibit the appointment of an officer by the issuer or securities infrastructure business; or
    - (b) direct the issuer or securities infrastructure business to remove the officer from its business.”.

6. Section 9 of the Act is amended by substituting for subsection (3), the following new subsection —

“(3) The Minister may prescribe —

      - (a) the minimum activities to be undertaken in Botswana, including the substantive administration and control of a securities business; and
      - (b) additional criteria for the granting, variation, suspension or cancellation of a licence under section 3.”.

7. Section 20 of the Act is amended by inserting, immediately after —

        - (a) the words “securities exchange” appearing in —
          - (i) the chapeau to subsections (1) and (3), and
          - (ii) subsection (4) (a),
 the words “or securities infrastructure business”;
        - (b) the word “participants” appearing in subsection (2) (f), the words “or authorise participation in the central securities depository”;
        - (c) subsection (2) (f), the following new paragraph —
 

“(g) shall provide a register for locally issued debentures and publicly issued bonds.”; and
        - (d) subsection (5), the following new subsection —
 

“(6) A securities infrastructure business shall, where it carries out an investigation —

          - (a) inform, in writing, the Regulatory Authority of the persons involved in, and the nature of, the investigation;
          - (b) advise, in writing, the Regulatory Authority on the status of the investigation at such intervals as the Regulatory Authority may determine;
          - (c) inform, in writing, the Regulatory Authority of the outcome of the investigation, including any disciplinary action taken; and

Amendment of section 5 of the Act

Insertion of section 7A. in the Act

Amendment of section 9 of the Act

Amendment of section 20 of the Act

- (d) submit on completion of the investigation, in such manner and within such time as the Regulatory Authority may determine, any information relating to the investigation.”.
- Amendment of section 21 of the Act      **8.** Section 21 (2) of the Act is amended by substituting for the words “a consolidated financial statement” appearing in paragraph (c), the words “consolidated financial statements”.
- Amendment of section 22 of the Act      **9.** Section 22 is amended by substituting for the words “press release” —
- (a) appearing in subsection (1), the words “statement to affected persons and the Regulatory Authority”;
  - (b) wherever they appear in subsections (2) and (5), the words “statement under subsection (1)”; and
  - (c) appearing in subsection (7), the word “statement”.
- Amendment of section 23 of the Act      **10.** Section 23 of the Act is amended by inserting immediately after subsection (2), the following new subsection —
- “(3) For the purposes of subsection (2), the Regulatory Authority shall, in such form and manner as it may determine, develop a criteria for determining whether a transaction has a commercial bearing.”.
- Amendment of section 33 of the Act      **11.** Section 33 of the Act is amended by substituting for the words “section 355” appearing therein, the words “the provisions”.
- Amendment of section 34 of the Act      **12.** Section 34 of the Act is amended by deleting the words “of Part XIV” appearing therein.
- Amendment of section 42 of the Act      **13.** The Act is amended by substituting for section 42, the following new section —
- “Administration of this Part
- 42.** (1) In the exercise of its functions under this Part, the Regulatory Authority may —
- (a) inspect or investigate any matter relating to a contravention referred to in sections 36, 37, 38 and 39; and
  - (b) institute such proceedings as are provided for in this Part.
- (2) The Regulatory Authority may, whenever it deems it necessary or expedient, appoint an investigator to investigate an alleged contravention of this Part, and such investigator —
- (a) may exercise all the powers conferred on the Regulatory Authority under subsection (1) and the powers of entry and search under the Non-Bank Financial Institutions Regulatory Authority Act; and
  - (b) shall have the powers, in terms of the Commission of Inquiry Act, to examine and summon witnesses on oath and the protection of a commissioner.”.

- 14.** The Act is amended by deleting Part VIII. Deletion of Part VIII of the Act
- 15.** Section 55 of the Act is amended by inserting the following new subsection —  
 “(2) The Regulatory Authority may, for a contravention of this section, impose any one or more of the penalties set out in section 58 of this Act.” Amendment of section 55 of the Act
- 16.** The Act is amended by inserting immediately after section 57, the following new section —  
 “Segregation of funds 57A. A securities institution that provides a custodial business shall —  
 (a) open and maintain a bank account designated for clients’ funds; and  
 (b) on the day of receipt, deposit any instrument of payment or cash received from a client into the bank account under paragraph (a):  
 Provided that where such payment or cash is received after banking hours, the deposit shall be made into the bank account the following day.” Insertion of section 57A. in the Act
- 17.** Section 58 of the Act is amended by substituting for subsection (7), the following new subsection —  
 “(7) The Regulatory Authority may, after consultation with a securities exchange —  
 (a) make takeover and merger rules in respect of matters under Part VII; and  
 (b) develop guidelines and make rules for the issue of locally issued debentures and private bonds.” Amendment of section 58 of the Act
- 18.** The Act is amended by inserting immediately after section 58, the following new section —  
 “Administrative sanctions 58A. (1) The Regulatory Authority may impose administrative sanctions for breach of any provision in this Act or the regulations, including —  
 (a) a public reprimand;  
 (b) recovery from any person of an amount double the amount of benefit accruing to such person by virtue of the breach;  
 (c) levying financial penalties, as may be prescribed;  
 (d) revocation of the fitness and probity of an officer of an issuer or securities infrastructure business, including recovery from such officer of an amount double the benefit accruing to the officer by virtue of the breach and removal from office; and  
 (e) disqualification of a person from appointment as a director of an issuer or securities infrastructure business, including recovery from such director of an amount double the benefit accruing to the director by virtue of the breach and removal from office.” Insertion of section 58A. in the Act

A.276

(2) The sanctions and financial penalties under subsection (1) shall be in addition to any other penalty under this Act and shall be without prejudice to any other provision in this Act or the regulations.”.

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

BARBARA N. DITHAPO,  
*Clerk of the National Assembly.*