BOTSWANA NATIONAL ASSEMBLY

O R D E R P A P E R

(THURSDAY 3RD FEBRUARY, 2022)

NOTICE OF MOTIONS AND ORDERS OF THE DAY	**HRS/MINS**
COMMITTEE STAGE	**1100 – 1900**

1. Societies Bill, 2021 (Bill No. 38 of 2021)

An Act to regulate the registration, monitoring and supervision of societies; and matters incidental thereto and connected with.

(Published on 23rd December, 2021)

(Minister of Nationality, Immigration and Gender Affairs)

1. The Bill is amended in **clause 22**, appearing on **page B.480**, by substituting for subclause (2), the following new subclause –

"(2) The Chairperson of the Council shall be elected by the members of the Council among their number.".

(Mr. T. B. Lucas, MP. – Bobonong)

2. The Bill is amended at **clause 32** appearing at **page B.483** by substituting for that clause, the following new clause –

"Savings and transitional provisions

32. (1) Every existing society shall apply to the Registrar for re-registration in such form as may be prescribed.

(2) An application referred to in subsection (1), shall be made within 12 months after the commencement of this Act or such longer period not exceeding twelve months as may be specified by the Minister by Order published in the *Gazette*.

(3) An existing society that has not made an application for the re-registration within the transition period shall be deemed to be de-registered and shall be removed from the register of societies by the Registrar.

(4) A society that has been removed from the register of societies may apply to the Registrar for registration in accordance with section 5 of this Act.

(5) All subsidiary legislation made under the repealed Act, and in force immediately prior to coming into operation of this Act,

shall in so far as is not inconsistent with the provisions of this Act, continue in force as if made under this Act.".

(Minister of Nationality, Immigration and Gender Affairs)

3. The Bill is amended at on **page B483**, by inserting, immediately after **clause 32** the following Schedule –

"SCHEDULE

(Section 3)

Botswana Congress Party
Botswana Democratic Party
Botswana Independence Party
Botswana Labour Party
Botswana Movement for Democracy
Botswana National Front
Botswana Peoples' Party
Botswana Progressive Union
Botswana Tlhoko Tiro Organisation
Botswana Workers' Front
Marx Engels Lenin Stalin Movement of Botswana
New Democratic Front
Social Democratic Party
The People's Liberty Movement
United Socialist Party".

(Mr. O. Ramogapi, MP. – Palapye)

2.	Financial Intelligence Bill, 2021 (Bill No. 34 of 2021)	An Act to re-enact with amendments the Financial Intelligence Act; to continue the establishment of the Financial Intelligence Agency and to re-constitute the National Financial Intelligence Coordinating Committee as a high level committee; to provide for third parties to perform certain customer due diligence measures on behalf of specified parties; to enable the Financial Intelligence Agency to initiate an analysis of information based on information in its on possession or information received from other sources to establish a suspicious transaction, and for matters connected therewith and incidental thereto.

(Published on 23rd December, 2021)

(Minister of Finance and Economic Development)

AMENDMENTS

1. The Bill is amended in the Arrangement of Sections appearing on **pages B.385** and **B.386**, by –

   (a) inserting immediately after PART VII, the following new entry –

   "PART VIII – *Financial Provisions*

   57. Funds of Institute
   58. Provision of information
   59. Financial year
   60. Accounts
   61. Audit
   62. Annual report
   63. Pension and other funds"; and

   (b) re-numbering –

   (i) PART VIII, as PART IX and

   (ii) entry "57., 58., 59, 60., 61. and 62, as entry "64., 65., 66., 67., 68., and 69., respectively; and

   (c) substituting for entry "63. Savings" appearing therein, entry "70. Transitional and savings provisions".

(Mr. D. Saleshando, MP. – Maun West)

2. The Bill is amended at **clause 2** appearing at **page B.386** by inserting in the correct alphabetical order, the following new definition –

"Cap. 46:04
Cap. 42:03
Cap. 46:08

"financial institution" includes a bank as defined under the Banking Act, a building society as defined under the Building Societies Act or a non-bank financial institution as defined under the Non-Bank Financial Institutions Regulatory Authority Act;."

(Minister of Finance and Economic Development)

3. The Bill is amended at **clause 2** appearing at **page B.386**, by substituting for the definition of –

   (a) "credible source" appearing at **page B.388**, the following definition –

   ""credible sources" means any independent and reliable source of information such as international institutions, authoritative publications and mutual evaluation or detailed assessment reports;" and

(b) "national risk assessment" appearing at **page B 390**, the following definition –

""national risk assessment" means appropriate steps that the country takes to identify and assess financial offence risk for the country on an ongoing basis, in order to –

(a) inform potential changes to the country's anti-money laundering, counter financing of terrorism, counter financing of proliferation regime and counter illicit dealings in arms or ammunition, including legislative changes and other measures; and

(b) assist in allocation and prioritisation of anti-money laundering, counter financing of terrorism, counter financing of proliferation and counter illicit dealings in arms or ammunition resources;".

(Minister of Finance and Economic Development)

4. The Bill is amended in **clause 4**, appearing on **page B.393** by substituting for that clause, the following new clause –

"*Continuation of Agency*

4. (1) The Financial Intelligence Agency (hereinafter referred to as "the Agency") is hereby continued as a body corporate with 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 a body corporate may by law perform.

(2) The seal of the Agency shall be such device as may be determined by the Agency and shall be kept and authenticated by the Director General.

(3) The Agency shall consists of a Director General and such other officers of the Agency, as may be necessary for the proper performance of the functions of the Agency.

(4) Subject to the provisions of this Act, the Agency shall not, in the performance of its functions, be subject to the direction or control of any other person or authority.".

(Mr. D. Saleshando, MP. – Maun West)

5. The Bill is amended in **clause 5**, appearing on **page B.394**, by substituting for that clause, the following new clause –

"*Appointment of Director General*

5. (1) There shall be a Director General who shall be appointed by the President, on the recommendation of the Minister.

(2) A person shall not be appointed Director General or act in that capacity unless he or she has extensive experience in one or more of the following disciplines –

(a) finance;

(b) law;

(c) law enforcement; or

(d) any other related field.

(3) Where there is a vacancy in the office of the Director General, the President shall cause to be published, in any newspaper of general circulation, an advertisement calling for applications from suitably qualified persons to be considered for appointment.

(4) A person appointed as a Director General shall hold office for a five year renewable term or until he or she attains the age of 60 years, whichever is the earlier.

(5) The Director General shall be responsible for the direction and administration of the Agency.

(6) The Director General shall, appoint in writing, an officer of the Agency as an examiner for the purposes of determining compliance with this Act.

(7) The provisions of section 113 (2), (3), (4) and (5) of the Constitution shall apply equally to the removal of a person holding office of Director General.".

(Mr. K. K. Kapinga, MP. – Okavango)

6. The Bill is amended in **clause 5**, appearing on **page B.394** by substituting for that clause, the following new clause –

"Appointment of Director General

5. (1) The Director General shall be appointed by the President, after consultation with the Leader of the Opposition in the National Assembly.

(2) Subject to the provisions of subsection (1), a person shall not be appointed Director General or act in that capacity unless he or she has extensive experience in government administration and governance, capable of discharging his or her duties without fear or favour, and recognised experience in one or more of the following disciplines –

(a) finance;

(b) law enforcement;

(c) law; or

(d) any other related field.

(4) A person appointment Director General shall hold office for a period not exceeding five years, as may be specified in the instrument of appointment, and shall be eligible for re-appointment for a further term of five years.

(5) Where there is a vacancy in the office of the Director General, the President shall cause to be published, in any newspaper of general circulation, an advertisement calling for applications from suitably qualified persons to be considered for appointment.

(6) Notwithstanding subsection (5), the President shall, in writing, notify the Leader of Opposition in the National Assembly –

(a) about the vacancy in the office of the Director General;

(b) about the process of selection for appointment; and

(c) of his or her preferred candidate and giving reasons for his or her preference.

(7) The Leader of Opposition in the National Assembly shall, after assessing the candidate as proposed by the President, write to the President and advise the President of his or her position on the candidate:

Provided that where the Leader of the Opposition in the National Assembly rejects the candidate as proposed by the President, he or she shall, in writing, advice the President of the reasons for rejection.

(8) The Director General shall be responsible for the direction and administration of the Agency.

(9) The Director General shall appoint, in writing, an officer of the Agency as an examiner for purposes of determining compliance with this Act.

(10) The Director General shall be removed from office for if he or she –

(a) is incapacitated by physical or mental illness;

(b) has become bankrupt or made arrangements with his or her creditors;

(c) has misconducted himself or herself in a manner that brings his or her office into disrepute; or

(d) is otherwise unable or unfit to discharge the functions of his or her office.".

(Mr. D. Saleshando, MP. – Maun West)

7. The Bill is amended at **clause 6** appearing at **page B.394**, by –

(a) inserting immediately after paragraph 2 *(j)*, the following new paragragh–

"*(k)* develop standards or criteria applicable to the reporting of suspicious transactions that shall take into account other existing and future pertinent national and international standards." and

(Minister of Finance and Economic Development)

8. The Bill is amended at **clause 7** appearing at **page B.395** by substituting for subclause (5), the following subclause –

(5) Where the Directorate withdraws a certificate issued under subsection (2) –

(a) the Director General or officer shall be suspended from performing any functions of the Agency;

(b) subject to the provisions of section 5 (5) of this Act, the Director General shall be removed from office and the office of the Director General shall become vacant;

(c) the office of the officer shall become vacant; and

(d) a new Director General or officer shall be appointed.

(Minister of Finance and Economic Development)

9. The Bill is amended in **clause 7**, appearing on **page B.395**, by substituting for subclause 5, the following subclause –

"(5) Where the Directorate withdraws a certificate issued under subsection (2) –

(a) the provisions of section 5 (7) shall apply to the removal of a person holding the office of Director General; and

(b) the provisions of the Public Service Act shall apply to the removal of any other officer.".

(Mr. K. K. Kapinga, MP. – Okavango)

10. The Bill is amended in **clause 7**, appearing on **page B.395**, by deleting subsections (3), (4) and (5).

(Mr. D. Saleshando, MP. – Maun West)

11. The Bill is amended in **clause 8**, appearing on **page B.396** –

(a) in subclause 2, by –

(i) substituting for paragraph *(a)*, the following new paragraph –

"*(a)* the Governor of the Bank of Botswana, who shall be the Chairperson;",

(ii) deleting subparagraph *(c)* (xvii), and

(iii) re-numbering subparagraphs *(c)* (xviii) and *(c)* (xix), subparagraphs *(c)* (xvii) and *(c)* (xviii), respectively; and

(b) in subclause (3), by substituting for that subclause, the following new subclause –

"(3) The Agency shall be the Secretariat to the Committee.".

(Mr. K. K. Kapinga, MP. – Okavango)

12. The Bill is amended in **clause 8**, appearing on **page B.396**, by substituting for that clause, the following new clause –

"*Continuation of National Coordinating Committee on Financial Intelligence*

8. (1) The National Coordinating Committee on Financial Intelligence is hereby reconstituted and continued under this section.

(2) The Committee shall consist of the following part-time members –

(a) the Chairperson;

(b) the Deputy Chairperson; and

(c) 18 others members.

(3) The Director General shall be an ex-officio member of the Committee with no voting rights, and shall the secretariat of the Committee.

(4) A person shall not be qualified to be appointed to the Committee unless the person has more than 10 years' experience in any of the following –

(a) financial analysis;

(b) law;

(c) law enforcement;

(d) accounting;

(e) forensic auditing;

(f) financial investigation; or

(g) any other field as the Minister may determine.

(5) The Committee shall be appointed by the Minister for a period not exceeding five years, as may be specified in the instrument of appointment, and shall be eligible for re-appointment for a further term of five years.

(6) Notwithstanding the provisions of subsection (3), a person shall not be appointed to be a member of the Committee 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, arrangement or composition with, his or her creditors, which has not been rescinded or set aside;

(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 a term of 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; or

(c) is a member of the National Assembly, a Councilor in a local authority, member of the *Ntlo ya Dikgosi* or the holder of an office in a political party.

(7) 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 may be imposed, and whilst that member is so suspended, the member shall not

carry out any duties or be entitled to any remuneration or allowances as a member.

(8) The Minister shall remove a member from office, if the member –

(a) is absent without reasonable cause from three consecutive meetings of the Committee 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 mental health professional 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 Committee; or

(d) 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) For purposes of subsection (7) (c),"misconduct" includes any act done without reasonable excuse by a member which –

(a) amounts to a failure to perform in a proper manner any duty imposed on the member as such;

(b) is prejudicial to the efficient carrying out of the functions of the Committee; or

(c) tends to bring the Committee into disrepute.

(10) A member shall vacate his or her office and his or her office shall become vacant -

(a) if a member becomes disqualified, in terms of subsection (4) and (5), to hold office as a member or is removed in terms of subsection (7);

(b) where a period of 30 days has elapsed from the date the member is given notice, in writing by the Minister, to vacate office;

(c) on the expiry of one months' notice in writing, to the Minister of the member's intention to resign from office;

(d) after a period of 30 days from the date that a ruling against the member is made on all appeals made in respect of a conviction 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; or

(e) upon his or her death.

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

(12) Subsection (10) 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.

(13) A member shall be paid in connection with his or her service on the Committee, such remuneration and allowances as the Minister may from time to time determine.

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

(15) A disclosure of interest made in accordance with subsection (13) shall be recorded in the minutes of the meeting at which it is made.

(16) Where a member or any person attending the meeting of the Committee fails to disclose his or her interest in accordance with subsection (13) and a decision by the Committee is made benefiting such member, such decision shall be void.

(17) A member or any person attending the meeting of the Committee who fails to comply with the provisions of subsection (13) commits an offence and is liable to a fine not exceeding P1 000 000 or to imprisonment for a term not exceeding five years, or to both.

(18) A member or any person assisting the Committee shall observe and preserve the confidentiality of all matters concerning the Committee and such confidentiality shall subsist even after the termination of the term of office or the mandate of the member.

(19) A member, or any person to whom confidential information is revealed through working with the Committee shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(20) A member, or any other person who contravenes the provisions of subsection (17) commits an offence and is liable to a fine not exceeding P1 000 000 or imprisonment for a term not exceeding five years, or to both.".

(Mr. D. Saleshando, MP. – Maun West)

13. The Bill is amended in **clause 8 (2)**, appearing on **page B.396**, by inserting immediately after paragraph *(c)*, the following new paragraphs –

"*(d)* two independent financial intelligence experts, and

(e) virtual assets specialist.".

(Mr. T. B. Lucas, MP. – Bobonong)

14. The Bill is amended at **clause 9** appearing at **page B.396**, by inserting immediately after paragraph (3) (e) which appears at **page B.397** the following new paragraph–

"*(i)* to co ordinate the national risk assessment to identify, assess and mitigate the risk of commission of a financial offence emerging from development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies."

(Minister of Finance and Economic Development)

15. The Bill is amended at **clause 10** appearing at **page B.398**, by substituting for the word "committed" appearing therein, the words "been convicted of"."

(Minister of Finance and Economic Development)

16. The Bill is amended in **clause 10**, appearing on **page B.398** –

(a) in subclause (1), by substituting for the Chapeau, the following new Chapeau –

"(1) The Minister may, on the recommendation of the Committee, apply to the High Court to declare a person or structured group as a terrorist or terrorist group where -"; and

(b) in subclause (2), by substituting for that subclause, the following new subclause –

"(2) Where the High Court has declared a person or structured group as a terrorist or terrorist group, the Minister shall cause to be published a Notice in the *Gazette,* indicating the name of such a person or structured group as a terrorist or terrorist group.".

(Mr. K. K. Kapinga, MP. – Okavango)

17. The Bill is amended at **clause 14** appearing at **page B.400**, by substituting for –

(a) paragraphs 1 *(b)*, *(d)* and *(e)* appearing at **page B.400** the following paragraphs –

"*(b)* establish procedures to ensure high standards of integrity of employees and a system to evaluate the personal, employment and financial history when hiring employees;"

"*(d)* develop and maintain independent audit function to examine and evaluate any policies, processes, procedures and controls developed in accordance with this section to ensure compliance with measures taken by the specified party to comply with the Act and the effectiveness of those measures;";

"*(e)* implement and maintain a customer acceptance policy, internal rules, programmes, policies, processes, procedures or such controls as may be prescribed to protect its system from financial offences;" and

(b) paragraphs 2 *(b)* and *(c)* appearing at **page B. 401**, the following paragraphs –

"*(b)* not to have been convicted of a serious offence in Botswana;

(c) not to have been convicted outside Botswana of a serious offence, which, if committed in Botswana would have been a serious offence";

(c) the word "P1 000 000" appearing at subclause (4), on **page B.401**, the word "P5 000 000" and

(d) inserting immediately after subclause (4) appearing at **page B.401** the following new subclause –

Cap. 08:03 "(5) For purposes of this section, "serious offence" has the same meaning assigned to under Proceeds and Instruments of Crime Act.".

(Minister of Finance and Economic Development)

18. The Bill is amended at **clause 16** appearing at **page B.402**, by –

(a) substituting for subclause (1) the following subclause –

(1) A specified party shall conduct customer due diligence measures –

(a) when establishing a business relationship with a customer;

(b) carrying out an occasional transaction equal to or in excess of the prescribed amount;

(c) when carrying out a transaction or occasional transaction equal to or in excess of the prescribed amount on behalf or on the instruction of a customer or any person, whether conducted as a single transaction or several transactions that appear to be linked;

(d) when carrying out a domestic or international wire transfer;

(e) when there is doubt about the veracity or adequacy of previously obtained customer identification data; and

(f) where there is suspicion of the commission of a financial offence.

(b) substituting for subclause (3), the following subclause –

"(3) In assessing the nature and level of risk in a particular case, the specified party shall take into account, among other things, the following –

(a) the purpose of the account, transaction or business relationship;

(b) the value of assets to be deposited by a customer or size of the transaction undertaken by the customer;

(c) the regularity and duration of the business relationship; and

(d) frequency of occasional transactions conducted by a customer."

(Minister of Finance and Economic Development)

19. The Bill is amended by –

(a) inserting immediately after **clause 16**, appearing at **page B.402**, the following new clause –

“Reliance on third party for customer due diligence measures

17. (1) Subject to a risk assessment, the duty imposed on a specified party to identify a customer under section 16, may be performed by a third party on behalf of a specified party.

(2) Where a specified party appoints a third party to conduct customer due diligence on its behalf, the specified party shall ensure that –

(a) the third party performs the duties imposed on the specified party under sections 16 (1) *(a)*-(c), 19 (1) *(a)*- *(c)*, and 30 (3) of this Act; and

(b) the third party is regulated, supervised and monitored for compliance with customer due diligence and record-keeping requirements as set out in sections 16 and 30 of this Act.

(3) A specified party that relies on a third party shall provide the supervisory authority with such particulars of the third party as may be prescribed

(4) A specified party that appoints a third party to conduct customer due diligence on its behalf is liable to a fine not exceeding P1 000 000, as may be imposed by the supervisory authority, where the third party fails to perform duties imposed on the third party under this section ”.

(b) re numbering subsequent provisions accordingly; and

(c) correcting the cross referencing as may be necessary.

(Minister of Finance and Economic Development)

20. The Bill is amended at **clause 17** appearing at **page B.403**, by substituting for that clause, the following clause –

“Obligation relating to agents for money or value transfer services

17. (1) With respect to provision of money or value transfer service, a specified party that relies on an agent shall –

(a) ensure that the agent is licenced or registered by a competent authority;

(b) maintain a current list of agents, which is accessible to competent authorities in the countries in which the specified party and the agent operate; and

(c) include the agent in its counter commission of financial offence programmes and monitor compliance with the programmes.

(2) A specified party that fails to comply with the provisions of this section is liable to an administrative fine not exceeding P1 000 000, as may be imposed by a supervisory authority.".

(Minister of Finance and Economic Development)

21. The Bill is amended at **clause 18** appearing at **page B.403** by substituting for subclause (2), the following subclause –

"(2) Where a specified party engages with a prospective customer to establish a business relationship, the specified party shall obtain information to reasonably enable the specified party to determine whether future transactions to be performed in the course of the business relationship concerned are consistent with the specified party's understanding of risk of money laundering related to the prospective customer and knowledge of such customer, including information describing the source of the funds which the prospective customer expects to use throughout the course of the business relationship in concluding transactions in the course of the business relationship.".

(Minister of Finance and Economic Development)

22. The Bill is amended at **clause 19** appearing at **page B.403** by substituting for subclause (5), the following subclause –

"(5) Where a specified party had established a business relationship with a customer before the coming into force of this Act, the specified party shall take into account whether and when customer due diligence measures have been previously applied and the adequacy of the data obtained or as may be specified in any guidelines issued under this Act, apply the customer due diligence measures on that customer on the basis of materiality and risk factors such as the type and nature of the customer, nature of the business relationship, products or transactions. ".

(Minister of Finance and Economic Development)

23. The Bill is amended at **clause 20** appearing at **page B.405** by substituting for paragraph (1) *(a) and (i)*, the following paragraphs –

"*(a)* in any case identified by the specified party, through a risk assessment, as one where there is a high risk of commission of a financial offence or from information provided to the specified party by a supervisory authority from the risk assessment or as part of supervision;" and *(i)* in any case where the Agency has reasonable belief that there is a risk that financial offences are being carried on in the country."

(Minister of Finance and Economic Development)

24. The Bill is amended at **clause 30** appearing at **page B.409** by substituting for subclause (3), the following subclause –

"(3) A specified party shall ensure that all customer due diligence information and transaction records are kept up to date and made available swiftly to a competent authority upon appropriate authority.".

(Minister of Finance and Economic Development)

25. The Bill is amended at **clause 41** appearing at **page B.413** by substituting for the word "specified party" appearing therein, the word "financial institution".

(Minister of Finance and Economic Development)

26. The Bill is amended at **clause 48** appearing at **page B.414** by –

(a) deleting paragraph 1 *(d)*, appearing at **page B.415**; and

(b) substituting for paragraphs *(g)* and *(h)* appearing at **page B.415**, the following paragraphs –

"*(g)* review the assessment of the money laundering, terrorist financing and financing of proliferation risk profile of a specified party or accountable institution, including risks of non-compliance periodically, and when there are major events or developments in the management and operations of a specified party or accountable institution;

(h) identify, assess and understand international and domestic money-laundering, terrorist financing and proliferation financing risks in the sector;".

(c) inserting immediately after subclause (3), the following new subclause–

"(4) With respect to a specified party that relies on a third party, that is part of the same financial group, a supervisory authority shall ensure that –

(a) the group applies –

(i) customer due diligence and record-keeping requirements, in accordance with sections 16, 19, 21 and 30 of this Act, and

(ii) programmes to combat commission of a financial offence, in accordance with section 14 of this Act; and *(b)* the implementation of customer due diligence and record-keeping requirements and anti money laundering, counter financing of terrorism and counter financing of proliferation programmes are supervised at a group level; and

(c) a higher country risk is adequately mitigated by the group's anti money laundering , counter financing of terrorism and counter financing of proliferation policies.".

(Minister of Finance and Economic Development)

27. The Bill is amended at **clause 59** appearing at **page B.420** by substituting for subclause (1) the following subclause –

"(1) No matter or thing done or omitted to be done by the Director General, an officer of the Agency, supervisory authority, a specified party, accountable institution, relevant government agency or department shall, if the matter or thing is done or omitted to be done *bona fide* in the course of the operations of the Agency, supervisory authority, a specified party, accountable institution, government agency or department, shall render the Director General, the officer of the Agency, the specified party, accountable institution, government agency or department its directors or senior management personally liable to an action, claim or demand. ".

(Minister of Finance and Economic Development)

28. The Bill is amended by –

(a) inserting immediately after **clause 60**, appearing at **page B.420**, the following new clause –

"*Annual report* 61.(2) The Director General shall, on or before 31st March in each year, or by such later date as the Minister may allow, submit to the Minister a report on the activities of the Agency in the previous year.

(2) A report reffered to in subsection (1) shall be laid in Parliament by the Minister within three months of receipt.".

(Minister of Finance and Economic Development)

29. The Bill is amended at **clause 61** appearing at **page B.420** by inserting immediately after subclause (2), the following new subclause –

"(3) Any person who contravenes the provisions of the Regulations made under this Act, where a penalty is not provided, commits an offence and is liable to –

(a) a fine not exceeding P100 000;

(b) imprisonment for a term not exceeding five years;

(c) both penalties specified at paragraphs (a) and (b); or

(d) such administrative fine not exceeding P100 000, as may be imposed by a supervisory authority."

(Minister of Finance and Economic Development)

30. The Bill is amended by inserting immediately after PART VII, the following new Part –

"PART VIII – *Financial provisions*

Funds of Agency

57. (1) The revenues of the Agency shall consist of –

(a) monies as may be appropriated by the National Assembly for the purposes of the Agency;

(b) monies borrowed with the approval of the Minister to cover short term cash flow requirements of the Agency; and

(c) contributions and endowments from any other source as may be approved by the Minister.

(2) The Agency shall use the funds acquired under subsection (1) to meet the costs incurred for its operations and shall use any surplus funds in such a manner as the Minister may direct.

Provision of information

58. The Agency shall provide to the Minister information concerning the operations, plans and financial accounts of the Agency as the Minister may, from time to time, consider necessary.

Financial year

59. The financial year of the Agency shall be a period of 12 months commencing on 1st April in each year and ending on 31st March of the following year.

Accounts

60. (1) The Agency shall keep and maintain proper records of accounts in respect of every financial year related to the assets, liabilities, income and expenditure of the Agency.

(2) The Agency shall cause to be prepared in respect of each financial year and not later than three months after the end

of that financial year, a statement of accounts which shall include –

(a) a balance sheet, a statement of income and expenditure and a statement of surplus and deficit; and

(b) any other information in respect of the financial affairs of the Agency as the Minister responsible for finance may require.

Audit

61. (1) The accounts of the Agency 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 Committee.

(2) 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 Agency have been properly kept;

(c) the Agency 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 Agency 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 Agency.

(3) The auditor's report and a copy of the audited accounts shall, within 14 days of completion, be forwarded to the Agency by the auditor.

Annual report

62. (1) The Agency shall, within a period of six months after the end of each financial year or within such longer period as the Minister may approve, submit, to the Minister, a comprehensive report of its operations during that year which report shall include –

(a) an auditor's report and a copy of the audited accounts; and

(b) a record of all directions received from the Minister in the course of the year.

(2) The annual report referred to under subsection (1) shall be presented to the Minister, who shall, within 30 days of receipt.

Pension and other funds

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

(Mr. D. Saleshando, MP. – Maun West)

31. The Bill is amended on **page B.421**, by substituting for **clause 63,** the following new clause –

"Transitional and savings provisions

70. (1) Notwithstanding the repeal effected under section 69, any instrument made under the repealed Act shall continue to have effect, as if made under this Act, to the extent that it is not inconsistent with this Act.

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

(3) Any legal proceedings in respect of any offence committed or alleged to be committed under the repeal Act shall be carried out or prosecuted as if commenced under this Act

(4) All fines imposed by a supervisory authority under the repeal Act, shall continue as if imposed under this Act.

(5) Any decision or action taken or purported to have been taken or done by the Director General or supervisory authority under the repeal Act, shall in so far as it is not inconsistent with this Act, be deemed to have been taken or done under the corresponding provisions of this Act.

(6) All rights, assets and property vested in or in any manner held on behalf of or for the purposes of the Agency immediately before the commencement of this Act shall, with the approval of the Minister, be vested in the Agency.

(7) On the coming into operation of this Act, all liabilities and obligations subsisting against the Government in respect of the Agency immediately before the commencement of this Act shall continue to subsist against the Government.

(8) Every contract in respect of any matter, being a contract between the Agency and any other party immediately before the commencement of this Act shall thereafter continue to subsist between the Agency and such other party.

(9) All rights, powers and duties, whether arising under any written law or otherwise, which immediately before the coming into operation of this Act were vested in the Agency shall, by virtue of this subsection, be transferred to, vested in, imposed on, or be enforceable by or against the Agency.

(10) The annual estimates approved for the Agency in respect of the financial year in which this Act comes into operation shall be deemed to be annual estimates of the Agency for the remainder of the financial year but those estimates may be varied by the Agency in such manner as the Minister may approve.

(11) Any person who is an officer or employee of the Agency immediately before the coming into operation of this Act shall not be an officer or employee of the Agency but shall continue to be such officer or employee in the Civil Service and shall be deemed to be on secondment to the Agency for a period of 18 months from the coming into operation of this Act.

(12) A person seconded to the Agency under subsection (11) who, within 18 months from the coming into operation of this Act –

(a) has been offered and has accepted to enter into a written contract of service with the Agency, shall be deemed to have terminated his or her service with the Government without right to severance of pay but without prejudice to all other remunerations and benefits payable upon the termination; or

(b) has not been offered, or has not accepted, to enter into a written contract of service with the Agency shall be redeployed by the Government.

(13) A person seconded in terms of subsection (12) *(a)* shall be employed on such terms and conditions as may be offered by the Agency and agreed to by the Agency and the person.

Cap.27:01
Cap.27:03

(14) A person referred to in subsection (13) who is transferred from the civil service to the employment of the Agency shall be permitted to continue the contribution to the Pensions Act or Pensions and Provident Funds Act or any other enactment in terms of which they are contributing towards a pension immediately before the transfer, subject to such terms and conditions as the Director General, with the approval of the Minister, may determine.".

(Mr. D. Saleshando, MP. – Maun West)

32. The Bill is amended by substituting for **Schedule I**, appearing at **page B.422**, the following Schedule –

SCHEDULE I

Specified Parties

(section 2)

1. An attorney as defined in the Legal Practitioners Act, Cap. 61:01, when preparing for or carrying out transaction for clients concerning the following –

   (a) buying and selling of real estate;

   (b) managing of client money, securities or other assets;

   (c) management of bank, savings or securities accounts;

   (d) organisation of contributions for creation, operation or management of companies; and

   (e) creating, operating or management of legal persons or arrangements and buying and selling of business entities.

2. An accountant as defined under the Accountants Act, Cap. 61:05, when preparing for or carrying out transaction for clients concerning the following –

   (a) buying and selling of real estate;

   (b) managing of client money, securities or other assets;

   (c) management of bank, savings or securities accounts;

   (d) organisation of contributions for creation, operation or management of companies; and

(e) creating, operating or management of legal persons or arrangements and buying and selling of business entities.

3. A registered professional as defined under the Real Estate Professionals Act, Cap. 61:07, when involved in transactions for client concerning buying and selling of real estate.

4. A bank as defined under the Banking Act, Cap. 46:04

5. A bureau de change as defined under the Bank of Botswana Act, Cap. 55:01

6. A building society as defined under the Building Societies Act, Cap. 42:03

7. A casino as defined under the Gambling Act, Cap. 19:01

8. A Non-Bank Financial Institution as defined in the Non-Bank Financial Institutions Regulatory Authority Act, Cap. 46:08

9. A person running a lottery under the Lotteries and Betting Act, Cap. 19:02

10. The Botswana Postal Services established under the Botswana Postal Services Act, Cap. 72:01

11. A precious stones dealer as defined under the Precious and Semi-Precious Stones (Protection) Act, Cap. 66:03

12. A semi-precious stones dealer as defined under the Precious and Semi-Precious Stones (Protection) Act, Cap. 66:03

13. Botswana Savings Bank established under Botswana Savings Bank Act, Cap. 56:03;

14. Citizen Entrepreneurial Development Agency

15. Botswana Development Corporation

16. National Development Bank established under the National Development Bank Act, Cap. 74:05

17. A car dealership

18. A Money or value transfer services provider

19. An electronic Payment Service Provider

20. A trust and company service provider

21. A savings and credit co-operative

22. A precious metal dealer as defined under the Unwrought Precious Metals Act, Cap. 20:03

23. A virtual asset service provider

(Minister of Finance and Economic Development)

SECOND READING

• Criminal Procedure and Evidence (Controlled Investigations) Bill, 2022 (Bill No. 1 of 2022)	An Act to provide for the authorisation of investigations for purposes of controlled investigations and the gathering of criminal evidence within and outside Botswana and to provide for any other related matters.

(Published on 12th January, 2022)

(Minister of Defence, Justice and Security)