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WHAT'S NEW ON THE LEGISLATIVE FRONT?

In December 2021, Parliament published 16 Bills geared towards strengthening the anti-money laundering and countering the financing (and proliferation of) terrorism (AML/CFT) legal framework in Botswana.

Some of the Bills proposed amendments to existing AML/CFT laws while other Bills proposed to overhaul pre-existing laws and yet the last group of Bills introduced new laws.

During its 2nd meeting of the 3rd Session of the 12th Parliament, the Legislative arm of Government sat to debate the Bills. The Bills were passed into law, and as far as the Financial Intelligence Act is concerned, these are the developments:


1. FINANCIAL INTELLIGENCE ACT, 2022 – ACT NO. 2 OF 2022


What do I need to know?


Although this Act overhauled the Financial Intelligence Act, 2019 and its 2021 amendments, not much has changed. The 2019 Financial Intelligence Regulations have been replaced by Statutory Instrument No. 14 of 2022 and the United Nations Security Council Resolutions are now recognised in local law under Statutory Instrument No. 13 of 2022.




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Highlights:

Sharing of information! The 2022 Act provides for the Financial Intelligence Agency to share financial information concerning a suspicious transaction, or financial information relating to an act of terrorism with other similar entities globally.


It's time to start paying for storage on the cloud! All specified parties (entities and professions listed at Schedule I of the Act) **MUST** keep records of customer due diligence information (KYC), account files, business correspondence and the results of customer risk assessments that may have been carried out, whether in respect of local or international business dealings for no less than **20 years**. Records may be kept in electronic format and


specified parties may choose to engage the services of a third party to store the information, but the specified party must make sure that it can readily access and provide the information to the Financial Intelligence Agency on request.


No more hiding behind a compliance officer! The Financial Intelligence Regulations require all specified parties to adopt, develop and implement internal rules which, among others, confirm the responsibility of management for ensuring compliance with the Act and make the specified party responsible for ensuring that its compliance officer is trained, and afforded the necessary resources to effectively carry out his/her duties.




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If a specified party or accountable institution (as defined in Schedule III of the Act) fails to comply with the provisions of the Act and by extension its Regulations, the senior management, which includes directors, partners, trustees or any other person responsible for managing the affairs of the entity will be found guilty of an offence which attracts a P 250 000 fine and/or 5 years imprisonment term.


PIP Alert! Any senior executive of a private company with an annual turnover of P1,000,000.00 qualifies as a 'Prominent Influential Persons' and by default, enhanced due diligence measures will apply when dealing with such persons. Religious leaders have been removed from the list of Prominent Influential Persons and will no longer be subjected to the increased scrutiny of enhanced due diligence.


Terrorist(s)! The Act empowers the Minister of Finance and Economic Development to declare a person (or group of persons) as a terrorist(s), in which case, an Order declaring such person(s) as a terrorist(s) will be published in the Government Gazette. Once this happens the usual measures of asset freezing will apply, and if the person(s) has property or any involvement in a foreign country, the Minister may forward such person(s) details for listing by the United Nations Security Council (UNSC). If any person(s) is listed in error, they may apply to Court for removal of a national listing or to the Ombudsman's office or Focal Point for removal from the UNSC list, however, no liability will lie against the authorities for the error unless the listing was done in bad faith or was grossly negligent or malicious.




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You're on the clock! All specified parties, accountable institutions, government departments or any other person who receives UNSC list must take the necessary action within 8 hours and thereafter issue a report to the relevant authorities. Any person who knowingly makes frozen property, economic resources or financial or other related services available to a listed person will be found guilty of a crime under the Counter Terrorism Act.

Important definitions:

Beneficial Owner: In a nutshell, this is a natural person who is the mastermind behind any transaction, or who will derive the ultimate advantage from any transaction. For instances, in a company, this is any person who (directly or indirectly)


holds more than 10% shares, voting right or other ownership interest. For consistency, this definition of a beneficial owner is applied in other legislation including the Companies Act, Trust Property Control Act and the new Virtual Assets Act.


Virtual Asset: In essence, these are virtual currencies such as Bitcoin, Ethereum, Dogecoin, Atari tokens and NFTs (Non-Fungible Tokens) among others, which exist as forms of currency on the internet and can be transferred, used as means of payment and invested, however, they are not recognised as legal tender.


Risk Management Systems: After carrying out a risk assessment, these are the controls, policies, procedures and technologies an entity puts in




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place to regulate its business affairs in a manner which will reduce the likelihood of being used as a vehicle to commit financial offences.

Tip Off: Simply put, this refers to informing a person that a suspicious transaction report has been made against them or that they are under investigation by authorities because they are suspected of committing a financial crime.

When does the Act kick in?

25th February 2022

If you would like to discuss the Act in more detail, understand its implications to your trade/business or clarify any areas of doubt, please feel free to contact us at info@gobhozalegalpractice.co.bw

Disclaimer: This article is for information only and should not be taken as legal advice.