

VOLUME: X

NON-BANK FINANCIAL REGULATORY AUTHORITY

Part ID: X Miscellaneous (ss 89-105)

CHAPTER: 46:08

[Ch4608s89]89. Advisory bodies

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.

[Ch4608s90]90. Requirement to answer questions

A person who, without reasonable excuse, fails to answer a question put to the person by the Regulatory Authority or an investigator in the performance of functions under a financial services law shall be liable to a civil penalty not exceeding P10,000 to be imposed by the Regulatory Authority.

[Ch4608s91]91. Requirement to comply with directions

A person who, without reasonable excuse, fails to comply with a direction, order or requirement given to the person under a financial services law shall be liable to a civil penalty not exceeding P20,000 to be imposed by the Regulatory Authority.

[Ch4608s92]92. False and misleading statements to Regulatory Authority

(1) A person who-

(a) makes a statement to the Regulatory Authority;

(b) gives information to the Regulatory Authority;

(c) authorises another person to make a statement to the Regulatory Authority, or give information to the Regulatory Authority; or

(d) in connection with an application for a licence, omits to state any thing, knowing that, because of the omission, the statement, information or application is misleading in a material respect shall be liable to a civil penalty not exceeding P30,000 to be imposed by the Regulatory Authority.

[Ch4608s93]93. False statements

A person who, for any purpose connected with a financial services law-

(a) knowingly makes a false statement; or

(b) produces or gives, or causes or knowingly allows to be produced or given, a document that the person knows or ought reasonably to have known to be false in a material particular,

shall be liable to a civil penalty not exceeding P30,000 to be imposed by the Regulatory Authority.

[Ch4608s94]94. Self incrimination not a reasonable excuse

(1) A

person who is required under a financial services law to answer a question or produce a document or thing is not excused from the requirement because compliance may tend to incriminate him or her.

(2)

However, if the person objects on that ground to complying, the answer, document or other thing given in compliance with the requirement is not admissible against him or her in a prosecution for an offence (except a prosecution for an offence of failing or refusing to comply with the requirement, or giving false or misleading information in purported compliance with the requirement).

[Ch4608s95]95. Offence of holding out as licensed, etc.

A

person who does any of the following-

(a) not being licensed as a non-bank financial institution - describes or holds himself or herself out as so licensed;

(b) not being licensed as a non-bank financial institution of a particular kind - describes or holds himself or herself out as being a non-bank financial institution of that kind;

(c) permits another person to do anything mentioned in paragraph (a) or (b),

commits an offence and on conviction is liable to a fine not exceeding P10,000 or to imprisonment for a period not exceeding two years, or to both.

[Ch4608s96]96. Destruction of documents

A

person who destroys, falsifies, conceals or disposes of, or causes or permits the destruction, falsification, concealment or disposal of, a document or thing that the person knows or ought reasonably to have known is relevant to the performance or exercise of the Regulatory Authority's functions or powers commits an offence and on conviction is liable to a fine not exceeding P50,000 or to imprisonment for a period not exceeding five years, or to both.

[Ch4608s97]97. Hindering Regulatory Authority, etc.

A

person who, without lawful excuse, obstructs or hinders-

(a) the Regulatory Authority;

(b) a member or employee of the Regulatory Authority; or

(c) an investigator or statutory manager,

in exercising powers or performing functions under a financial services law commits an offence and on conviction is liable to a fine not exceeding P50,000 or to imprisonment for a period not exceeding five years, or to both.

[Ch4608s98]98. Preventing compliance

A

person who knowingly hinders or prevents compliance with a direction, order or requirement given under a financial services law commits an offence and on conviction is liable to a fine not exceeding P50,000 or to imprisonment for a period not exceeding five years, or to both.

[Ch4608s99]99. Extension of time

The

Regulatory Authority may, on application, extend any time for compliance with, or a period prescribed by, a provision of a financial services law, and may do so before or after the time for compliance or the period prescribed has passed.

[Ch4608s100]100. Evidence

A

statement in writing signed by the Chief Executive Officer-

(a) that a specified person was or was not, at a specified time, licensed; or

(b) that a specified person was or was not, at a specified time, an investigator,

is admissible in evidence of the facts and matters stated in the certificate and, unless the contrary is established, is conclusive as to those facts and matters.

[Ch4608s101]101. Conduct of directors, servants and agents

(1)

Where it is necessary to establish, for the purposes of a financial services law, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that-

(a) the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and

(b) the director, employee or agent had the state of mind.

(2) A

reference in subsection (1) to the state of mind of a person includes a reference to-

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

(3) A

reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

[Ch4608s102]102. Liability of directors, etc.

Where

an offence against a provision of this Act is committed by a body corporate, each director of the body corporate also commits the offence and on conviction is liable to the same penalty unless the director establishes that he or she took reasonable precautions and exercised due diligence to avoid the commission of the offence.

[Ch4608s103]103. Offence committed partly within and partly beyond Botswana

When

an act that, if wholly done within Botswana, would be an offence against a financial services law, is done partly within and partly beyond Botswana, every person who within Botswana does any part of such act may be tried and punished under the financial services law in the same manner as if such act had been done wholly within Botswana.

[Ch4608s104]104. Penalties for bodies corporate

Where

a body corporate is convicted of an offence against a financial services law, the court may, if the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to 10 times the amount of the maximum pecuniary penalty that could be imposed by the court on an individual convicted of the same offence.

[Ch4608s105]105. Regulations

(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 or which, in the Minister's opinion, is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act or to give force or effect to its provisions or for its better administration.

(2)

Regulations made in terms of subsection (1) may provide for any of the following-

(a) the form of any document referred to in this Act and the way in which it is to be prepared, executed, registered, transmitted or delivered;

(b) fees to be charged in respect of any act, matter or thing to be done by or in relation to the Regulatory Authority;

(c) matters to be included in the document submitted with an application for a licence and procedures for considering those applications;

(d) the appointment of an actuary or auditor for a non-bank financial institution;

(e) reports to the Regulatory Authority or to the non-bank financial institution by an actuary or auditor;

(f) the submission to the Regulatory Authority of financial statements, reports, statistics, accounts and other documents.