

December 4, 2020

REF: G/M

TO: All Non-Bank Financial Institutions

**REVIEW OF THE NON-BANK FINANCIAL INSTITUTIONS REGULATORY
AUTHORITY, 2016**

1. The Non-Bank Financial Institutions Regulatory Authority Act, 2016 (“the Act”) was promulgated on 5th August 2016 and came into effect on 11th November 2016. The primary focus of the Act was to govern the administration of the Non-Bank Financial Institutions Regulatory Authority (“NBFIRA”).
2. It has become necessary to review the Act so as to enhance and elaborate on provisions relating to the regulation and supervision of the non-bank financial institutions falling within the regulatory purview of NBFIRA.
3. The Ministry of Finance and Economic Development, together with NBFIRA, would like to inform and consult with stakeholders about the review of the Act for purposes of its amendment.
4. The proposed amendments, with justifications for the same, are attached hereto and marked “Annex I”.
5. As a key stakeholder, and part of the consultative process, you are hereby invited to submit your written comments/feedback to NBFIRA in the prescribed column of Annex I at kkemokgatla@nbfira.org.bw and dmakepe@nbfira.org.bw not later than 16th December 2020.

3. We trust the above is in order.

Yours faithfully,



Oduetse A. Motshidisi
CHIEF EXECUTIVE OFFICER

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Category of Provisions	Proposed Amendment	Rationale for Amendment	COMMENTS/FEEDBACK
1. Licensing exemption (and from licensing) of Non-Bank Financial Institutions	Provide that licensing of all NBFIs is mandatory, unless granted exemption, which shall also be provided for.	Amendment would ensure licensing and related provisions for all NBFIs regulated by NBFIRA, including new sectors.	
2. Prudentially Regulated Non-Bank Financial Institutions	Provide for list identifying which of the NBFIs are to be prudentially regulated.	Not all NBFIs under the purview of the Regulatory Authority are prudentially regulated. E.g. friendly societies. The amendment will clarify which industries are prudentially regulated.	
3. Prudential Rules	Provide the methodology and process to be followed, as well as content, where the Regulatory Authority wishes to promulgate prudential rules.	This shall provide clarity and remove ambiguity regarding the process to be followed where it is necessary for the Regulatory Authority to promulgate prudential rules for the industry, and the scope of prudential rules.	
4. Powers to give Directions	Provide the methodology and process to be followed when the Regulatory Authority issues directives to NBFIs, in furtherance of the Authority's mandate, including directives to provide information to NBFIRA.	This shall provide clarity and remove ambiguity regarding the process to be followed where it is necessary for the Regulatory Authority to issue directives and the scope of the directives. To perform its mandate, it is imperative for the Regulatory Authority to be able to obtain information from NBFIs as and when necessary.	
5. Controllers of Non-Bank Financial Institutions	Provide further clarity and standardise processes to be followed by the industry to obtain approval of the Regulatory	The processes pertaining to approval of appointment and removal of controllers are clear in respect of certain regulated sectors and ambiguous for others.	

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		Authority in appointing and removing a controller.	The amendment will close gaps and remove ambiguity.	
6.	Providing false or deceptive information	Provide effective enforcement provisions for providing false and misleading statements	The industries regulated by the Regulatory Authority are largely based on customers trusting the integrity of the industries. It is therefore necessary to provide effective enforcement provisions for prohibiting industries from deceiving the public at large, and to not provide false or deceptive information to the Regulatory Authority.	
7.	Unfair Practices	Provision permitting the Regulatory Authority to determine that a specified practice is unfair and prohibit the same.	Sectors may holistically adopt a practice which needs to be curtailed by the Regulatory Authority.	
8.	Compromises and arrangements involving prudentially regulated non-bank financial institutions	Provides for a process where entities wish to enter into arrangements to standardise for all NBFIs regulated by NBFIRA.	Compromises such as amalgamations, mergers, transfers involve the combining of a number of entities to form one. There are a number of implications arising from the process, including financial implications for the customers of the concerned entities. Not all NBFIs regulated by the Regulatory Authority have provisions outlining the process that should be followed to ensure a smooth transition.	
9.	Statutory Managers	Provide for the appointment, duties, termination and deliverables of a Statutory Manager	As part of supporting the financial industry, it is at times necessary to appoint an independent person, in the form of a statutory manager, to take over the management of a distressed	

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			entity. Gaps in legislation has resulted in some regulated sectors not having provisions pertaining to the appointment of statutory managers by the Regulatory Authority.	
10.	Winding up of non-bank financial institutions	Provide the process to be followed for winding up for all NBFIs.	The winding up of an NBFI has implications, including for the client, as such it is necessary that there be a process to be followed to ensure it is done in a proper manner. Legislative gaps have resulted in some industries not having provisions on what process is to be followed where an entity wishes to wind up.	
11.	Enforceable Undertakings	Provide for voluntary undertakings to be made enforceable	A person may make a voluntary undertaking which would assist the Regulatory Authority in carrying out its mandate. To ensure that the person carries out the undertaking, it is necessary to make the undertaking enforceable.	
12.	Hindering the Regulatory Authority	Provisions prohibiting the hindrance of the Regulatory Authority from carrying out its mandate, including prohibiting destruction of documents.	The amendments shall explicitly provide for prohibition of regulated entities and persons from hindering the Regulatory Authority from carrying out its mandate, particularly pertaining to preventing entities from complying with financial services laws	
13.	Extension of Time	Provide that the Regulatory Authority may extend times for compliance.	In carrying out its mandate, the Regulatory Authority puts in place various deadlines to be met by regulated entities. Instances arise where the entities are not reasonably able to meet the said deadlines. The amendments will further elaborate and	

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			remove ambiguity in the process of extending compliance timelines.	
14.	Offence Committed Partly within Botswana and Partly Beyond Botswana	Provide on what should happen where offences are committed both in Botswana and in another jurisdiction.	A large number of regulated entities form part of financial groups traversing into other jurisdictions. It is therefore possible that offences may be committed partly in Botswana and partly in another jurisdiction. It is necessary to stipulate the process to be followed where this occurs.	
15.	Provisions pertaining to NBFIRA's ability to obtain information	Provisions extending NBFIRA's authority to obtain information related to the regulated sectors from a broader purview, including banks.	It is necessary for the Regulatory Authority to be able to broadly obtain information pertaining to its regulated entities to enable effective supervision, including on AML issues.	
16.	Cooperation with regional and international regulatory authorities	Provisions that facilitate collaboration geared towards effective supervision with regional and international regulatory authorities, including: <ul style="list-style-type: none"> ▪ Provisions regarding the confidentiality of information received by the Regulatory Authority from foreign authorities; ▪ Provisions allowing for inspections and investigations to be carried out for other regulatory authorities; 	The Regulatory Authority cooperates with regional & international regulators and it is necessary to provide assurance that any information shared with NBFIRA shall remain confidential. The amendment shall also allow the Regulatory Authority to carry out inspections and investigations on behalf of regional and international regulatory authorities. This shall be reciprocated by the foreign regulatory authorities.	