

# LEGISLATIVE UPDATE

APRIL-JUNE 2022

The objective of this report is to inform our valued clients of new legislative developments during the reporting period of April - June 2022. The report provides a record of new legislation published in the Government Gazette in a summary form. Legislation for purposes of this report refers to Acts of Parliament, regulations prescribed pursuant to Acts of Parliament, any other statutory instruments and Bills before the National Assembly.

For purposes of the below table, terms defined and used in each row will bear the meaning as given to them in their respective row and will not bear the same meaning when used in other rows.

UPDATE	COMMENT	PUBLISHED DATE
<b>Economic Inclusion Act No. 26 of 2021 (the "Act")</b>	<p>The Act is aimed at the implementation of existing economic empowerment laws and initiatives and the effective participation of "targeted citizens" in the economic growth and development of the economy.</p> <p>A targeted citizen is defined as a citizen whose access to economic resources has been constrained by various factors as may be prescribed by the Minister from time to time.</p> <p>The Act provides for the establishment of the Economic Empowerment Office, which will be responsible for overseeing the implementation of the Act.</p> <p>The Act applies to all sectors of the economy and requires both public and private bodies to participate actively in the economic transformation that the Act seeks to achieve.</p> <p>In terms of the Act, public bodies are required to adopt the measures set out in the Act to implement economic empowerment laws, policies initiatives and programmes to achieve the</p>	20 April 2022

- To enable ownership of land and property by targeted citizens;
- To create investment opportunities for a targeted citizen;
- To empower a targeted citizen; and
- To enable representation of a targeted citizen in the workforce.

The Act further prescribes duties specific to public bodies responsible for:

- Finance and economic development;
- Investment, trade and industry; and environment, natural resources conservation and tourism.

Private sector enterprises which are non-citizen owned or non-target citizen owned are also required to contribute to the economic transformation and empowerment objective of the Act as set out in the Act.

The commission of any of the offences listed under the Act attracts a fine of between BWP5,000.00 and BWP 1,000,000.00 (inclusive), or imprisonment for a period between 6 months and 10 years (inclusive) in respect of individuals. In the case of organizations, non-compliance with the Act attracts a fine of between BWP5,000.00 and BWP10,000,000.00 (inclusive).

**Constitution  
(Amendment) Bill,  
2022 (the "Bill")**

The Bill seeks to amend the Constitution to increase the number of elected members of the National Assembly from 57 to 61.

20 May 2022

In order to achieve this, clause 2 of the Bill proposes that section 58(2)(a) of the Constitution be amended by substituting the word "57" with "61".

**Non-Bank Financial Institutions Regulatory Authority (Supervisory Levies) Regulations, 2022 (the “Supervisory Levies Regulations”)**

The Supervisory Levies Regulations set out the supervisory levies that must be paid by a non-bank financial institution in each financial year as specified in its schedule.

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Section 3 of the Supervisory Levies Regulations states that the basis of calculation of supervisory levies for each financial year is the recovery of operational costs associated with carrying out supervisory activities in relation to a non-bank financial institution.

In accordance with section 4 of the Supervisory Levies Regulations, supervisory levies are to be paid in two equal instalments:

- On or before 30 April of each financial year; and
- On or before 31 October of each financial year.

Interest at a rate equal to the prevailing prime interest rate is payable on any unpaid supervisory levies. Further, a penalty levy will be imposed by the Regulatory Authority where a misstatement or other non-compliance leads to an under-collection of supervisory levies.

The Supervisory Levies Regulations revoked the Non-Bank Financial Institutions Regulatory Authority (Supervisory Levies) Regulations, 2020.

**Hypothecation (Repeal) Bill, 2022 (the “Bill”)**

The Bill seeks to repeal the Hypothecation Act [Cap 46:05] (the “**Repealed Act**”) as a consequence of the enactment of the Movable Property (Security Interests) Act, 2022 (the “**Security Interests Act**”).

10 June 2022

Subsidiary legislation made under the Repealed Act, that is not inconsistent with the Security Interests Act, shall continue to be in force.

The Bill does not affect decisions,

registered deeds of hypothecation, agreements, or legal proceedings instituted or pending under the Repealed Act.

**Tribal Land Act no 1 of 2018 (the "Act") commencement date**

The Act commenced on 20 April 2022. The Act repeals the Tribal Land Act of 1968 and introduces the following changes to the holding of tribal land in Botswana:

20 April 2022

- The Act requires the Land Boards to consult with Tribal Administration and District Councils in formulation of policies;
- Permits for the transfer of land boards functions/powers to other bodies with the consent of the Minister;
- Land Boards are now empowered to establish Committees to enhance efficiency;
- the Act makes registration of tribal land grants by Land Boards (Customary Grants and common law leases) at Deeds Registry compulsory;
- All land rights allocated by Dikgosi before the establishment of Land Boards and those allocated by Land Boards for registration of their customary land grants or leases within 6 months of the commencement of the Act;
- Transactions such as a mortgage lease capable of running for 5 years require consent of the Land Board if such transactions are proposed in favour of non citizens;
- The issue, sale, transfer, mortgage or any other disposal of shares in a private company owning tribal land also requires consent of the Land Board;
- The Act introduces market value as one of the factors to be considered in determining adequate compensation;
- The Act empowers the Land Tribunal to hear appeals concerning repossession and compensation matters from Land Boards.

**S.I No. 45 of 2022,  
Tribal Land  
Regulations, 2022 (the  
“Tribal Land  
Regulations”)**

29 April 2022

The Tribal Land Regulations were enacted to establish the Ministerial Committee (the “Committee”), whose duties include among others, recommending candidates for appointment as Land Board and Subordinate Land Board (collectively referred to as the “Board”) members and determining the tenure of the Committee. The Tribal Land Regulations also establish the land board committee and its composition, as well as the application process for aspirants of land board membership.

The Tribal Land Regulations set out the form for an application for the grant of customary land rights in the first schedule. For natural persons, a copy of the applicant’s identity card or passport for non-citizens, proof of marital status and marital regime if married are supporting documents to the application. For juristic persons like companies, the application is supported by proof of registration, proof of shareholding, copies of valid identity card or passports for non-citizen shareholders, constitution for societies, constitution for syndicates signed by all members, resolution of companies authorising the application, and proof of powers to acquire immovable property.

The Tribal Land Regulations also empower the Boards to hold meetings to consider the applications and will notify the applicants in writing of the date and venue of the meeting at least two weeks prior.

The Tribal Land Regulations also empower the Board to hold public sittings where any interested person shall be entitled to make representations concerning the application.

Further, the Tribal Land Regulations also set out the considerations that a Board makes before granting customary land rights which include:

- The rights of any other person;

- Availability of the land for use stipulated by the applicant;
- The suitability of size of the land for the use stipulated; and
- Eligibility of the applicant to use the land.

The Tribal Land Regulations also provide that the Board shall make to the Registrar of Deeds (the **“Registrar”**) a draft application in the form set out in the first schedule (Form 2), accompanied by a resolution of the Board in the form set out in the first schedule and any other supporting documents as would be required by the Registrar.

The Tribal land Regulations also empower the Board to administer an oath or affirmation to any person appearing before it, to subpoena any person to give evidence before it or give an oath.

Failure to obey such subpoena attracts a fine of BWP500 or a term of imprisonment of three months or both. Failure to take the oath is an offence punishable by fine of BWP5,000 or a term of imprisonment of six months or both.

The Tribal Land Regulations also stipulate that any decision by a Board shall be made in writing to the address provided by the applicant and that upon authorising any transfer of any customary land right, the Board shall submit to the Registrar a signed resolution of the Board.

Further, the Tribal Land Regulations empower a Board to cancel any customary rights subject to written notice at least thirty days prior stating the grounds upon which cancellation shall occur.

The grantee is allowed to appeal against the cancellation of rights.

The Tribal Land Regulations also grant the Board the power to, upon receipt of the application for a grant of land by way of lease, consider the terms and

conditions including the consideration to be paid by the applicant.

Further, the land board provides for appeal against the decision of the Board within thirty days of receipt of such decision.

The Tribal Land Regulations also provide for repossession of land for public purposes subject to compensation to grantees. Factors that the Minister of Lands and Water Affairs (the "Minister") considers in paying compensation for such repossession include the following:

- The loss of land right where the alternative land of same size and value has not been granted;
- Value of any standing crops;
- Value of any improvements on the land;
- Costs of resettlement of the grantee;
- Registration of title;
- Removal and transportation costs; and
- Mortgage costs incurred by the grantee and the execution of a new mortgage.

The amount for consolation will be computed subject to the following factors:

- Length of time the grantee has been resident on the land;
- Inconvenience likely to be suffered by the grantee;
- Disturbance, disruption or closure of any business operations for a period of three months prior; and
- and loss of goodwill.

The Tribal Land Regulations make it clear that no compensation shall be paid if the grantee is not entitled to the land.

The Tribal Land Regulations also provide schedules with sub-headings as follows:

- **Schedule 1** – form for application of land rights;
- **Schedule 2** – deed of customary land grant layout;
- **Schedule 3** – resolution of the Board;
- **Schedule 4** – form of subpoena;

- **Schedule 5** – memorandum of agreement of lease;
- **Schedule 6** – assessment and valuation reports, inspection report and fees for services provided.

**S.I. No. 48: Tribal Land (Amendment) Regulations, 2022**

The Tribal Land Amendment Regulations have been amended in the second schedule, under the heading “Rentals” by –

13 May 2022

- Deleting the words “P1000.00/Annum” in the column corresponding to “Undeveloped Small Agricultural Holdings (Dairy, Horticulture, Small Stock Farm, Piggery, Garden, Integrated Farm Held Under Common Law Lease”;

and substituting for the corresponding entries in the first and second column the following:

- “Developed Small Agricultural Holdings (Dairy, Horticulture, Small Stock Farm, Piggery, Garden, Integrated Farm Held Under Common Law Lease) – P1000 + P1.50/Ha/Annum”;
- “Undeveloped Game Farms/Livestock Ranches – P1000.00 + P1.00/Ha/Annum” and
- “Undeveloped Game Farms/Livestock Ranches – P1000.00 +P1.50/Ha/Annum”.

**S.I. No. 32 of 2022 – Non-Bank Financial Institutions Regulatory Authority Act (Remaining Parts Commencement Date) Order, (“NFIRA Commencement Date) 2022**

The NBFIRA Commencement Date has effected 8 April 2022

8 April 2022

Parts VII and X of the Non-Bank Financial Institutions Regulatory Authority Act to operation on the date of the publication of the Order.

**S.I. No. 41 of 2022 – Copyright and Neighbouring Rights (Amendment) Regulations, 2022 (the “Copyright Amendment Regulations”)**

The Copyright Amendment Regulations have been amended by substituting for the Fourth Schedule the following new Schedule – “Fourth Schedule – Levies” Goods:

22 April 2022

- Audio cassette – 2% of the levy on cost price;



- Video cassette – 2% of the levy on cost price;
- Compact disc (CD)(unrecorded) – 1% of the levy on cost price;
- Digital versatile disc (DVD)(unrecorded) – 1% of the levy on cost price;
- Smartphones – 2% of the levy on cost price;
- Other cellphones – 1% of the levy on cost price;
- Computer (desktop) – 1% of the levy on cost price;
- CD writer – 1% of the levy on cost price;
- Multi-function machine (printer/copier/fax/scanner) – 2% of the levy on cost price;
- Facsimile – 2% of the levy on cost price;
- Photocopier – 2% of the levy on cost price;
- Printer – 2% of the levy price;
- Scanner – 2% of the levy price;
- Modulator – 1% of the levy price;
- iPod – 1% of the levy price;
- iPad – 2% of the levy price;
- MP3 player – 1% of the levy price;
- MP4 player – 1% of the levy price;
- Flash disc – 1% of the levy price;
- Camcorder – 2% of the levy price;
- Digital camera – 2% of the levy price;
- Photographic camera – 2% of the levy price;
- Television camera – 2% of the levy price;
- Television – 2% of the levy price;
- Cinematographic camera – 2% of the levy price;
- Cinematographic projector – 2% of the levy price;
- Laptop – 2% of the levy price;
- Tablet – 2% of the levy price;
- Video recording or reproducing apparatus, whether or not incorporating a video tuner – 2% of the levy price;
- Sound recording or reproducing apparatus – 2% of the levy price;
- Memory card or smart card – 2% of the levy price;
- External hard drive – 2% of the levy price;
- Television decoder or set top box – 2% of the levy price;
- Drone – 2% of the levy price; and
- CCTV camera – 2% of the levy price.