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INVESTOR  
COMPENSATION  
FUND

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# INTRODUCTION

- Section 57 of the Securities Act the Non – Bank Financial Institutions Regulatory Authority (NBFIRA) provides that NBFIRA shall make Investor Compensation requirements by which an Investor Compensation Fund shall be established.
- NBFIRA delegated the function of developing the Investor Compensation Fund Rules (the Rules) and managing the Investor Compensation Fund (Compensation Fund) to the Botswana Stock Exchange Limited (BSE).
- The BSE duly created the Rules which were approved by NBFIRA in April 2022.
- The Rules took effect on the 7<sup>th</sup> April 2022.

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# KEY DEFINITIONS

- **Claimant** - means all securities investors, with eligible claims in terms of the rules, excluding institutional investors, who have suffered loss as a result of a participant's failure to meet their contractual obligation.
- **Participants** - means the BSE, the Central Securities Depository Company of Botswana (CSDB), Securities Brokers who are Members of the Exchange, Special Members of the Exchange, CSD Participants and any other entity as the BSE may determine from time to time.

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# WHAT IS A COMPENSATION FUND?

A Compensation Fund in relation to a financial market, is a rescue fund for securities investors, established to grant securities investors compensation for financial losses suffered as a result of a Participant's failing to meet their contractual obligations.

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## WHAT IS THE PURPOSE OF THE COMPENSATION FUND?

- To grant compensation to clients for losses suffered as a result of non-fulfilment of contractual obligations due to: (a) Dishonesty, insolvency, default, or liquidation of a Participant; (b) Dishonesty of an employee of a Participant, among other reasons.
- To protect securities investors' investment interests.
- To ensure financial integrity in the securities market in Botswana.
- To enhance investors' confidence in the securities market of Botswana.

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## WHAT IS THE SCOPE OF INVESTOR COMPENSATION FUND?

- The Compensation Fund covers transactions and dealings of Securities traded on the exchange.
- Coverage: losses suffered by a Claimant for recovery of losses where:
  - (a) the claimant gives money or other property or authority over property, to a Member to facilitate a transaction;
  - (b) the claimant suffers loss because: i. if the claimant provided money or other property to the Member resulting in the defalcation or fraudulent misuse of the money or other property by the Member; or ii. if the claimant gave the Member authority over property resulting in the fraudulent misuse of that authority by the Member.
- Where a claimant suffers loss arising from a contractual or statutory obligation placed on any other participant besides a Member as defined under the Rules.
- **NB:** The Compensation Fund **DOES NOT COVER** default obligations, shortfalls, deficiencies and or any other defaults during clearing and settlement of trade transactions by CSDB. This type of protection is provided for by the Settlement Guarantee Fund Rules.

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# WHO CONTRIBUTES TO THE COMPENSATION FUND?

- All Participants of the Fund being, the BSE, the Central Securities Depository Company of Botswana (CSDB), Securities Brokers who are Members of the Exchange, Special Members of the Exchange, CSD Participants and any other entity as the BSE may determine from time to time.
- Each Participant is required to contribute a sum of **BWP 5, 000.00** (Five Thousand Pula), towards the Compensation Fund per annum.

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# WHO IS ELIGIBLE TO CLAIM FROM THE INVESTOR COMPENSATION FUND?

- All securities investors, with eligible claims in terms of the Rules, **excluding institutional investors**, who have suffered loss as a result of a Participant's failure to meet their contractual obligations.
- A retail investor who can prove they have a legitimate claim.

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# WHAT IS A LEGITIMATE CLAIM?

- A Claim that proves:

(a) that the claimant has suffered loss and the loss was a direct result of malpractice, negligence, error, on the part of the Participant;

- (b) that the claimant has suffered loss and the loss was a direct result of insolvency on the part of the Participant;
- (c) that the claimant gave money or property or authority to a Participant or a person who the claimant believed was a Participant or acting on behalf of the Participant;
- (d) Proof that the money or property or authority was given to the Participant in connection with effecting a transaction covered by the provisions of the Members Rules, the Equity Listings Requirements, Automated Trading System Debt Trading Requirements and other applicable Rules and Requirements relating to transactions effected through the Exchange.

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# HOW TO MAKE A CLAIM FROM THE INVESTOR COMPENSATION FUND

- Make an application addressed to the **Chief Executive Officer of the BSE** through the prescribed application form **within 3 years** from the date of default.
- Ensure the application contains the following:
  - the names of the parties involved;
  - addresses of the parties involved;
  - the details of the transaction (s) or proposed transaction (s) for which the money or property or authority over property was given, including the date, time, place and type of contract(s) or securities traded or proposed to be traded;
  - steps the claimant has taken to exhaust any remedies available to him in respect of the loss and the results of any such steps;
  - the amount of the actual pecuniary loss suffered in BWP;
  - proof that applicant has a legitimate claim.
- If an investor is successful, their claim will be paid within 6 months from the date of application.

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# WHAT ARE THE GROUNDS FOR REJECTING A CLAIM?

- If the investor has contributed in any way to the financial difficulties of the Participant in default;
- If the application is found to contain any inaccuracy or omission, unless this is clearly immaterial or is shown by the investor to be wholly innocent; or
- Where the investor has so conducted himself in his dealings with a Participant in default, as to be in breach of applicable law or regulations, including these Rules.

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# LIMITATION OF CLAIMS

- The amount that a claimant is entitled to claim as compensation from the Compensation Fund, shall not:  
  
**exceed 5% of the Compensation Fund or BWP 500, 000.00 (Five Hundred Thousand Pula) whichever is lower**, provided that the total compensation paid from the **Compensation Fund in any one year shall not exceed 50%** of the balance available in the Compensation Fund.

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## WHAT HAPPENS IF THE COMPENSATION FUND IS LIQUIDATED?

- **The assets in the Compensation fund shall be disbursed to the BSE, and Participants according to the proportions of their contributions should the Fund remain sufficient.**

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## WHAT HAPPENS IF THE COMPENSATION FUND IS INSUFFICIENT?

- If at any time the amount of the Compensation Fund is insufficient to pay all amounts that, at that time, are required to be paid, the Board of Trustees may determine that a levy of a specified amount be paid equally among all the Participants.



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