



# CONSULTATION PAPER ON THE ELECTRONIC COMMUNICATIONS & TRANSACTIONS REGULATIONS

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## Forward

The proposed Electronic Communications and Transactions Regulations have been developed as subsidiary legislation to the Electronic Communications and Transactions Act, with the purpose of giving effect to and implementing certain fundamental portions of that Act, principally those relating to secure electronic signatures.

This consultation follows an informal consultation carried out through a public workshop organised by BOCRA on the **30<sup>th</sup> January 2015**, where initial feedback and comments were taken and incorporated, to the extent possible or feasible, within the version of the Electronic Communications and Transactions Regulations attached in **Annex A**.

The public is invited to make additional comments on the proposals set out in this paper by the **27<sup>th</sup> February 2015**, to the following:

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Upon reception of all comments, BOCRA will produce the final version of the Electronic Communications and Transactions Regulations to be presented to the National Assembly.

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# 1. Introduction

- 1.1 Electronic commerce developed globally at a fast pace to become a pre-eminent way of conducting business. The successful uptake of this way of doing business was a result of the internationalisation of markets and the realisation that through electronic commerce, one could not only purchase products and services that were not available in one's immediate location, but one could also market and sell products and services worldwide, thus dramatically increasing the potential customer base for a business. The possibility for consumers to purchase from foreign jurisdictions and for producers to sell to foreign jurisdictions has also proved itself to be a formidable way of increasing competitive efficiency and has resulted in better standards of living for societies who have embraced this way of doing business.
- 1.2 Botswana is still at a stage in its economic development where it is heavily-reliant on the extraction of finite resources for the sustenance of its standard of living. Although great strides have been made in improving the living conditions of the Batswana society over the past decades, the heavy reliance on the extraction industries means that this solution cannot be relied on for ever. By their very nature, the extraction industries, when directed towards a finite resource base, can provide sustenance only up to that point up till which the resources can be extracted economically. As such resources are extracted over time, their stock levels will go down until they are either totally depleted or until those resources that can be economically extracted are used up. Policy makers therefore have a duty to think about what comes next, after mineral resources can no longer be relied on as a source of foreign currency. This is especially vital in the case of Botswana where, at present, 80% of the wealth generated by the country comes from diamond, nickel, copper and gold extraction.
- 1.3 A solution that has worked remarkably well even in economies that have started off without any natural resources has been a strategically-directed shift towards the high-tech manufacturing and services economy. Services usually need minimal amounts of natural resources and produce higher-value added per capita than extraction activities. High-tech manufacturing, on the other hand, require composite materials as inputs but can also result in very high value added activities. The transition from extractive industries to service and high-tech manufacturing industries cannot materialise overnight. It is also not automatic and requires considerable investment in infrastructure and human resources. In this setting, electronic commerce can serve as a key enabler for the transition that Botswana is aspiring for as it can integrate Botswana's economy better into the global economy and can also spur the flow of knowledge between Botswana and the rest of the world that Botswana needs to be better able to fuel its drive towards economic activity characterised by high-tech manufacturing and services.
- 1.4 Electronic Commerce prospects, however, are unachievable without a solid enabling legal framework, based on international best practices. For this reason, the

**Electronic Communications and Transactions Act** (“the Act”) was enacted by Botswana in 2014, thereby giving the country a foundation from which to start capitalising on the opportunities offered by electronic commerce (“e-Commerce”). The Act, however, required a set of subsidiary legislation in order to properly give effect to certain elements of the principal legislation; thus, the **Electronic Communications and Transactions Regulations** (“the Regulations”) were developed in order to provide for:

- the notification and accreditation of certification service providers in accordance with **Section 26 of the Act**;
- the administration of take-down notifications in accordance with **Section 44 of the Act**;
- the issuance of compliance orders in the event of a breach of the Act or the proposed Electronic Communications and Transactions Regulations;
- other general matters in relation to electronic transactions and e-Commerce.

1.5 Due to the fact that the Regulations deal, in the most part, with the accreditation of electronic signatures, and in view of the fact that such accreditation is to be administered by BOCRA in accordance with **Section 26 of the Act**, BOCRA has taken the lead in the development of the Regulations; however, BOCRA has been supported and has worked closely with representatives from the Ministry of Trade and Industry, and representatives from the Ministry of Defence, Justice and Security, in carrying out this project.

1.6 The following sections explain the salient features of the Regulations and make proposals for discussion thereto.

## 2. Electronic Signatures & Related Services

### 2.1 The Importance of Electronic Signatures

- 2.1.1 A fundamental element of e-Commerce is the ability to identify the originator of an electronic document and to signify acceptance of the contents of that document in the same manner and at least to the same extent that this is possible with a traditional handwritten signature.
- 2.1.2 Whilst the terms ‘electronic signature’ is an extensive term which can incorporate any type of signature done in an electronic manner, such as putting one’s name at the bottom of an email message, or placing a scanned signature on an electronic document, not all electronic signatures have the same evidentiary value. For an electronic signature to be considered as equivalent to a handwritten signature, it needs to be secure in terms of **Article 25 of the Act**. This, in turn, means that it has to be accredited, under the Regulations, by BOCRA.
- 2.1.3 This notwithstanding, accreditation of an electronic signature product/service is not mandatory – it is only necessary if one is claiming outright that his electronic signature product/service can provide the same evidentiary weight as a handwritten signature. If one is providing an electronic signature product/service which is not accredited or otherwise recognised by BOCRA (under **Regulation 20**), this will simply mean that, in the event of legal proceedings, his subscribers will have the burden of proving the reliability of the signature used in the circumstances at hand. On the other hand, an accredited secure electronic signature shifts the burden of proof in favour of the signatory, so that such a signature will be considered reliable unless clear evidence to the contrary is presented.
- 2.1.4 Certain providers of certification products and services, though not requesting accreditation or recognition, still need to notify BOCRA if they are operating in or from Botswana, as detailed in the upcoming paragraphs.

### 2.2 Notification of Generic Certification Service Providers

- 2.2.1 The Act defines a “**certification service provider**” as “a person providing an authentication product or service incorporated in or logically associated with an electronic communication”. This is quite a wide definition and would incorporate even simple authentication services such as the provision of a username and password to access a website. The Regulations only deal with a sub-category of authentication products and services: namely, those where certificates are issued and those where other services related to electronic signatures are concerned.
- 2.2.2 Providers of this sub-category of products/services must, as from the 1<sup>st</sup> October 2015, formally notify BOCRA prior to commencing operations in or from Botswana. The notification only requires basic information as provided in **Regulation 3(1)** (the

name, identification details and contact details of the certification service provider, a description of the product or service to be provided and any other information which the Authority may deem fit to require). No fee accompanies this basic notification and its main purpose is the availability of a public register of such providers, which can be accessed from BOCRA's website as provided in **Regulation 8**. Changes or cessation of the provision of the goods or services must also be notified to the Authority<sup>1</sup>.

## 2.3 Accreditation of Certification Service Providers

### 2.3.1 Criteria for Accreditation

2.3.1.1 **Paragraph 2.1.2** above has explained why accreditation may be desired even though it is not mandatory. Accreditation, once awarded, means that the service provider can make use of the "*Accredited by BOCRA*" symbol to signify that his product/service has been thoroughly vetted and complies with the high standards required by BOCRA.

2.3.1.2 It is being proposed that accreditation should only be made available to a company; however the company need not be resident, established or operating in or from Botswana, provided that it is compliant with the requirements of the Regulations<sup>2</sup>. The intention behind this provision is to allow Botswana to be a jurisdiction of choice for providers who wish to obtain accreditation in a reputable jurisdiction outside of their country of establishment.

2.3.1.3 Accreditation entails the submission to BOCRA of a completed Application Form (which will be available from BOCRA's website) together with:

- documentation in relation to the applicant and its employees as requested in the said Application Form;
- the provider's Certification Practice Statement;
- a copy of the standard end-user agreement;
- a business plan as detailed in the Application Form;
- the audited financial statements of the applicant for the past two (2) years, if available;
- an Audit Report compiled in accordance with the ACS Compliance Checklist, as detailed in **Regulation 6**;
- any other information which the Authority may deem fit to require.<sup>3</sup>

2.3.1.4 BOCRA shall only award accreditation of a secure electronic signature where it is satisfied that it conforms with and satisfies the requirements laid down by the Schedules to the Regulations and the **Accredited Certification Service Standards**

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<sup>1</sup> A reference to "the Authority" in this document shall be considered as a reference to BOCRA.

<sup>2</sup> Regulation 4.

<sup>3</sup> Regulation 5.



("the ACS Standards"). The requirements are based on the use of public key cryptography to support the electronic signature and the ACS Standards, which shall be revised by BOCRA from time to time to reflect up-to-date international best practices<sup>4</sup>, and to ensure that the accredited certification service provider has properly established procedures and security measures in place to minimise the operational and financial threats and risks associated with such public cryptographic systems.

## **2.3.2 The Auditing Process**

- 2.3.2.1 In order for the applicant for accreditation to prove compliance with the Act, the Regulations and the ACS Standards, it will require the submission of an Audit Report compiled in accordance with **Regulation 6**, against the **Accredited Certification Service Compliance Checklist** ("the ACS Compliance Checklist"), which will be available on BOCRA's website.
- 2.3.2.2 The Audit Report must be compiled by a team made up of a certified public accountant and a certified information systems auditor with experience and expertise in electronic signatures. The auditors must be independent of the certification service provider being audited and must not be a software or hardware vendor that is or has provided any services or supplied equipment to the certification service provider, or an entity providing competing services to it. The team of auditors do not need to be part of the same firm and can be chosen separately.
- 2.3.2.3 The auditors must be approved by BOCRA. Establishing additional criteria for the auditors to be approved, in addition to those mentioned above was discussed; however, it was felt that these criteria need to be flexible and should not be placed within the Regulations. Rather, BOCRA will be issuing calls for auditors interested in being placed on this list, and the criteria, together with the conditions of approval, will be included within this call. Once placed on the list of approved auditors, it will be up to the applicant/service provider to decide which auditors to work with.
- 2.3.2.4 Auditing also occurs upon request for renewal and furthermore, at any point in time when BOCRA deems fit to request a full or partial audit in accordance with **Regulation 11**. The expenses of an audit report are always borne by the applicant/service provider, except where an audit was requested by BOCRA following an allegation of misconduct by an accredited service provider, which complaint thereafter proves to have been made in bad faith, or to have otherwise been frivolous or vexatious. In such cases, **Regulation 12** states that the Authority may require the person who made the allegation to pay any costs and expenses involved in the inquiry, including the cost of the Audit Report.

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<sup>4</sup> The ACS standards were not included in the Regulations so as to allow for fast and efficient updating of the requirements as necessary.

### 2.3.3 Waiver provision

- 2.3.3.1 One other important provision is the waiver provision found in **Regulation 19**. This provides that any certification service provider that, in applying for accreditation, wishes to apply for a waiver of any of the requirements specified in the Regulations, may make a request in writing to the Authority to this effect, giving reasons for the request and supporting its arguments with such documentation as the Authority may require. The possibility of giving examples of circumstances where waiver may be requested was discussed. However, such an option was felt to be limiting the scope of a provision which was kept intentionally wide to give BOCRA discretion in this respect. One can find an example of how such waiver could operate in **Paragraph 2.3.4.2** below.

### 2.3.4 The ACS Standards

- 2.3.4.1 It is being proposed that the ACS Standards should be rigorous enough to ensure that a certification service provider accredited by BOCRA will be able to meet the requirements imposed by the regimes in Europe and the United States of America. The benefit of this will be that a certification service provider accredited in Botswana will meet standards that are sufficiently high to be able to offer its products and services beyond Botswana's borders.
- 2.3.4.2 In order for this to occur, the ACS Standards would need to implement the more rigorous and prescriptive provisions of each regime to ensure compliance with both. Of course, one could always apply for a waiver under **Regulation 19** for certain elements of his operations – for example, if a certification service provider is interested in targeting his service towards the United States but not Europe, he could request BOCRA to waive the requirements which go beyond those required by the United States, and BOCRA may evaluate this request provided that the service provider makes amply clear to the public where the limitation of his services lie.

## 2.4 BOCRA's Powers

- 2.4.1 BOCRA is generally tasked with the administration of the accreditation process and the supervision of accredited certification service providers. The Regulation gives BOCRA the powers required to fulfil these tasks; thus BOCRA can:
- accept or reject an application for accreditation or for renewal of accreditation in accordance with **Regulation 15**;
  - cancel or suspend accreditation in accordance with **Regulation 16**;
  - monitor the activities of an accredited certification service provider in accordance with **Regulation 11**;

- investigate allegations of misconduct or a breach of the Act, the Regulations, the ACS Standards or any other legislation or regulations by an accredited certification service provider in accordance with **Regulation 12**;
- investigate allegations of breach of the Certification Practice Statement or the end-user terms and conditions, in accordance with the same **Regulation 12**;
- impose any condition as it may deem fit, at any time either upon granting accreditation or further to the carrying out of its monitoring activities, as provided for in various parts of the Regulations.

2.4.2 BOCRA is to decide an application for accreditation within three (3) months from submission of a full application for accreditation, and an application for renewal within two (2) months from submission of a full application for renewal. The removal of timelines in this respect was discussed; however BOCRA felt that a requirement in the law, for BOCRA to adhere to these timelines was preferable.

2.4.3 All decisions of the Authority taken under the Regulation may be appealed by any person who is aggrieved by such decision in accordance with the Communications Regulatory Authority Act, as provided in **Regulation 18**.

## 2.5 Standard required for the recognition of certificates issued outside Botswana

2.5.1 The Regulations also cater for the recognition of foreign certification service providers and propose that for the purposes of **Section 31 of the Act**, a certificate issued by a certification service provider outside Botswana, not being issued by a service provider accredited by the Authority, shall be considered as equivalent to a certificate issued in terms of the same Act and the Regulations if:

- it is proven, through an Audit Report commissioned in accordance with **Regulation 6**, to be compliant with the requirements of these Regulations; or
- the service provider issuing it is accredited in an approved jurisdiction.

2.5.2 Once again, the list of “approved jurisdictions” for this purpose needed to remain flexible and thus rather than including such jurisdictions in the Regulation, it was deemed best to keep the list on BOCRA’s website where it could be easily updated, if necessary.

2.5.3 If a certification service provider is accredited in a jurisdiction which is no longer an approved jurisdiction, BOCRA must notify such certification service provider, that as from a specific date, certificates issued by it shall no longer remain recognised, unless it is willing to undergo an Audit Report. For evidentiary purposes, however, a certification service used at a time when the service was still recognised shall be deemed as secure in terms of **Part V of the Act**, unless evidence to the contrary is adduced.

## 2.6 Other matters regarding electronic signatures under the Regulations

2.6.1 The regulations provide additionally for:

- Significant changes in the ownership, management or operations of an accredited certification service provider - **Regulation 10**;
- The process to be followed in the event of voluntary non-renewal of accreditation or discontinuation of operations - **Regulation 14**;
- Effect of cancellation or suspension of accreditation - **Regulation 17**;
- Prohibited Actions and resulting penalties in case of a breach - **Regulation 21**.

## 2.7 Electronic Signatures: Summary of Proposals

### 2.7.1 PROPOSAL 1

2.7.1.1 BOCRA proposes to require notification of certification service providers who issue certificates or provides other services related to electronic signatures in or from Botswana, as detailed in **Section 2.2**.

<i>Question:</i> Do you agree with the notification requirement as described?
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### 2.7.2 PROPOSAL 2

2.7.2.1 BOCRA is proposing a process for the voluntary accreditation of certification service providers to require notification of certification service providers as detailed in **Section 2.3**.

<i>Questions:</i>
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Do you generally agree with the accreditation process as described?

Do you agree that accreditation should only be available to a company?

Do you agree that the company need not be resident, established or operating in or from Botswana to be eligible for accreditation?

Do you agree that the ACS Standards should incorporate the more rigorous provisions of the standards employed in Europe and the United States in order for Botswana's accredited certification service providers to be able to immediately meet the standards of either the EU or the USA, or do you think Botswana should have its own 'stand-alone' standards?

### 3. Use of electronic records and electronic signatures by Government

#### 3.1 The Importance of Electronic Government

- 3.1.1 One of the most important and expedient consequences of the recognition of electronic transactions and records is the possibility of making use of an Electronic Government (“**e-Government**”) platform. Electronic Government means the use of technology to improve citizens’ access to, and interaction with Government. Examples of e-Government services would include the possibility to file applications and tax returns, submit and request records and make payment of fees to Government online. In a country like Botswana, given the distances which citizens need to travel in order to carry out these activities in person, a shift to the online platform will be undoubtedly welcome.
- 3.1.2 Such e-Government services are not possible however, unless an enabling legislative framework is in place and unless secure and reliable electronic signatures can be used in relation to these services. Thus, **Part III of the Regulations** propose that a department or ministry of the Government, organ of State or statutory corporation that: accepts the filing of documents, requires that documents be created or retained, issues any permit, licence or approval, or provides for the method and manner of payment, may accept the filing of such documents, or the creation or retention of such documents in the form of electronic records, may issue permits, licences or approvals in the form of electronic records and may accept payment in electronic form.
- 3.1.3 The Regulations further propose that in such a case, the department or ministry of the Government/organ of State/statutory corporation make specifications in this regard as to format, signature used, security measures to be put into place and other similar matters; however, an application or record which was signed or authenticated through the use of a secure electronic signature which is accredited by BOCRA should always be accepted, given that BOCRA’s standards, as explained above, are expected to be rigorous. BOCRA always has the option and discretion to require additional specifications for electronic signatures to be used in e-Government services, by placing such specification in the ACS Standards.

#### 3.2 Electronic Government: Proposals

##### 3.2.1 PROPOSAL 3

- 3.2.1.1 BOCRA proposes to enable the provision of e-Government services through the Regulations by providing therein that a number of Government-related activities

can be carried out electronically and proposing that a secure electronic signature accredited by BOCRA should be sufficient for e-Government purposes, as detailed in **Paragraphs 3.1.2 and 3.1.3**.

*Questions:*

Do you agree with the provision of e-Government services as discussed above?

Should there be particular specifications in relation to signatures for e-Government services?

## 4. Administration of Take-Down Notifications by BOCRA

### 4.1 Liability of Intermediary Service Providers and Take-Down Notices

- 4.1.1 Within the context of this section, a “**service provider**”, as defined in the Act, means “a person or party that makes information system services available”; therefore this section refers to the likes of internet service providers (“**ISPs**”), providers of hosting facilities (such as those hosting a third party website) and those linking to content on a third party website.
- 4.1.2 Without going into detail with regard to the provisions of the Act in this regard (as the provisions of the Act are beyond the scope of the present consultation), it may be stated that such ‘intermediaries’ are generally considered as being immune from liability in relation to content being transmitted through their systems, or content being cached, hosted or linked to, even if such content is illegal or in breach of a third party’s rights (for example, by being in breach of another person’s copyright). This immunity, however, is only given to the intermediary if certain conditions are present<sup>5</sup>.
- 4.1.3 When it comes to caching, hosting or linking to illegal content, one such condition is that the service provider must not be aware of the fact that the content being cached, hosted or linked to may be illegal. Thus, upon become aware of this the illegality or breach of a third party’s rights, the content, or the link thereto, must be immediately removed if the intermediary wishes to preserve its immunity. For this reason, the Act provides for the possibility of sending a ‘take-down notification’ to make the intermediary service provider aware of the contentious content. The service provider, in view of the aforementioned provisions of the Act, will generally react immediately by removing the content or the link to it. A service provider should address such scenarios in its terms and conditions with clients.

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<sup>5</sup> See Sections 40-43 of the Act.

## 4.2 BOCRA's Role in Take-Down Notices

- 4.2.1 **Section 44 of the Act** tasks BOCRA with the administration of take-down notices, which have to be drawn up as provided in the same section. The Regulations supplement this by providing the manner in which this administration is to take place by BOCRA.
- 4.2.2 In the first place, it must be noted that BOCRA cannot take on the role of a court or tribunal by attempting to take a decision as to whether any content being complained of in a take-down notification is actually illegal or in breach of a third party's rights. BOCRA does not have the power, nor the expertise to be able to conduct a hearing in relation to a large variety of matters (ranging from breach of intellectual property rights, to privacy, to pornography and other matters). Thus, it is proposed that BOCRA's role should be limited to the following:
- verifying the identity of the complainant;
  - ensuring that the take-down notification complies with the requirements of **Section 44 of the Act**;
  - following positive identification and compliance, sending the take-down notification to the service provider identified by the complainant in the take-down notification;
  - requesting information as to the action taken by the service provider following take-down notification and imposing a penalty if such report is not received;
  - keeping a record of all take-down notifications received, action taken and reports received from the service provider.
- 4.2.3 BOCRA can only administer take-down notices where the service provider identified by the complainant in the take-down notification is a body corporate registered in Botswana and/ or the main operations of the service provider are carried out from Botswana. Furthermore, **Regulation 23(4)** provides that BOCRA shall not be liable, in any manner whatsoever, for a wrongful take-down by a service provider in response to a notification of unlawful activity which complied with **Section 44(1) of the Act**.
- 4.2.4 Whilst the immunity provision for service providers are quite commonplace in international practice, complainants would normally send take-down notifications directly to the intermediary service provider, and the involvement of an authority like BOCRA is not customary. Any variation to BOCRA's role in the administration of take-down notifications under **Section 44 of the Act**, however, would have to be done through an amendment to the main Act.

## 4.3 Take-down notifications: Proposals

### 4.3.1 PROPOSAL 4

- 4.3.1.1 BOCRA proposes to administer take-down notifications required by **Section 44 of the Act** as detailed in **Section 4.2**.

<p><i>Question:</i> Do you agree with BOCRA's role in the administration of take-down notifications as described?</p>
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## 5. Dispute Resolution and Issuance of Compliance Orders regarding breaches of Parts VI and VII of the Electronic Communications and Transactions Act

### 5.1 Part VI of the Act: Consumer Protection

- 5.1.1 **Part VI of the Act** deals with protection of consumers who are carrying out transactions online. Without going into detail with regard to the provisions of the Act in this regard (as the provisions of the Act are beyond the scope of the present consultation), the consumer protection provisions try to bridge the gap created by transactions carried out at a distance, such as the fact that a consumer purchasing online cannot always speak to the seller, know who he/she is, nor can the consumer see the product being purchased clearly. For this reason, the Act provides for matters such as detailed information which needs to be provided by online sellers, as well as the obligatory provision of a seven (7) day 'cooling off' period during which the consumer can cancel the sale without reason and without penalty. **Regulation 27** clarified that this 'cooling off' period only applies to a transaction for the supply of goods if the goods in respect of which the right of cancellation is to be exercised can be returned to the seller in the same state in which they were purchased.
- 5.1.2 **Regulation 24(1)** makes it clear that the Consumer Protection Office in Botswana will also have the right and obligation to administer **Part VI of the Act** and to take cognisance of any complaint made by a consumer in relation to an alleged breach of this part of the Act.
- 5.1.3 One matter of note in this respect is that the definition of a 'consumer' in the Act and in the Consumer Protection Act differ, so that the definition under the Electronic Communications and Transactions Act is wider than that in the Consumer Protection Act. A rectification in this regard, however, would have to be done through an amendment to the main Act.



## 5.2 Part VII of the Act: Online Marketing

- 5.2.1 **Part VII of the Act** deals with the manner in which marketing through electronic communications should be done and prevents unsolicited marketing communications through the use of electronic communications. A complaint under this part of the Act is open not only to consumers, as any person receiving such unsolicited marketing communications can make a complaint. Due to the fact that unsolicited marketing is technically a breach of privacy, **Regulation 24(2)** makes it clear that the entity in Botswana which will be responsible for privacy and data protection will also have the right and obligation to administer **Part VII of the Act** and to take cognisance of any complaint made by any person in relation to an alleged breach of this part of the Act.

## 5.3 Compliance Orders

- 5.3.1 **Regulation 25** deals with compliance orders which may be issued by the entities mentioned in **Paragraphs 5.1.2 and 5.2.1** above. A compliance order is issued at the sole discretion of the entity concerned and as a result of a breach of the relevant parts of the Act as mentioned above. It is issued either on the entity's own initiative or upon request by a department or ministry of government, organ of state or statutory corporation, in Botswana or in a third country.
- 5.3.2 Prior to proceeding with the issuance of a compliance order under **Regulation 25(1) and (2)**, the relevant entity shall, if it considers it to be possible and reasonable to do so, seek to achieve voluntary compliance by the service provider and other persons involved and allow a service provider the opportunity of being heard. In the event that the recipient of a compliance order fails to comply with its provisions, the relevant entity shall have the power to impose a fine for each day during which failure to comply persists and to publish the compliance order in the Gazette, on the relevant entity's website, in local newspapers and to otherwise publicise the recipient's lack of compliance with the Act. A publication so made must be factual and concise.
- 5.3.3 Clearly, where the person or body corporate in breach of the provisions of **Parts VI and VII of the Act** is a service provider who is not resident, registered or established in Botswana, and the operations of the service provider are not based in Botswana, the relevant entity does not have the power to enforce the provisions of the Act; however, **Regulation 25(5) allows the entities to** publicise the service provider's lack of compliance with the Act as provided above, thus making the public aware of which service providers fail to uphold the standards required by Botswana.

## 5.4 Consumer Protection and Online Marketing: Proposals

### 5.4.1 PROPOSAL 5

- 5.4.1.1 BOCRA proposes the seven (7) day ‘cooling off’ period established by **Section 35 of the Act** should only apply to a transaction for the supply of goods if the goods in question can be returned to the seller in the same state in which they were purchased.

*Question:* Do you agree with this proposal?

### 5.4.2 PROPOSAL 6

- 5.4.2.1 BOCRA is proposing the issuance of a compliance order for breaches of Parts VI and VII of the Act as detailed in **Section 5.3** above.

*Question:* Do you agree with the rationale and methodology for the issuance of compliance orders as described?

## 6. Next Steps

BOCRA invites all stakeholders to respond to the questions and make comments on the issues raised in this consultations paper by the **27<sup>th</sup> February 2015**. The comments should not be restricted to the questions asked, but should also cover any areas that are deemed to be important to this consultative document. Upon reception of all comments, BOCRA will produce the final version of the Electronic Communications and Transactions Regulations to be presented to the National Assembly.