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ACT NO. 2 OF 2000

CENTRAL BANK OF LESOTHO ACT 2000

An Act to continue the existence of the Central Bank of Lesotho, to enable it to ensure price stability, to provide for its administration and control and for related matters.

ENACTED BY THE PARLIAMENT OF LESOTHO

PART I - PRELIMINARY

Short title and commencement

1. This Act may be cited as the Central Bank of Lesotho Act 2000, and shall come into operation on the date of its publication in the Gazette save that different dates may be appointed by the Minister for different provisions of this Act.

Interpretation

2. In this Act, unless the context otherwise requires –

“appointing authority” means-

- (a) in relation to the Governor and Deputy Governors, the King acting on the advice of the Prime Minister;
- (b) in relation to the other directors, the Minister;

“bank” means any financial institution whose functions include receiving deposits, honouring instruments drawn against them, and paying interest on them as permitted by law;

“banking business” has the same meaning assigned to it under the Financial Institutions Act 1999;¹

“Board” means the Board of Directors of the Central Bank of Lesotho;

“capital market” means the market for the purchase and sale of medium and long term financial instruments;

“credit business” has the same meaning assigned to it under the Financial Institutions Act 1999;

“Deputy Governor” means a Deputy Governor of the Central Bank of Lesotho appointed under section 9;

“Director” means a member of the Board of Directors of the Central Bank of Lesotho appointed under section 10;

“court” in relation to any financial institution means the High Court of Lesotho and, in relation to any offence against this Act, includes a subordinate court having jurisdiction in respect of that offence;

“financial institution” means an institution which performs banking business or credit business;

“Government” means the Government of the Kingdom of Lesotho;

“Governor” means the Governor of the Central Bank of Lesotho appointed under section 9;

“licensed institution” means an institution licensed under the Financial Institutions Act 1999, the Money Lenders Act 1989², the Building Finance Institutions Act 1976³, or an institution registered under the Insurance Act 1976⁴;

“Management” means the Governor, Deputy Governors and Heads of Department of the Bank;

“Minister” means the Minister of Finance;

“the Bank” means the Central Bank of Lesotho.

“Securities” means treasury bills, notes, commercial papers, bankers’ acceptance, certificates of deposit, bonds, debentures, stock and other financial instruments issued by Government.

Application

3. This Act applies to the whole of the Kingdom of Lesotho and, where appropriate, to the operations of the offices and agents, outside Lesotho, of the Bank or of any licensed institution.

PART II - CONTINUATION, OBJECTIVE AND FUNCTIONS OF THE BANK

Continuation of the Bank

4. (1) The Bank, as established by the Central Bank Act 1978⁵, shall, subject to this Act, continue to function as the Central Bank of Lesotho which is a body corporate having perpetual succession, a common seal and capable of suing and being sued in its own name.

(2) The Bank shall have its principal place of business in Maseru.

(3) The Bank may, in accordance with the decision of the Board –

(a) establish branches within Lesotho;

(b) appoint agents in Lesotho and agents and correspondents abroad; and

(c) establish offices abroad.

Objective of the Bank

5. The objective of the Bank is to achieve and maintain price stability.

Functions

6. The functions of the Bank shall be –

(a) to foster the liquidity, solvency and proper functioning of a stable market-based financial system;

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- (b) to issue, manage and redeem the currency of Lesotho;
 - (c) to formulate, adopt and execute the monetary policy of Lesotho;
 - (d) to formulate, adopt and execute the foreign exchange policy of Lesotho;
 - (e) to license or register and supervise institutions pursuant to the Financial Institutions Act 1999, the Money Lenders Act 1989, the Building Finance Institutions Act 1976, and the Insurance Act 1976;
 - (f) to own, hold and manage its official international reserves;
 - (g) to act as banker and adviser to, and as fiscal agent of, the Government of Lesotho;
 - (h) to promote the efficient operation of the payments system;
 - (i) to promote the safe and sound development of the financial system; and
 - (j) to monitor and regulate the capital market.

General powers

7. (1) The Bank may –
- (a) issue demand drafts and effect other kinds of remittances payable at its own principal place of business, branches and offices or at those of its agencies or correspondents;
 - (b) import, export, refine, hold, sell, purchase, transfer or

otherwise deal in gold, gold coins and bullion, silver and such other precious metals as the Board shall determine;

- (c) open accounts for, accept deposits from and make credit available pursuant to the provisions of this section, only to the Government;
- (d) pursuant to paragraph (c), purchase, sell, discount and rediscount inland bills of exchange and promissory notes arising out of bona fide commercial transactions;
- (e) purchase with or without a resale agreement, sell, discount and rediscount treasury bills and bonds of the Government forming part of a public issue;
- (f) purchase and sell other securities of the Government maturing in not more than 20 years which have been publicly offered for sale or form part of an issue which is being made to the public at the time of acquisition:

Provided that such funds shall be deployed in financing projects with a gestation period of not more than 7 years and which are self-amortising;

- (g) invest in securities of the Government for any amount and to mature at any time, on behalf of staff funds and superannuation funds and other internal funds of the Bank;
- (h) grant to any financial institution advances for fixed periods not exceeding 3 months against publicly issued treasury bills of the Government maturing within 93 days;

(i) grant to any financial institution advances for fixed periods not exceeding 3 months against promissory notes secured by pledge with the Bank –

(i) in gold coin or gold bullion;

(ii) in securities of the Government which have been publicly offered for sale and are to mature within a period of 20 years:

Provided that no advance so secured shall at any time exceed 75% of the market value of the security pledged and that the total of such securities held by the Bank (whether under the provisions of this subparagraph or otherwise) is within the limitations imposed by the proviso to paragraph (f);

(iii) in such bills of exchange and promissory notes as are eligible for purchase, discount or rediscount by the Bank:

Provided that no advance so secured shall exceed 75% of the nominal value of the instruments so pledged;

(iv) in warehouse warrants or other documents of title to goods in respect of staple commodities or other goods, duly insured and with a letter of hypothecation from the owner:

Provided that no such advance shall exceed 60% of the current market

value of the commodities in question;

- (v) in such assets other than those specified in the foregoing subparagraphs, and on terms and conditions which the Bank may prescribe;
- (j) purchase and sell external currencies and purchase, sell, discount and rediscount bills of exchange and treasury bills drawn and payable in freely convertible foreign currencies and maturing within 90 days, exclusive of days of grace, from the date of acquisition;
- (k) purchase and sell securities issued and expressed in the currency of any country outside Lesotho whose currency is freely convertible and is issued or guaranteed by the Government of such country, and securities issued or guaranteed by international financial institutions;
- (l) maintain accounts with central banks and other banks abroad and act as correspondent, banker or agent for any central or other bank or other monetary authority and for any international financial institution of which Lesotho is a member;
- (m) undertake the issue and management of loans publicly issued in Lesotho by the Government or by public bodies on such terms and conditions as may be agreed;
- (n) accept from customers for custody securities and other articles of value;

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- (o) undertake on behalf of customers and correspondents the purchase, sale collection and payment of securities, currencies and credit instruments at home and abroad, and the purchase and sale of gold and silver;
 - (p) promote the establishment of a financial institutions clearing system and provide facilities therefor;
 - (q) issue, place, buy and sell its own securities on such terms and conditions, as may be determined by the Board in consultation with the Government:

Provided that any security issued by the Bank which is purchased or redeemed by the Bank shall not be included among its assets and shall be immediately retired and cancelled;

- (r) with the permission of the Government, make contribution of capital or advances to any foreign financial institution or undertake exchange clearing transactions with such foreign institution;
- (s) with the approval of the Government, participate in and promote growth of any currency union, and undertake exchange clearing or other financial transactions or make contribution of capital or any other dues payable by Lesotho as a member to such institution;
- (t) with the approval of the Minister, borrow from institutions and pledge assets or create lien over assets held by it as security for the repayment of such loan;

(u) acquire, hold and dispose of movable and immovable property for the purposes of its functions; and

(v) incur such expenditures as it may deem necessary for the proper discharge of its functions.

(2) Notwithstanding this Act or any other enactment for the time being in force, the Bank may contribute or donate funds to an institution or body corporate in Lesotho for the study or promotion of, or research in, banking, economics and allied subjects:

Provided that such donation or contribution shall not exceed 5% of the estimated surplus distributable profits of the Bank for the current year after making full provision for the statutory and customary funds, charges and obligations of the Bank.

(3) The validity of any loan or advance granted by the Bank in pursuance of this Act shall not be called in question merely on the ground of non-compliance with the requirements of some other enactment or of any resolution, contract, memorandum or, articles of association or other instrument.

PART III – ADMINISTRATION

Board of Directors

8. (1) There shall be a Board of Directors of the Bank which shall be responsible for the policy and general administration of the affairs and business of the Bank.

(2) The Board shall consist of –

- (a) the Governor who shall be chairperson;
- (b) 2 Deputy Governors; and
- (c) 5 other directors.

(3) The Governor, or in his absence or temporary incapacity, one of

The Deputy Governors, in order of seniority, shall be in charge of the day-to-day management of the Bank.

Governor and Deputy Governors

9. (1) The Governor and Deputy Governors shall –

- (a) each be appointed by the King, acting on the advice of the Prime Minister, for a term of 5 years and may be eligible for re-appointment:

Provided that in appointing the Deputy Governors, the King, acting on the advice of the Prime Minister, shall designate one of them as First Deputy Governor and the other one as Second Deputy Governor;

- (b) be persons of recognized financial experience; and
- (c) be appointed on such terms and conditions, which may not be altered to their disadvantage during their tenure of office, as shall be set out in their respective contracts of appointment.

(2) The Governor shall be the Chief Executive of the Bank and shall perform the following functions –

- (a) the execution of policies and measures approved by the Board and, subject to any such policies and measures as may be applicable, the direction, supervision, and control of the operations of the Bank and its internal management and administration;
- (b) the exercise of powers or performance of duties of the Bank or of such other powers or duties as may be conferred or imposed upon him by the Board;
- (c) the making of regular reports to the Board on the management and operations of the Bank; and

(d) the providing of data, information and advice necessary for the formulation of policies by the Board for the attainment of the objective of the Bank.

(3) The Deputy Governors shall assist the Governor in the performance of his functions under this Act.

(4) Without prejudice to subsection (3), the Governor may, in writing, delegate to any of the Deputy Governors, subject to such conditions and limitations, if any, as he may specify, such of the powers and duties exercisable by him under this Act or any other enactment as he thinks necessary for the efficient administration of the Bank.

(5) While holding office, the Governor and Deputy Governors shall not occupy any other office or assume any other position of responsibility, whether or not there is any remuneration attached to it.

(6) Notwithstanding subsection (5) the Governor and Deputy Governors may-

(a) act as members of any commission established by the Government to inquire into any matters affecting currency, banking or other economic problems; or

(b) become governors, directors or members of the Board, by whatsoever name called, of any international authority to which the Government shall have adhered or given support or approval.

Other directors of the Bank

10. (1) The other Directors of the Bank referred to in section 8(2)(c), who shall be persons of recognized standing and experience in finance, business, economics, law, banking, industry or agriculture, shall be appointed by the Minister.

(1) The Directors shall hold office for 3 years and may be eligible for re-appointment.

(2) The Directors shall be entitled to fees and allowances in accordance with such rules as may be prescribed by the Board and approved by the Minister.

Disqualification from and cessation of appointment

11. (1) No person shall be appointed or shall remain Governor, Deputy Governor or Director of the Bank if he is –

- (a) if he is a member of Parliament;
- (b) if he is a director, salaried official or shareholder of any licensed institution which carries on deposit taking business in Lesotho or of any other institution subject to the regulatory jurisdiction of the Bank;
- (c) if he is an officer in the public service;
- (d) if he is of unsound mind;
- (e) if he is convicted of any offence involving dishonesty or moral turpitude; or
- (f) if he has been declared insolvent and has not been rehabilitated.

(2) The Governor or Deputy Governors and other directors may resign their offices on giving at least 3 months' notice of their intention to do so in writing to the King, through the Prime Minister, in the case of the Governor and Deputy Governors or to the Minister in the case of the other directors.

(3) Except as otherwise provided in this section, the Governor and Deputy Governors shall not be removed from office before the expiration of the term of their appointments.

(4) The Governor, a Deputy Governor or any other Director shall be removed from office in the Bank if-

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- (a) he becomes of unsound mind or incapable of carrying out his duties according to the written opinion of 3 medical practitioners selected by the Board;
 - (b) he becomes insolvent or suspends payment or compounds with his creditors;
 - (c) he is convicted of any offence involving dishonesty or moral turpitude;
 - (d) he is guilty of serious misconduct in relation to his duties; or
 - (e) in the case of a Director other than the Governor or Deputy Governors, who is possessed of professional qualifications, he is found guilty of serious professional misconduct and as a consequence is debarred from practicing his profession.

(5) If the appointing authority, acting on its own behalf or on the recommendation of the Board, considers that the question of removing a person referred to in subsection (4) from office ought to be investigated, the appointing authority shall appoint an ad hoc advisory board, which shall consist of a chairperson, who holds or has held high judicial office, and not less than 2 other persons which shall enquire into the matter and report the facts thereof to the appointing authority, and advise the appointing authority on whether such person ought to be removed from office under this section.

(5) Where an advisory body appointed under subsection (5) advises the appointing authority that such person ought to be removed from office, the appointing authority shall remove such person from office.

(7) If the question of removing a person from office has been referred to an advisory board under this section, the appointing authority may suspend that person from performing the functions of his office, and any such suspension may at any time be revoked by the appointing authority and shall in any case cease to have effect if the advisory board advises the appointing authority that such person ought not to be removed from office.

Substitutes

12. (1) The Minister, acting on a report by the Board that a temporary absence or incapacity of a Director other than the Governor or the Deputy Governors has occurred, may appoint a substitute to serve until the Board determines that such state has ceased.

(2) If any Director dies or resigns or otherwise vacates the office before the expiry of the term for which he has been appointed, another person shall be appointed at the earliest opportunity to fill the vacancy.

Meetings of the Board

13. (1) The Governor, or in his absence or temporary incapacity, one of the Deputy Governors in order of seniority, shall be chairman of the Board.

(2) Meetings of the Board shall be called by the chairman and shall take place as often as may be required but not less than once every 2 months in every financial year of the Bank.

(3) Five members of the Board of whom one shall be the Governor or one of the Deputy Governors shall form a quorum at any meeting.

(4) Unless otherwise provided, decisions shall be adopted by a simple majority of the votes of the members present and the Chairman shall have a deliberate vote, and in the event of an equality of votes, shall also have a casting vote.

(5) The Board may invite such other officers and executives of the Bank to attend its meetings to assist the Board in its deliberations whenever it deems it expedient, but such persons shall not vote on any matter for decision by the Board.

(6) Any 3 other Directors may require the Governor to convene a meeting of the Board at any time and the Governor shall convene the meeting accordingly.

Validity of acts

14. (1) No act or proceeding of the Board shall be invalidated merely by reason of the existence of a vacancy or vacancies among the Directors.

(2) All acts done by any person acting in good faith as a Director shall be as valid as if he were a Director, notwithstanding that some defect in his appointment or qualifications be afterwards discovered.

(3) The Directors of the Bank shall not be regarded or act as delegates on the Board of any Government entity or of any commercial, financial, agricultural, industrial or other interests or receive or accept directions therefrom in respect of duties to be performed under this Act.

Disclosure of interest

15. (1) A member of the Board who has an interest in any matter that is a subject for the Board to consider shall disclose to the Board the nature of his interest and shall not participate in any discussion or decision of the Board on the matter.

(2) If a member fails or refuses to disclose his interest as required under subsection (1), the Board may recommend to the authority that appointed him that he be removed from the Board.

(3) No director, officer or employee of the Bank shall accept any gift or advantage for himself or on behalf of a person with whom he may have family, business, or financial connections if the acceptance thereof would result, or give the appearance of resulting, in a diminishing of his impartial devotion to his duties under this Act.

(4) Any person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding M15,000.00 or to a term of imprisonment not exceeding 5 years.

Appointment of officers and other staff

16. (1) All appointments of officers and other employees of the Bank shall be made by management but only to positions created by a decision of the Board and on such terms and conditions as shall be laid down by the Board.

(2) All appointments of heads of department and division shall be subject to the approval of the Board.

(3) No salary, fee, wage or other remuneration or allowance paid by the Bank shall be computed by reference to the net or other profit of the Bank.

Establishment of various departments

17. The Bank may establish and maintain such departments or divisions, within the Bank, as it may consider necessary for the proper and efficient conduct of its business.

Secrecy

18. (1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court or under the provisions of any enactment, no director, officer, employee or agent of the Bank, shall disclose to any person, any information relating to the affairs of the Bank or of any licensed institution or other person, firm, company or other organization or of a customer of the Bank which he has acquired in the performance of his duties or the exercise of his functions.

(2) Without prejudice to any civil or criminal liability, a violation of this section shall constitute serious misconduct.

(3) For the purposes of this section, any former director, officer, employee or agent of the Bank shall be similarly bound and shall not disclose any information whether documentary or otherwise relating to the affairs of the Bank

except by order of a court of competent jurisdiction or to fulfil other obligations imposed by law.

PART IV - CAPITAL, PROFITS AND RESERVES

Authorized capital

19. The authorized share capital of the Bank shall be M100 000 000 (one hundred million maloti) and shall not be reduced except by amendment to this Act.

Paid-up capital of the Bank

20. (1) The minimum paid-up capital shall be M25 000 000 (twenty five million maloti).

(2) The paid-up capital shall be subscribed and held exclusively by the Government and its holdings of such capital shall not be subject to any encumbrance.

(3) The paid-up capital may be increased by the Government in such amounts as may, from time to time, be resolved by the Board and approved by the Minister.

(4) The Minister may, by warrant, authorise the payment from the Consolidated Fund of such sums as may be required for the purpose of subscribing to the paid-up capital of the Bank.

(5) Without prejudice to subsections (3) and (4), the Minister may seek credit for the purpose of subscribing to the paid-up capital of the Bank.

(6) Notwithstanding this Act, where in the judgement of the Board, the assets of the Bank are less than the sum of its liabilities and minimum paid-up capital, the Board shall notify the Minister who shall authorise the transfer to the Bank of funds, negotiable securities bearing market-related terms and conditions or foreign exchange for the purpose of preserving the minimum paid-up capital of the Bank from impairment.

Profits and general reserves

21. (1) The net profits of the Bank for each financial year shall be determined by the Board after making provision for bad and doubtful debts, depreciation in assets, contributions to staff and superannuation funds and for all other matters for which provision is to be made by or under this Act.

(2) The Bank shall establish a general reserve to which shall be allocated at the end of each financial year of the Bank -

- (a) in the case of any year at the end of which the general reserve of the Bank does not exceed the minimum paid-up capital of the Bank, one-third of the net profits of the Bank for the financial year;
- (b) in the case of any year at the end of which the general reserve of the Bank exceeds the minimum paid-up capital of the Bank but does not exceed four times the paid-up capital of the Bank, one-sixth of the net profits of the Bank for the financial year.

(3) After appropriate allocations have been made to the general reserve under subsection (2), one-quarter of the remainder of the net profits for the financial year shall be applied to the redemption of any securities of the Government held by the Bank which have been issued under section 20(6).

(4) With the approval of the Minister, further allocations may be made from time to time to the general reserve to increase it beyond four times the minimum paid-up capital of the Bank.

(5) The residue of the net annual profits for the financial year remaining after all deductions authorized by subsections (2), (3), (4) and section 55 have been made shall be paid into the Consolidated Fund as soon as practicable after the end of each financial year.

(6) No deduction authorized under subsections (2), (3) and (4) shall be required to be made nor shall any payment be made under subsection (5) if, in the judgement of the Board, the assets of the Bank are, or after the deduction or payment, will be, less than the sum of its liabilities and minimum paid-up capital.

(7) If the Bank incurs any net loss during any financial year, such loss shall be charged to the general reserve and if the general reserve is inadequate to cover the entire amount of the loss, the balance of loss shall be carried forward in an account for accumulated losses.

(8) The balance of accumulated losses shall be replenished by the Government by transferring to the Bank funds, negotiable securities bearing market related terms and conditions or foreign exchange on the lines indicated in section 20 (6).

(9) If in any financial year there are accumulated losses carried forward from previous years and which losses have not yet been replenished by the Government in the manner indicated in subsection (8), the final profit of that year shall be allocated in priority to the cancellation of such accumulated losses.

(10) The allocations stipulated in subsections (2), (3), (4) and (5) shall refer only to the balance of profits which remains after the cancellation of accumulated losses carried forward from previous years.

PART V – CURRENCY

Currency of Lesotho

22. (1) The monetary unit of Lesotho shall be the Maloti divided into 100 lisente; the symbol for the Maloti and lisente shall be “M” and “L”, respectively.

(2) Any reference to an amount of money expressed in terms of rand in any law in Lesotho in force at the coming into operation of this section, including any enactment having effect by virtue of any law, or any Rules or Regulations giving effect to any law, shall be construed as a reference to the same amount of money expressed in terms of Maloti.

Sole right to issue currency

23. (1) The Bank shall have the sole right of issuing notes and coins in Lesotho and neither the Government nor any other person shall issue currency notes, bank notes or coins without the permission of the Bank, any promissory notes or bills or tokens payable to bearer on demand:

Provided that cheques or drafts, including bills of exchange payable to bearer on demand or otherwise may be drawn on a person's account with a bank.

(2) Notes and coins issued under subsection (1) shall be backed 100% by gold coin, gold bullion, silver coin, silver bullion, rand or convertible foreign exchange.

Obligation in respect of currency

24. (1) The Bank shall, at its principal place of business in Maseru exchange on demand and without charge, Lesotho currency of any denomination for Lesotho notes and coins of any other denomination requested:

Provided that in the event of a temporary unavailability of a requested denomination, the Bank may discharge this obligation by delivering notes and coins of available denominations which shall nearly approximate that requested.

(2) The Bank shall, on demand, issue notes and coins against receipt of the equivalent amount of rand and redeem its notes and coins against the payment of an equivalent amount of rand at its head office, and such other places and in such manner as shall be determined by the Board.

Agents for the issue, exchange and withdrawal of currency

25. The Bank may appoint, on such terms and conditions as may be agreed, one or more licensed institutions or other agents in Lesotho to act in an agency capacity for the issue, exchange and withdrawal of notes and coins.

Denomination and form of notes and coins

26. The Minister shall, on the recommendation of the Bank, prescribe by public notice—

(a) the denominations, (being multiples or fractions of a maloti) forms and designs, of the notes and coins to be issued by the Bank;

(b) the devices to be borne by such notes and coins;

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- (c) the standard weight and composition of such coins and the amount of remedy and variation which shall be allowed.

Bank's currency to be legal tender

27. (1) Notes issued by the Bank shall be legal tender in Lesotho at their face value for the payment of any amount.

(2) Coins issued by the Bank shall, if such coins have not been tampered with, be legal tender in Lesotho at their face value up to an amount not exceeding 20 maloti.

(3) Notwithstanding subsections (1) and (2), the Bank shall have power, on giving not less than 3 months notice in the Gazette and in one newspaper of general circulation in Lesotho, to call in any of its notes and coins, on payment of the face value thereof and any such notes and coins, with respect to which a notice has been given under this subsection shall, on the date specified in the notice, cease to be legal tender.

(4) The Bank may, by notice published in the same manner as notice given under subsection (3), specify a period during which notes or coins which have ceased to be legal tender may, nevertheless be exchanged at the Bank.

Tampering with coins

28. (1) No person shall tamper with a coin.

(2) A coin shall be deemed to have been tampered with if the coin has been impaired, diminished or lightened otherwise than by fair wear and tear or has been defaced by stamping, engraving or piercing whether the coin has or has not been thereby diminished or lightened.

Lost and damaged currency

29. No person shall as of right be entitled to recover from the Bank, the value of any lost, stolen, mutilated or imperfect notes or coins except under the provisions, if any, of any enactment or rule or the Bank's order to the contrary.

Counterfeit currency

30. The Bank shall assist in the enforcement of any laws relating to counterfeiting the currency of Lesotho, and a certificate of a duly authorized officer of the Bank that a document or token in question is or is not a genuine note or coin shall be prima facie evidence of the fact in any judicial proceeding in Lesotho.

PART VI – FOREIGN EXCHANGE REGIME, EXCHANGE RATE POLICY AND INTERNATIONAL RESERVES

Foreign exchange regime

31. (1) The foreign exchange regime of Lesotho shall be determined by the Government after consulting with the Bank and shall be consistent with the obligations of any international treaty to which Lesotho is a party or which it has ratified.

(2) The Government may declare an external value for the maloti and any change thereof.

(3) Where the Government does not declare any external value for the maloti or any other exchange rates, the exchange rate for the maloti against other currencies shall be determined in the market.

Exchange rate policy

32. (1) The exchange rate policy of Lesotho shall be formulated and executed by the Bank.

(2) The Bank may issue guidelines for the purpose of regulating the purchase, sale, holding or transfer of foreign exchange.

(3) The Bank may, in order to achieve its objective under section 5 or to avert a foreign exchange crisis, temporarily restrict the purchase, sale, holding or transfer of foreign exchange.

(4) Any restrictions under subsection (3) shall, initially, be only for a period not exceeding 12 months and may be extended for another period not exceeding 12 months only with the approval of the Board.

(5) Whenever the bank imposes a restriction, it shall submit a report to the Minister within 7 days and every 3 months thereafter containing the causes which have led to the imposition of the restrictions and the actions the Bank intends to take to remedy the situation.

(6) Any restriction imposed under this section shall be consistent with any obligations acquired by Lesotho under any international agreement to which it is a party.

Foreign exchange Rules

33. Without prejudice to section 7, the Bank shall have power –

- (a) to make Rules governing foreign exchange market operations;
- (b) to license, revoke the licenses of, supervise and regulate foreign exchange dealers and licensed institutions pursuant to exchange regulations made by the Bank;
- (c) to set limits on open foreign exchange positions of licensed institutions; and
- (d) to own, maintain and manage its international reserves.

Clearing and payment agreements

34. The Bank may, either on its own account or by order of the Government, enter into clearing and payment agreements or any other contracts for the same purpose with public and private central clearing institutions domiciled abroad.

International reserves

35. (1) The Bank shall establish and maintain an international reserve which shall consist of all or any of the following assets –

- (a) foreign exchange in the form of notes and coins or bank balances held abroad in foreign currencies;
- (b) gold;
- (c) any other internationally recognized reserve asset, including
 - (i) the entitlement to make reserve tranche purchases from the International Monetary Fund;
 - (ii) the holding by Lesotho of special drawing rights of the International Monetary Fund;
- (g) bills of exchange and promissory notes, payable in convertible foreign currencies;
- (h) debt securities issued or guaranteed by, and forward purchase or repurchase agreements concluded with or guaranteed by, foreign States or central banks or international financial organizations, denominated and providing for payment in foreign currencies; and
- (f) such other external assets as the Board may approve.

(2) The Bank shall endeavour to maintain the international reserves at a level which, in the Bank's opinion, shall be adequate for the execution of its monetary and exchange rate policies and for the prompt settlement of the country's international transactions.

(3) If the international reserve has declined or, in the opinion of the Bank, is in danger of declining to such an extent as to jeopardize the execution of the monetary or exchange rate policies or the prompt settlement of the country's international transactions, the Bank shall submit to the Minister a report on the international reserve position and the causes which have led or may lead to such a decline, together with such recommendations as it considers necessary to remedy the situation and the Minister shall cause the report to be laid before Parliament.

(4) Until such time as, in its opinion the situation has been rectified, the Bank shall make such further reports and recommendations as it thinks necessary.

Reporting of foreign exchange transactions

36. Licensed institutions and licensed foreign exchange dealers may be required by the Bank to report, periodically, to the Bank their open foreign currency positions on a currency-by-currency basis or overall open position; and the Bank shall prescribe the reporting forms and supporting documents that shall be submitted.

PART VII - OPERATIONS

Management of monetary system

37. Without prejudice to any other provision of this Act or in the Financial Institutions Act 1999, the Bank shall, for the purpose of efficient monetary management, have power to –

- (a) impose a ceiling on the level of bank credit;
- (b) expand or contract credit facilities to financial institutions;
- (c) determine the maximum lending period by financial institutions, the kind of collateral and amount of loan against such collateral;

-
- (d) alter the minimum ratio of reserve to deposits or the minimum capital adequacy ratio which every licensed institution shall maintain;
 - (e) impose such special requirements on deposits with licensed institutions as it may determine; and
 - (f) impose such other conditions as the Bank may deem necessary for the purpose of effective monetary policy.

Prohibited activities

38. The Bank shall not –

- (a) except as expressly authorized by this Act, engage in trade or otherwise have a direct interest in any commercial, agricultural, industrial or any other undertaking, except such interests as it may in any way acquire in the course of the satisfaction of debts due to it, and all such interests so acquired shall be disposed of at the earliest suitable moment;
- (b) grant loans on the security of any shares;
- (c) subject to section 42 grant unsecured advances or advances secured otherwise than as laid down in section 7(1)(h) and (i):

Provided that in the event of any debts due to the Bank becoming, in the opinion of the Bank, endangered, the Bank may secure such debts on any real or other property of the debtor and may acquire such property, which shall be resold at the earliest suitable moment;

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- (d) purchase, acquire or lease immovable property except in accordance with the proviso to paragraph (c) and except so far as the Bank considers necessary or expedient for the provision, or future provision, of premises for the conduct of its business, the residence of staff or other similar requirements incidental to the performance of its functions under this Act;
 - (e) draw or accept bills payable otherwise than on demand;
 - (f) allow the renewal or substitution of maturing bills of exchange purchased, discounted or rediscounted by or pledged with the Bank except in exceptional circumstances when the Board may, by resolution, authorise one renewal or one substitution only in either case of not more than 50% of the original amount of any such bill for a period not exceeding 90 days; or
 - (g) accept for discount, or as security for an advance made by the Bank, bills or notes signed by members of the Board or by the Bank's officers, employees or other servants on their own account.

Determination of interest and discount rates

39. (1) The Bank shall determine discount and interest rates to be charged by it on its lending within the overall framework of the monetary and credit policy in force.

(2) The Board may prescribe conditions subject to which credit facilities may be made available by the Bank to financial institutions.

PART VIII – RELATIONS WITH THE GOVERNMENT

Bank as banker to the Government

40. (1) The Bank shall act as the banker to the Government;

Provided that Government may maintain balances with, and generally use the services of, any bank or other financial institution on such terms and conditions as may be agreed upon between the Minister, having taken into account the advice of the Bank, and such bank or other financial institution, as the case may be.

- (2) In its capacity as Banker to the Government, the Bank shall-
- (a) receive, collect, pay and remit money, bullion and securities on behalf of the Government;
 - (b) accept custody of all securities and other valuable objects belonging to the Government;
 - (c) pay no interest on amounts deposited in any Government account;
 - (d) except as otherwise determined, in consultation with the Minister, receive no remuneration from the Government, for services rendered by the Bank under this section.

Financial advice to the Government

41. (1) The Bank shall act as the financial adviser to the Government.

(2) The Government may, through the Minister, request the Bank to render advice and to furnish reports on matters relating to the activities of the Bank.

- (3) It shall be the duty of the Bank -
- (a) to inform and advise the Government, through the Minister, on any matter which in its opinion is likely to affect the achievement of the objective of the Bank;

-
- (b) to adopt such policies and to cause such remedial measures to be taken, as are appropriate in the circumstances and authorized by this Act; and
 - (c) to submit to the Government a detailed report which shall include as a minimum, an analysis of –
 - (i) the causes of any anticipated economic disturbances or, of the actual abnormal movements of the money supply or the price level;
 - (ii) the probable effects of such disturbances or movements on the level of production, employment and real income in Lesotho; and
 - (iii) the measures which the bank has already taken, and any further monetary, fiscal or administrative measures which it proposes to take or recommends for adoption by the Government.

Credit to the Government

- 42.** (1) The Bank may –
- (a) make advances on overdrafts and loans to the Government on such terms as the Board may determine; acquire directly from the Government or any other persons, treasury bills or securities representing obligations of the Government.
- (2) The total of such loans, advances and holdings of treasury bills and government securities excluding any government securities held as part of the share capital of the Bank less any credit balances in the account of Government with the Central Bank of Lesotho shall not exceed 5% of the Government's actual revenue in the previous year's budget.

(3) Treasury bills and government securities held by the Bank against repurchase agreements entered into with it by licensed institutions shall be excluded from the total holdings of government securities of the Bank where the repurchase is required to be effected within 93 days from the date of the agreement.

(4) Any advance made under subsection (1)(a) shall be repaid within 93 days from the end of the Government's financial year to which it relates, and where any such advance remains unpaid after the due date, the power of the Bank to make further advances in any subsequent financial year shall not be exercised unless the amounts due in respect of outstanding advances have been repaid.

(5) The Bank shall charge interest on advances granted under this section at such rates as the Board may determine keeping in view the prevailing market rates in the money market in Lesotho and other relevant factors.

Bank as agent for Government

43. The Bank may act generally as agent for the Government where the Bank can do so appropriately and consistently within the provisions of this Act and with its duties and functions as a Central Bank; and on such terms and conditions as may be agreed between the Bank and the Government.

Depository

44. The Bank shall, upon designation by the Minister, serve as the depository of, and the fiscal agency through which dealings shall be conducted with, any international financial institution of which Lesotho is a member

External debt

45. The Government shall, when contracting any external debt, consult the Bank on the terms and conditions of such debt.

Reports on economy

46. (1) The Bank shall submit periodic reports on the state of the economy to the Minister which may include recommendations for the attainment of the macro-economic objectives of the Government.

(2) The Bank may, not less than 3 months after the submission of the report under subsection (1), publish the report in such manner as it thinks fit.

PART IX – RELATIONS WITH LICENSED INSTITUTIONS

Co-operation with licensed institutions in Lesotho

47. The Bank shall serve as Commissioner of Financial Institutions in terms of the Financial Institutions Act 1999 and the Money Lenders Act 1989 and as Commissioner of Building Finance Institutions in terms of the Building Finance Institutions Act 1976, and as the Commissioner of Insurance in terms of the Insurance Act 1976.

Required reserves

48. (1) The Bank may, from time to time, prescribe by notice published in the Gazette and by written notice to each financial institution the maintenance of required reserves, against deposit and other similar liabilities which may be specified for this purpose.

(2) Such reserves shall be maintained by way of cash holding with each financial institution or by way of balance held in the current account with the Bank or both on a periodic average basis in such proportion and over such period as the Bank may prescribe.

(3) The Bank may prescribe different reserve ratios for different classes of deposits and other similar liabilities and prescribe the method of their computation.

(4) The reserve ratios shall be uniform for all financial institutions within the same class.

(5) Any prescription of, or increase in, the required reserve ratios shall be effective only after reasonable notice has been communicated to the financial institutions.

(6) Reserves held by way of balances in the current account with the Bank may, under such regulations and subject to such charges as may be prescribed by the Bank, be withdrawn by financial institutions for the purpose of meeting their existing liabilities and may further serve as a basis for the clearance of cheques and settlement of balances among financial institutions.

(7) Every financial institution shall send to the Bank returns signed by 2 responsible officers of the financial institution concerned containing such information as the Bank may consider necessary for carrying out the purposes of this section at such period of time as the Bank may, from time to time, direct.

(8) The Bank shall impose on any financial institution which fails to maintain the required reserves in the appropriate ratio prescribed under this section a penalty based on the amount of deficiency at a rate equivalent to twice the interest rate on 91-day treasury bills of the Government of Lesotho prevailing during the reserve period for so long as the deficiency continues and such penalty shall be payable to the Bank on demand made by it within such date as may be prescribed by the Bank.

(9) Penal interest may be recovered by deduction from any balance in the account of the financial institution maintained with the Bank.

(10) The Bank may pay interest at such rate as it thinks fit, on deposits held under this section and such interest payment shall only be limited to the minimum amount required and shall not exceed the minimum deposit required to be maintained by a financial institution.

Bank to limit credit expansion

49. (1) The Bank may, in conducting its monetary policy prescribe temporary conditions and restrictions with respect to the total amount of credit including guarantees extended by financial institutions only if and to the extent that its monetary policy objectives cannot be achieved with other monetary instruments.

(2) The restrictions imposed under subsection (1) shall not exceed a period of 12 months and shall be lifted as soon as the monetary conditions that prompted the imposition of the restrictions are brought under control.

Clearing houses

50. (1) The Bank may facilitate the clearing of cheques and other credit instruments for licensed institutions carrying on business in Lesotho.

(2) For the purpose referred to in subsection (1) the Bank may, at any appropriate time and in conjunction with other licensed institutions, organise a clearing house and provide facilities therefor in Maseru and in such other place or places as may be desirable.

PART X – ACCOUNTS AND STATEMENTS

Financial year of Bank

51. The financial year of the Bank shall be the same as the calendar year.

Audit

52. (1) The accounts of the Bank shall be audited annually by an auditor appointed by the Board and approved by the Minister.

(2) Without prejudice to subsection (1) the Minister may, from time to time, request the Auditor-General to make an examination of, and submit a report on, the accounts relating to the issue, re-issue, exchange and withdrawal of notes and coins by the Bank or, in what the Minister shall think to be exceptional circumstances, the accounts of the Bank as a whole and the Auditor-General shall do so accordingly and the Bank shall provide all necessary and proper facilities therefor.

Accounts and annual report

53. (1) The Bank shall, within 3 months from the close of each financial year, make and submit to the Minister –

- (a) a copy of the annual accounts certified by the auditor;
- and

-
- (b) a report on its operations during that year and such report shall be published by the Bank.
- (2) The Minister shall as soon as possible after receipt of the report cause a copy of the report and statement of accounts -
- (a) to be laid before Parliament; and
- (b) to be published in the Gazette.
- (3) The Bank shall, not later than 20 days after the last working day of each month, make and publish a return of its assets and liabilities as at the close of business of the last working day and a copy of the return shall be submitted to the Minister who shall cause it to be published in the Gazette.

Revaluation Reserve Account

54. (1) The gains and losses arising from any changes in the valuation of the Bank's assets or liabilities in, or denominated in, gold or foreign currencies, or Special Drawing Rights as a result of changes in the exchange rate for the maloti or of any change in the values, parities or exchange rates of such assets with respect to the maloti shall be carried to a special account called the Revaluation Reserve Account.

(2) The profits or losses arising from such change shall not be included in the computation of the annual profits and losses of the Bank.

(3) In the case of a carried over loss or net debit balance in the Revaluation Reserve Account, amounts shall be transferred from the available balance in the General Reserve to cancel such carried over losses.

(4) The balance of loss not covered by such transfer from the General Reserve shall be shown separately in the balance sheet under the Revaluation Reserve Account (loss) and until this balance is cancelled by future revaluation gains or by transfers from the General Reserve, no profits shall be transferred to the Consolidated Fund; and any available profits shall be credited to the Revaluation Reserve Account in an amount sufficient to cover the carried over losses.

(5) No credits or debits shall be made to the Revaluation Reserve Account except in accordance with this section.

PART XI – MISCELLANEOUS

Bye-Laws

55. (1) The Board may make bye-laws consistent with this Act with a view to providing for all matters for which bye-laws are necessary or convenient for the efficient operation of any of the provisions of this Act and for good order and management of the Bank.

(2) The bye-laws shall be authenticated by the Bank's seal and shall be published in the Gazette.

Tax status

56. The Bank shall not be liable to the payment of customs duty on the importation of gold, silver, coins, notes, and security papers.

Prohibited names

57. No licensed institution shall hereafter be registered under the provisions of any legislation by a name which includes any of the words "Central", "National", "Reserve", or "State", or their equivalent in any other language.

Liquidation

58. The Bank shall not be placed in liquidation except pursuant to legislation passed in that behalf by Parliament and then in such manner as that legislation directs.

Collection of information

59. For the purpose of this Act and for the discharge by the Bank of its functions as a central bank, the Governor or any officer of the Bank authorized by him, may require from any person any information, estimates, returns or particulars, subject to the same procedures and restrictions as are set out in the Statistics Act 1965⁶.

Credit information

60. For the purpose of sections 61, 62, 63, 64, 65, and 66 “credit information” means any information relating to –

- (a) the amounts and the nature of loans or advances and other credit facilities granted by a licensed institution to any borrower or class of borrowers;
- (b) the nature of security taken from any borrower for credit facilities granted to him; and
- (c) the guarantees, bid bonds, performance bonds and other forms of indemnities issued by a licensed institution on behalf of any of its customers;
- (d) credit classification under different health categories as may be determined by the Bank from time to time, such as current, sub-standard, doubtful or loss.

Bank to collect and furnish credit information

61. The Bank may –

- (a) collect, in such manner as it may think fit, credit information from every licensed institution; and
- (b) furnish such information to any licensed institution in accordance with section 63

Bank to call for returns containing credit information

62. (1) For the purpose of enabling the Bank to discharge its functions under section 61, it may at any time direct any licensed institution to submit to it such statements relating to such credit information and in such form and within such time as may be specified by it from time to time.

(2) A licensed institution shall, notwithstanding anything to the contrary contained in any enactment for the time being in force or in any instrument regulating the constitution thereof or in any agreement executed by it, relating to the

secrecy of its dealings with its constituents, be bound to comply with any direction issued under subsection (1).

Procedure for furnishing credit information to licensed institution

63. (1) A licensed institution may, in connection with any financial arrangement entered into or proposed to be entered into by it, with any person, make an application to the Bank in such form as the Bank may specify requesting it to furnish the applicant with such credit information as may be specified in the application.

(2) On receipt of an application under sub-section (1), the Bank shall, as soon as may be, furnish the applicant with such credit information relating to the matters specified in the application, as may be in its possession:

Provided that the information so furnished shall not disclose the names of the licensed institutions which have submitted such information to the Bank.

(3) The Bank may in respect of each application levy such fees as it may determine, from time to time, for furnishing credit information.

Disclosure of information prohibited

64. (1) Any credit information contained in a statement submitted by a licensed institution under section 62 or furnished by the Bank to any licensed institution under section 63 shall be treated as confidential and shall not, except for the purposes of this Act, be published or otherwise disclosed.

(2) Nothing in this section shall apply –

(a) to the disclosure by any licensed institution, with the previous permission of the Bank, of any information furnished to the Bank under section 62;

(b) to the publication by the Bank, if it considers necessary in the public interest so to do, of any information collected by it under section 62, in such consolidated form as it may think

fit, without disclosing the name of any licensed institution or its borrowers.

(3) Notwithstanding any other law, no court, tribunal or other authority shall compel the Bank or any licensed institution to produce or to give inspection of any statement submitted by that licensed institution under the provisions of section 62 or to disclose any credit information furnished by the Bank to that licensed institution under section 64.

Certain claims for compensation barred

65. No person shall have any right, whether in contract or otherwise, to any compensation for any loss incurred by reason of the operation of the provisions of sections 60 to 64 of this Act.

Penal provisions

- 66.** (1) If any licensed institution –
- (a) fails to submit any statement required under section 62 or submits under that section a statement which is false in any material particular; or
 - (b) fails to comply with any condition imposed in connection with provisions on credit information under this Act,

every director or other officer of the licensed institution who is knowingly a party to the breach commits an offence and shall be liable on conviction to the punishment under section 68.

(2) Any person who discloses any credit information, the disclosure of which is prohibited under this section, commits an offence and shall be liable on conviction to the punishment under section 68.

Offences and penalties

- 67.** (1) Except as otherwise provided in this Act any person who –

-
- (a) contravenes any provision of this Act or Regulations made thereunder or anything prescribed or direction made or given under this Act and published in the Gazette; or
 - (b) knowingly makes an incorrect statement in a document submitted by him or any incorrect information supplied by him for the purpose of this Act,

commits an offence and shall be liable on conviction to a fine not less than M50,000 or to imprisonment for a term not exceeding 7 years or to both.

- (2) Where an offence under this Act is committed by a body of persons –
 - (a) in the case of a body corporate other than a partnership, every director or officer of the body shall also be deemed to have committed the offence; and
 - (b) in the case of a partnership every partner or officer of that firm or organisation shall also be deemed to have committed that offence.

(3) No person shall be deemed to have committed an offence by virtue of subsection (2), if he proves that the offence was committed without his knowledge or connivance and that he exercised all due care and diligence to prevent the commission of the offence having regard to all the circumstances.

Liability for damages

68. No claim for damages shall lie against the Bank, for any thing which is done or said in good faith in the administration of this Act.

Regulations

69. The Governor may, in consultation with the Minister, make Regulations for the better carrying out of the purposes and provisions of this Act.

Repeal and savings

70. (1) The Central Bank of Lesotho Act 1978, is hereby repealed.

(2) Any Bye-laws, Rules, Regulations, Orders, Notices, Prescriptions or other instruments or directives issued under the repealed Act, shall continue in operation until their expiration, or until their express repeal under this Act.

(3) Any person appointed or deriving office under the repealed Act shall be deemed to have been appointed or to derive office under this Act.

(4) In the event of any conflict or inconsistency between this Act and any other enactment by or under which any licensed institution is constituted or established, this Act shall prevail.

Transitional

71. The minimum paid-up capital referred to in Part IV shall be fully subscribed within 5 years from the date of commencement of this Act.

¹ Act No.6 of 1999

² Act No.25 of 1989 (amended by Act No.6 of 1993)

³ Act No.17 of 1976

⁴ Act No. 18 of 1976

⁵ Act No. 13 of 1978

⁶ Act No.11 of 1965