



LESOTHO

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LEGAL NOTICE NO. 133 OF 2016

**Insurance (Capital, Solvency and Reserves Requirements for Insurers)
Regulations, 2016**

Pursuant to sections 22(2), 25(4), 26(2), 28(1), 36(1) and 134 of the Insurance Act, 2014¹, I,

RETŠELISITSOE MATLANYANE

Governor of the Central Bank of Lesotho, make the following regulations -

Citation and commencement

1. These Regulations may be cited as the Insurance (Capital, Solvency and Reserves Requirements for Insurers) Regulations, 2016 and shall come into operation on the date of publication in the Gazette.

Interpretation

2. In these Regulations, all other words used have the same meaning ascribed to them under the Act, and unless the context otherwise requires -

“Act” means the Insurance Act, 2014;

“amount at risk” means the difference between insurance indemnity and mathematical reserve, calculated for insurance contracts covering the risk of death;

“assets” means the total approved assets kept by an insurer and invested in terms of prescribed investment guidelines including total assets as per the balance sheet;

“available solvency margin” means the excess of value of assets over the value of liabilities representing the level of own funds of the insurer;

“Commissioner” means the Central Bank of Lesotho continued into existence by the Central Bank Act, 2000²;

“contractual liabilities” means the total amount of insurance technical

provisions;

“IBNR” means incurred but not reported claims;

“incurred claims” means paid claims plus the modification of reserves for outstanding claims for a particular reporting period;

“insurer or reinsurer funds” means all assets admitted, other than the amount set aside comprising the policyholder funds;

“gross incurred claims” means incurred claims before deducting the related reinsurer share;

“liability adequacy test” means the test conducted by an actuary at the end of each reporting period to assess whether its recognised insurance liabilities are adequate;

“liquid assets” means assets in cash, current bank accounts, demand deposit accounts or term deposits, which can be withdrawn unconditionally and securities that are easily convertible into cash without incurring penalties;

“net incurred claims” means gross incurred claims minus the share of a reinsurer related to gross incurred claims;

“not approved asset” means an asset identified as a not approved asset under section 25 of the Act and these Regulations;

“policyholder funds” means the total assets admitted under these Regulations set aside to cover the contractual liabilities of the insurer plus an amount of the required solvency margin in value provided by the dispersal requirements;

“required solvency margin” means the level of own funds required to be held and maintained permanently by the insurer, below which the insurer is deemed insolvent;

“solvency ratio” means the ratio of the amount of available solvency margin to the amount of required solvency margin;

“technical provisions” means an amount set aside by an insurer to meet liabilities arising out of insurance contracts;

“unearned premiums reserves” means the pro-rata portion of the full gross premium from the statement date to the end of the period for which premiums have been paid on the policy for protection that is to be given in the future;

“unexpired exposure period” means the remaining coverage period of existing policies in which the liabilities of insurer may arise;

“unexpired risk reserves” means the additional provision that arises as a result of the estimated cost of claims and expenses exceeding the unearned premium reserve; and

“valuation date” means the date at which the prospective assessment of the amount that needs to be set aside in order to provide for claims and costs that will result out of unexpired exposure periods of cover.

Application

3. These Regulations apply to a person licensed to engage in the provision of insurance business in Lesotho.

Purpose

4. The purpose of these Regulations is to establish capital, solvency and reserves requirements; and calculation of solvency margins for insurers.

Capital Requirements

5. (1) A company which applies for registration -

(a) as a short term insurer; or

(b) as a long term insurer,

shall have share capital of not less than M4, 000,000.

(2) An insurer who is in operation shall maintain -

- (a) a minimum capital balance not less than the greater of the amounts specified in subregulation (1); or
 - (b) an amount equal to or greater than the minimum solvency amount calculated in accordance with these regulations;
- (3) The assets required when calculating the minimum solvency amount in subregulation (2)(b) shall be subject to the prescribed limits of investments specified in Schedule 1 and Schedule 2.

Investment rules

6. (1) An insurer shall invest its assets in a manner that complies with the criteria in Schedule 1 and Schedule 2.

(2) Notwithstanding subregulation (1), an insurer shall hold assets in Lesotho in total aggregate value of not less than 30 per cent.

(3) For non-direct investments, investments shall be deposited or invested through a locally registered institution or entity operating and administering assets in Lesotho.

(4) The Commissioner may order an insurer to dispose of any assets kept by an insurer that the Commissioner deems are not in compliance with the provision of subregulation (2).

(5) Any insurer seeking to invest in assets that are outside of the investment rules established in these Regulations shall request approval from the Commissioner.

Reserving requirements for short-term insurer

7. A short-term insurer shall -

- (a) maintain reserves in respect of short-term insurance; and
- (b) maintain a solvency margin not less than the amount set out in Schedule 3.

Unearned premium reserves for short-term insurer

8. (1) A short-term insurer shall establish and maintain unearned premium reserves, in addition to reserves provided under section 26 (1) of the Act.

(2) In determining the reserves required for the unearned premium reserves in subregulation (1), a short-term insurer shall use the methods in Schedule 4 and any other method as approved by the Commissioner.

(3) A short-term insurer shall determine and disclose a value for its unearned premiums reserves for each class of business.

(4) A short-term insurer shall conduct a test on the adequacy of unearned premium reserves, and where the unearned premium reserves are inadequate, premium deficiency reserves shall be determined.

(5) The reserving method used to determine the unearned premium reserves shall be applied consistently from year to year.

Unexpired risk reserves for short-term insurer

9. (1) A short-term insurer shall calculate reserve for unexpired risks by estimating the claims expected to be incurred after the valuation date on policies with unexpired exposure periods as at the valuation date, including the part of claims management expenses that relates to these claims in such an amount that the estimated value of such future claims exceeds the unearned premiums reserve.

(2) A short-term insurer shall calculate and maintain the reserve for unexpired risks separately for each class of business.

(3) A short-term insurer shall conduct a test on the adequacy of unexpired risk reserves in accordance with the generally accepted actuarial standards and international financial reporting standards, and where the unexpired risk reserves are inadequate, deficiency reserves shall be determined.

Outstanding claims and incurred claims for short-term insurer

10. (1) A short-term insurer shall determine outstanding claims incurred and reported using -

- (a) the Case Estimate Method;
- (b) the Average Cost per Claim Method; or
- (c) Other actuarially accepted methods recognized by the Commissioner.

(2) A short-term insurer shall determine reserves arising from IBNR claims by using one of the following methods in accordance with the risk nature, risk distribution and experiential data of the insurance lines -

- (a) the Chain-Ladder Method;
- (b) the Average Cost Per Claim Method;
- (c) the Bornhuetter-Ferguson Method;
- (d) the Cape-Cod Method; or
- (e) any other accepted actuarial methods recognised by the Commissioner.

(3) A short-term insurer shall conduct a test on the adequacy of the reserves and where the outstanding claims incurred, and IBNR are inadequate, claims deficiency reserves margin shall be determined.

(4) A short-term insurer shall -

- (a) maintain contingency reserves to cover fluctuations in securities and variations in statistical estimates; and
- (b) disclose the value of contingency reserve in its financial statements.

Reserving requirements for long-term insurer

11. A long-term insurer shall maintain reserves in respect of long-term insurance.

Unearned premium reserves for long-term insurer

12. A long-term insurer shall establish and maintain unearned premium reserves, in addition to reserves provided under section 26 (1) of the Act.

Policy liabilities for long-term insurer

13. (1) A long term insurer shall establish and maintain policy liabilities providing for -

- (a) a best estimate value of the liability of the company in respect of obligations under life insurance contracts; and
- (b) uniform emergence of profit in respect of life insurance contracts.

(2) The policy liability is equal to the sum of -

- (a) the best estimate liability;
- (b) the value of future best estimate bonuses; and
- (c) the value of future best estimate shareholder profits.

(3) Where non-participating benefits are provided, profit is entirely the entitlement of the shareholder and in that case, the policy liability is equal to the sum of -

- (a) the best estimate liability; and
- (b) the value of future best estimate shareholder profits.

(4) A long-term insurer shall determine the best estimate liability as the value of the expected future payments and receipts under the policy, gross of reinsurance, which are based on obligations at the reporting date and the best estimate liability shall be equal to -

- (a) the value of expected future benefit payments; plus
- (b) the value of expected future expenses; less

(c) the value of expected future premiums.

(5) A long-term insurer shall use the generally accepted actuarial principles when projecting the expected future cash flows, taking into consideration the assumptions about the expected future experience, and all factors which are considered to be material to the calculation, including -

- (a) investment earnings;
- (b) inflation;
- (c) taxation;
- (d) expenses;
- (e) mortality and morbidity; and
- (f) policy discontinuance.

(6) The best estimate liability and best estimate assumptions shall be based any options or guarantees offered by the insurer.

Solvency margin

14. An insurer shall -

- (a) calculate the solvency margin in accordance with Schedules 3 and 5;
- (b) determine the value of assets for the required solvency margin calculation in accordance with Schedule 6; and
- (c) determine the available solvency margin as the value of admissible assets over and above the value of admissible liabilities.

Assets not approved

15. (1) The Commissioner may recognise assets which meet the obligations of a policyholder and which are readily marketable assets when current

and future obligations are due, as approved assets.

(2) Subject to section 25(1) of the Act, the following assets shall not be considered as approved assets -

- (a) organizational expenses, goodwill, trade names, and other similar intangible assets;
- (b) uncollected receivables of the agents which are over 90 days regardless of any unearned premium;
- (c) reinsurance premiums which are more than 90 days overdue except to the extent the assuming entity maintains unearned premium and loss reserves;
- (d) software;
- (e) furniture, fixtures and equipment;
- (f) assets not held in the name of the insurer;
- (g) assets which do not meet investment criteria prescribed by the Commissioner;
- (h) investment amount whose investment value is not calculated and reported in the manner as prescribed by the Act;
- (i) reinsurance recoverable related to reinsurance agreements not approved by the Commissioner as set out in the Act and related regulations;
- (j) advances to employees, directors or agents, other than loans of policyholders, whether secured or not.

(3) An insurer may request and obtain approval of all or part of an asset otherwise excluded under section 25 of the Act and these regulations as an approved asset by forwarding a written request to the Commissioner which -

- (a) provides a description of the amount and nature of the

asset;

- (b) states whether the company is requesting that all or a portion of the asset is to be considered approved; and,
- (c) demonstrates that the asset -
 - (i) is readily marketable,
 - (ii) is unencumbered; and,
 - (iii) may be easily liquidated to meet policyholder obligations when both current and future obligations are due.

(4) Where the reinsurance recoverable is not approved, any deductions to liabilities pertaining to the reinsurance agreements not approved shall be reported as a liability.

Methodology for calculating required solvency margin of an insurer

16. (1) A long-term insurer shall calculate the required solvency margin based on technical reserves and on amount at risk, in accordance with Schedule 5.

(2) A short-term insurer shall calculate the required solvency margin based on net written premiums for the last 12 months and net incurred claims for the last 12 months, in accordance with the Schedule 3.

Required solvency margin for long-term insurer

17. (1) A long-term insurer shall determine required solvency margin by applying risk factors on the mathematical reserves and the sum at risk per class of long term business.

(2) Risk factors as stipulated in this regulation shall relate to adverse impacts due to movements in future mortality, morbidity, longevity, expenses, lapses and other insurance risks.

(3) A long-term insurer shall be required to maintain the required

solvency margin equal to the sum of risk factors multiplied by the mathematical reserves and sum at risk per class of long term business.

(4) An insurer shall, for the purposes of calculating the required solvency margin for mathematical reserves and sum at risk apply such factors to each class of business insurance liabilities according to the form for the calculation of solvency margin.

Required solvency margin for a short-term insurer

18. (1) The required solvency margin for short-term insurers shall be determined using the premium basis or the claims incurred methods.

(2) A short term insurer shall be required to maintain solvency margin which shall be a higher of amount determined using the premium basis method or the incurred claims basis method.

(3) Risk factors shall be applied on the premiums written and claims incurred within the 12 months period on each line of short term business when determining the value of the required solvency margin when using the premium basis and incurred claims basis respectively.

(4) An insurer shall, for the purposes of calculating the required solvency margin for written premiums and incurred claims apply such factors to each class of business insurance liabilities according to the form for the calculation of solvency margin.

(5) The insurer shall maintain a solvency ratio at a level of not less than the level prescribed in these Regulations. If an insurer's solvency level shall be below this amount, it shall be considered to be unable to satisfy its liabilities as these become chargeable.

(6) An insurer shall calculate and continuously monitor monthly its required solvency margin and available solvency margin.

(7) An insurer shall submit the information on its required solvency margin and available solvency margin as of the annual balance sheet date or as of any other reporting date required by the Commissioner.

(8) An insurer shall inform the Commissioner upon determination

that either of its solvency margins, required or available, falls under the minimum level prescribed under these Regulations, within 10 days from the date it acquires knowledge of such non-compliance.

Transitional provisions

19. A person registered as an insurer under the Act, shall adjust insurance activities in accordance with the provisions of these Regulations within one year from the coming into operation of these Regulations.

**DR. RETŠELISITSOE MATLANYANE
GOVERNOR OF THE CENTRAL BANK OF LESOTHO**

NOTE

1. Act No. 12 of 2014
2. Act No. 2 of 2000

SCHEDULE 1

**INVESTMENT RULES ON ADMISSIBILITY
FACTORS - MARKET RISK
(Regulation 5(3) and 6(1))**

Item	Categories or kinds of assets	Percentage of market value of asset of Short Term Insurer	Percentage of market value of asset of Long Term Insurer
1	Government Securities	100%	100%
2	Deposits at financial institutions	100%	100%
3	Ordinary Shares Listed	85%	80%
4	Preference Shares Listed	90%	85%
5	Ordinary Shares Unlisted	80%	80%
6	Preference Shares Unlisted	80%	80%
7	Owner Occupied Property	60%	80%
8	Investment Properties	85%	90%
9	Investments in affiliated companies	80%	80%
10	Premiums receivable for less than 60 days	100%	100%
11	Receivables Outstanding for a period of less than 90 days from reinsurers	100%	100%
12	Receivables Outstanding for a period of less than 90 days from insurers	100%	100%
13	Receivables from related companies outstanding for less than 90 days	100%	100%
14	Accrued interest, rent, income	100%	100%
15	Policyholders' loans	90%	100%
16	Mortgages and debentures	100%	100%
17	Secured loans	100%	100%
18	Unsecured loans	50%	60%
19	Other assets	50%	50%

SCHEDULE 2

INVESTMENT RULES ON CONCENTRATIONS LIMITS

**Investments in a company, share, bank or any institution
on a single entity basis
(Regulation 5(3) and 6(1))**

Item	Categories or kinds of assets	Maximum percentage of aggregate market value of total assets of Short Term Insurer	Maximum percentage of aggregate market value of total assets of Long Term Insurer
1	Deposits and balances in any bank or building society registered in Lesotho as deposit-taking institution including negotiable deposits, and money market instruments in terms of which such an institution is liable, paid-up shares of a building society	20%	20%
2	Bills, bonds or securities issued or guaranteed by or loans to or guaranteed by any statutory body or any local in Lesotho or outside Lesotho	20%	30%
3	Investment in a single property or property development project in Lesotho	5%	10%
4	Investments in ordinary shares of any company, banking institution, building society or other institution incorporated in Lesotho, excluding affiliated	10%	10%

	companies, whose shares are listed on a licensed exchange in Lesotho		
5	Investments in ordinary shares of any company, banking institution, building society or other institution, excluding affiliated companies, whose shares are listed on a licensed exchange outside Lesotho	10%	10%
6	Investments in preference shares of any company, banking institution, building society or other institution incorporated in Lesotho, excluding affiliated companies, whose shares are listed on a licensed exchange in Lesotho	15%	15%
7	Investments in preference shares of any company, banking institution, building society or other institution, excluding affiliated companies, whose shares are listed on a licensed exchange outside Lesotho	15%	15%
8	Investments in shares or debentures of any company or other institution, excluding affiliated companies, listed on a licensed exchange	10%	15%
9	Investments in shares or debentures of any company other institution, excluding affiliated companies, unlisted on a licensed exchange	5%	5%
10	Investment in any property shares in Lesotho	10%	10%
11	Investments in affiliated companies	5%	5%
12	Investments in other assets	2%	2%
13	Loans to and non-convertible debentures of any affiliated company	5%	10%

SCHEDULE 3

**SHORT TERM INSURANCE BUSINESS CALCULATION
OF SOLVENCY MARGINS
(Regulation 7(b), 14(a) and 16(2))**

Short term
Insurance
Business

Calculation of
Solvency Margin

Company:
Insurance ID:

Financial Year :

*(Amounts in
thousands Maloti)*

Method 1 - Line Premium basis	Line	Gross Written Premium (GWP) [A]	Net Written Premium (NWP) [B]	Retention Rate (Min NWP/ GWP = 50%) [C]	Class Risk Factor [D]	Required Solvency- Current Period [E] = A*C*D
Property	11	-	-	--	30.0%	-
Accident and health	12	-	-	--	25.0%	-
Motor	13	-	-	--	16.0%	-
Transportation	14	-	-	--	20.0%	-
Engineering	15	-	-	--	30.0%	-
Liability	16	-	-	--	35.0%	-
Guarantee	17	-	-	--	29.0%	-
Miscellaneous	18	-	-	--	10.0%	-

Other General Insurance	23	-	--		10.0%	-
Total (Method 1 - Premium basis)	24	-	--			-
Method 2 - Claims basis	Line	Gross Claims Incurred (GCI)	Net Claims Incurred (NCI)	Retention Rate (Min NCI/GCI= 50%)	Class Risk Factor	Required Solvency-Current Period
		[G]	[H]	[I]	[J]	[K] = G*I*J
Property	25	-	-	--	15.0%	-
Accident and health	26	-	-	--	33.0%	-
Motor	27	-	-	--	18.0%	-
Transportation	28	-	-	--	26.0%	-
Engineering	29	-	-	--	35.0%	-
Liability	30	-	-	--	24.0%	-
Guarantee	31	-	-	--	25.0%	-
Miscellaneous	32	-	-	--	20.0%	-
Other General Insurance	33	-	-	--	20.0%	-
Total (Method 2 - Claims basis)	34	-	-	--		-
Solvency Margin Result						Current Period [S]
Required minimum margin (the highest of 2 methods)	35					-
Total (Method 1 - Premium basis)	-					

Total (Method 2 - -
Claims basis)

SOLVENCY POSITION

Short term insurance Business

Capital Adequacy

Company:

Insurance ID:

Financial Year :

(Amounts in thousands Maloti)

Item	Line	Current Period [A]
Capital Available [12-13-14-15]	11	-
Total Assets 12 -		
<i>Non Admissible Assets</i>	13	-
<i>Assets With Over Concentration Limits</i>	14	-
Total Liabilities	15	-
Capital Required [Maximum of 17 or 20]	16	4,000,000
Risk Capital Requirement - 30% of [sum 18 to 19]	17	-
Risk Capital Amount - Insurance Risk	18	-
Risk Capital Amount - Asset Risk	19	-
Minimum Capital Requirement - 4,000,000	20	4,000,000
Capital Adequacy Ratio	21	0.0%

SCHEDULE 4

UNEARNED PREMIUM RESERVES METHODS (Regulation 8 (2))

Method	Basis
“24ths”	Reserve on monthly
“365ths”	Reserve on daily
“8ths”	Reserve on bi-quarterly

SCHEDULE 5

**LONG TERM INSURANCE BUSINESS CALCULATION OF
SOLVENCY MARGINS
(Regulation 14(a) and 16(1))**

**Long term insurance
Business**

Calculation of
Solvency Margin

Company:
Insurance ID:

Financial Year :

*(Amounts in thousands
Maloti)*

Mathematical Reserves-Solvency	Line	Mathematical reserves	Factor	Requirement for Current Period
		[A]	[B]	[C] = AxB

**Insurance not related
(linked) to
investment funds:**

Individuals:	11			
Life insurance	12		4.0%	-
Annuities	13		4.0%	-
Collectives:	14			
Life insurance:	15			

<i>With premiums guaranteed for not more than one year</i>	16	1.0%	-
<i>With premiums guaranteed for more than one year</i>	17	3.0%	-
Annuities	18	4.0%	-
Insurance related (linked) to investment funds:			
Individuals:	19		
Life insurance	20	2.0%	-
<i>With guarantees</i>	21	1.0%	-
<i>Without guarantees</i>	22		
Annuities	23		
<i>With guarantees</i>	24	2.0%	-
<i>Without guarantees</i>	25	1.0%	-
Collectives:	26		
Life insurance	27		
<i>With guarantees</i>	28	2.0%	-
<i>Without guarantees</i>	29	1.0%	-
Annuities	30		
<i>With guarantees</i>	31	2.0%	-

<i>Without guarantees</i>	32	1.0%	-
Additional insurances (risks)			
Individuals and collectives	33		
<i>accidental death</i>	34	2.0%	-
<i>accidental injury</i>	35	2.0%	-
<i>permanent disability</i>	36	2.0%	-
<i>temporary disability</i>	37	4.0%	-
<i>hospitalization or health care expenses</i>	38	4.0%	-
<i>severe disease insurance</i>	39	4.0%	-
<i>unemployment insurance</i>	40	2.0%	-
<i>other (specify)</i>	41	2.0%	-
Total (Solvency - Mathematical Reserve)	42		-

Sum at Risk Solvency	Line	Gross Sum at Risk	Reinsurance Share of Gross sum at Risk	Net Sum at Risk	Factor	Requirement for Current Period
		[E]	F]	[G]=	[H]	[I] = GxH E-F

**Insurance not related
(linked) to
investment funds:**

Individuals:	43			
Life insurance	44	-	0.3%	-
Annuities	45	-	0.0%	-
Collectives:	46			
Life insurance:	47			
<i>With premiums guaranteed for not more than one year</i>	48	-	0.2%	-
<i>With premiums guaranteed for more than one year</i>	49	-	0.3%	-
Annuities	50	-	0.0%	-

**Insurance related
(linked) to
investment funds:**

Individuals:	51			
Life insurance	52	-	0.2%	-
With guarantees	53	-	0.3%	-
Without guarantees	54			
Annuities	55			
With guarantees	56	-	0.0%	-
Without guarantees	57	-	0.0%	-
Collectives:	58			
Life insurance	59			
With guarantees	60	-	0.0%	-
Without	61	-	0.0%	-

guarantees				
Annuities	62			
<i>With guarantees</i>	63	-	0.0%	-
<i>Without guarantees</i>	64	-	0.0%	-
Additional insurances (risks)				
Individuals and collectives	65			
<i>accidental death</i>	66	-	0.0%	-
<i>accidental injury</i>	67	-	0.0%	-
<i>permanent disability</i>	68	-	0.0%	-
<i>temporary disability</i>	69	-	0.0%	-
<i>hospitalization or health care expenses</i>	70	-	0.0%	-
<i>severe disease insurance</i>	71	-	0.0%	-
<i>unemployment insurance</i>	72	-	0.0%	-
<i>other (specify)</i>	73	-	0.0%	-
Total (Solvency - Sum at Risk)	74			-

Solvency Margin Result

Current
Period
[S]

SOLVENCY POSITION

Long term insurance Business

Capital Adequacy

Company:

Insurance ID:

Financial Year :

(Amounts in thousands Maloti)

Item	Line	Current Period
		[A]
Capital Available [12-13-14-15]	11	-
Total Assets	12	-
Non Admissible Assets	13	-
Assets With Over Concentration Limits	14	-
Total Liabilities	15	-
Capital Required [Maximum of 17 or 20]	16	4,000,000
Risk Capital Requirement - 30% of [sum 18 to 19]	17	-
Risk Capital Amount - Insurance Risk	18	-
Risk Capital Amount - Asset Risk	19	-
Minimum Capital Requirement - 4,000,000	20	4,000,000
Capital Adequacy Ratio	21	0.0%

SCHEDULE 6

**VALUATION OF ASSETS
(Regulation 14(b))**

**CALCULATION OF ADMISSIBILITY OF ASSETS FOR LONG TERM
INSURER**

**LONG TERM
INSURER**

**Calculation of
Admissibility of
Assets**

Company:

Insurance ID:

Financial Year :

*(Amounts in
thousands Maloti)*

Item	Line	Admissi- bility Factor	Life Insura- nce	Total	100%	Risk	Non	Over	Net
				Amount	Admit- ted Assets Amount	Adjus- Assets Amount	Admi- ted Assets Amount	Concent- ration Limit Amount	Admitted Amount
				[A]	[B]	[C]	[D]	[E]	[F]
Assets Fixed Assets (Net Book Values) [sum 12 to 15]	11			-	-	-	-	-	-
Owner Occupied Property	12		80%	-	-	-	-	-	-

Motor Vehicles	13	50%	-	-	-	-	-
Computer Equipment	14	0%	-	-	-	-	-
Furniture, Fittings and Office equipment	15	0%	-	-	-	-	-
Investments	16						
[sum 17 to 25]							
Government & Non Governmental Securities	17	100%	-	-	-	-	-
Deposits at Financial Institutions	18	100%	-	-	-	-	-
Ordinary Shares Listed	19	80%	-	-	-	-	-
Preference Shares Listed	20	85%	-	-	-	-	-
Ordinary Shares Unlisted	21	80%	-	-	-	-	-
Preference Shares Unlisted	22	80%	-	-	-	-	-
Investment Funds	23	90%	-	-	-	-	-
Investment Property	24	85%	-	-	-	-	-
Investment in Subsidiaries and Affiliates	25	80%	-	-	-	-	-

Loans	26		-	-	-	-	-
[sum 26 to 32]							
Policy holders'	27	100%	-	-	-	-	-
Loans							
Mortgages and Debentures	28	100%	-	-	-	-	-
Unsecured Loans to Institutions	29	80%	-	-	-	-	-
Secured Loans	30	100%	-	-	-	-	-
Loans to Employees, Directors, Agents	31	0%	-	-	-	-	-
Other Loans	32	0%	-	-	-	-	-
Receivables [sum 34 to 43]	33	0%	-	-	-	-	-
Premiums Receivables Outstanding For less than 60 days	34	100%	-	-	-	-	-
Premiums Receivables Outstanding for Period More Than 60 Days	35	0%	-	-	-	-	-
Receivables Outstanding For a Period of Less Than 90 Days from Reinsurers	36	100%	-	-	-	-	-

Receivables 37 Outstanding For Period More Than 90 Days From Reinsurers	0%	-	-	-	-	-
Receivables 38 Outstanding For Outstanding For a Period of Less Than 90 Days from Insurers	100%	-	-	-	-	-
Receivables 39 Outstanding For Period More Than 90 Days From Insurers	0%	-	-	-	-	-
Receivables 40 Outstanding For a Period of Less Than 90 Days from Affiliates	100%	-	-	-	-	-
Receivables 41 Outstanding For Period More Than 90 Days From Affiliates	0%	-	-	-	-	-
Reinsurance 42 Recoverables Approved	100%	-	-	-	-	-
Reinsurance 43 Recoverables Not Approved	0%	-	-	-	-	-
Cash and 44 cash equiva- lents [sum 45 to 46]						

Cash in Hand	45	100%	-	-	-	-	-
Cash in Banks	46	100%	-	-	-	-	-
Other [sum 48 to 52]	47		-	-	-	-	-
Accrued Interest, Rent, Income	49	100%	-	-	-	-	-
Deferred Acquisition Cost	50	0%	-	-	-	-	-
Prepaid Expenses	51	0%	-	-	-	-	-
Intangible Assets	52	0%	-	-	-	-	-
Other assets (specify below) [sum 54 to 58]	53	50%	-	-	-	-	-
0	54	50%	-	-	-	-	-
0	55	50%	-	-	-	-	-
0	56	50%	-	-	-	-	-
0	57	50%	-	-	-	-	-
0	58	50%	-	-	-	-	-
Total	59		-	-	-	-	-

CALCULATION OF ADMISSIBILITY OF ASSETS FOR SHORT TERM INSURANCE

Short term Insurance

Calculation of Admissibility of Assets

Company:

Insurance ID:

Financial Year :

*(Amounts in thousands
Maloti)*

Item	Line	Admissibility Factor	General Insurance				Net Admitted Amount	
			Total Amount	100% Admitted Assets Amount	Risk Adjusted Assets Amount	Non Admitted Assets Amount		Over Concentra- tion Limit Amount
			[A]	[B]	[C]	[D]	[E]	[F]=[A]- [D]-[E]
Assets			11	-	-	-	-	-
Fixed Assets (Net Book Values) [sum 12 to 15]								
Owner Occupied Property			12	60%	-	-	-	-
Motor Vehicles			13	50%	-	-	-	-
Computer Equipment			14	0%	-	-	-	-
Furniture, Fittings and Office equipment			15	0%	-	-	-	-
Investments [sum 17			16	0%	-	-	-	-

to 25]

Government & Non Governmental Securities	17	100%	-	-	-	-
Deposits at Financial Institutions	18	100%	-	-	-	-
Ordinary Shares Listed	19	85%	-	-	-	-
Preference Shares Listed	20	90%	-	-	-	-
Ordinary Shares Unlisted	21	80%	-	-	-	-
Preference Shares Unlisted	22	80%	-	-	-	-
Investment Funds	23	80%	-	-	-	-
Investment Property	24	85%	-	-	-	-
Investment in Subsidiaries and Affiliates	25	80%	-	-	-	-
Loans [sum 26 to 32]	26		-	-	-	-
Policyholders' Loans	27	100%	-	-	-	-
Mortgages and Debentures	28	100%	-	-	-	-
Unsecured Loans to Institutions	29	80%	-	-	-	-
Secured Loans	30	100%	-	-	-	-
Loans to Employees, Directors, Agents	31	0%	-	-	-	-
Other Loans	32	0%	-	-	-	-
Receivables [sum 34 to 43]	33	0%	-	-	-	-

Premiums Receivables Outstanding For less than 60 days	34	100%	-	-	-	-
Premiums Receivables Outstanding for Period More Than 60 Days	35	0%	-	-	-	-
Receivables Outstanding For a Period of Less Than 90 Days from Reinsurers	36	100%	-	-	-	-
Receivables Outstanding For Period More Than 90 Days	37	0%	-	-	-	-
From Reinsurers Receivables Outstanding For a Period of Less Than 90 Days from Insurers	38	100%	-	-	-	-
Receivables Outstanding For Period More Than 90 Days From Insurers	39	0%	-	-	-	-
Receivables Outstanding For a Period of Less Than 90 Days from Affiliates	40	100%	-	-	-	-
Receivables Outstanding For Period More Than 90 Days From Affiliates	41	0%	-	-	-	-
Reinsurance Recoverables Approved	42	100%	-	-	-	-
Reinsurance Recoverables Not Approved	43	0%	-	-	-	-
Cash and cash equivalents [sum 45 to 46]	44	0%	-	-	-	-

Cash in Hand	45	100%	-	-	-	-
Cash in Banks	46	100%	-	-	-	-
Other [sum 48 to 52]	47		-	-	-	-
Accrued Interest, Rent, Income	49	100%	-	-	-	-
Deferred Acquisition Cost	50	0%	-	-	-	-
Prepaid Expenses	51	0%	-	-	-	-
Intangible Assets	52	0%	-	-	-	-
Other assets (specify below) [sum 54 to 58]	53	50%	-	-	-	-
0	54	50%	-	-	-	-
0	55	50%	-	-	-	-
0	56	50%	-	-	-	-
0	58	50%	-	-	-	-
Total	59		-	-	-	-

LEGAL NOTICE NO. 134 OF 2016

**Financial Institutions (Large Financial Cooperatives)
Regulations, 2016**

Arrangement of Regulations

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LEGAL NOTICE NO. 134 OF 2016

**Financial Institutions (Large Financial Cooperatives)
Regulations, 2016**

Pursuant to section 27(1) read with 71(1) of the Financial Institutions Act, 2012¹,
I,

RETŠELISITSOE MATLANYANE

Governor of the Central Bank of Lesotho, being the Commissioner of Financial
Institutions, make the following regulations:

PART I – PRELIMINARY**Citation and commencement**

1. These regulations may be cited as the Financial Institutions (Large Financial Cooperatives) Regulations, 2016 and shall come into operation on the date of publication in the Gazette.

Interpretation

2. In these regulations, unless the context otherwise requires -

(a) “board” means the governing body of a large financial cooperative to which the governance of its affairs is entrusted;

“Commissioner” means the Central Bank of Lesotho;

“cooperative” means a cooperative as defined in the Cooperative Societies Act 2000²;

“fit and proper person” means a person contemplated in regulation 30;

“financial cooperative” means a financial institution which is owned and operated by its members to provide products and services which are comparable to those offered by banks;

“large financial cooperative” means a financial institution which is owned and operated by its members and accepts deposits from members and provides credit services on the pledge of savings;

“Minister” means the Minister of Finance;

“proposed large financial cooperative” means a cooperative whose volume of savings and deposits have reached M5 000 000.00 and has applied for registration as a large financial cooperative under regulation 5;

“the Act” means the Financial Institutions Act 2012;

- (b) other words have the same meaning as ascribed to them under the Financial Institutions Act 2012.

Objective

3. The objective of these regulations is to -
- (a) create a prudential, legal, regulatory and supervisory framework for large financial cooperatives;
 - (b) place large financial cooperatives under the regulatory and supervisory authority of the Commissioner;
 - (c) determine thresholds for placing a large financial cooperative under prudential supervision;
 - (d) protect deposits and shares of members while preserving the ability to serve the members;
 - (e) strengthen governance of large financial cooperatives;
 - (f) strengthen internal controls in large financial cooperatives; and
 - (g) streamline regulatory relationship between the Commissioner for Cooperative Development and the Commissioner.

Application

4. (1) These regulations apply to a large financial cooperative incorporated under the Cooperative Societies Act of 2000, engaged in accepting savings and deposits from its members, and meets any of the following criteria -

- (a) total deposits are equal to or more than M5 000 000.00; or
- (b) assets are equal to or more than M5 000 000.00 in value.

PART II – LICENSING

Application for a licence

5. (1) A financial cooperative which meets the criteria established in regulation 4 shall apply to the Commissioner for a licence to operate as a large financial cooperative.

(2) Subject to subregulation (5), an existing financial cooperative which operates as stipulated under regulation 4, without a license, as a large financial cooperative, shall be deemed to be engaged in business without being a financial institution and shall be subject to section 20 of the Act.

(3) An application for a licence shall be made in writing and shall include -

- (a) 2 certified copies of the applicant's constitution;
- (b) a certified copy of the registration certificate as a cooperative under the Cooperative Societies Act of 2000;
- (c) the full and abbreviated name of the large financial cooperative, which shall include its trading name;
- (d) by-laws approved by the Commissioner for Cooperative Development;
- (e) copies of lending and other administrative policies and internal procedures and controls manuals;

- (f) audited financial statements showing an adequate economic and financial situation and full compliance with rules and regulations applicable to cooperative societies licensed under the Cooperative Societies Act of 2000;
- (g) the postal and physical address of the financial cooperative and a statement describing the suitability of the premises of the large financial cooperative and a statement describing the suitability of the premises from which the large financial cooperative will operate;
- (h) the application fee prescribed by the Commissioner; and
- (i) such other information as the Commissioner may require.

(4) Upon receipt of the application, the Commissioner may require the large financial cooperative to comply with any condition stipulated under Part II of the Act.

(5) Within 60 days after the receipt of the completed application, the Commissioner may grant the large financial cooperative a license to operate as a large financial cooperative or, where the application has been rejected, the Commissioner shall provide the grounds upon which the application has been rejected.

(6) The Commissioner may issue a provisional licence subject to fulfilment of any condition necessary for the grant of a licence to a large financial cooperative within 3 months following the date of application.

Requirements for licensing

6. Before a licence is issued to a large financial cooperative the large financial cooperative shall demonstrate to the satisfaction of the Commissioner that -

- (a) the business it proposes to conduct is that of a large financial cooperative to which the application relates;
- (b) it has sufficient human and financial resources and operational

capacity to function as a large financial cooperative;

- (c) a director, managing director or executive officer of the large financial cooperative has the necessary experience, knowledge and qualifications to operate the large financial cooperative, and is a fit and proper person as contemplated in sections 43 and 44 of the Act;
- (d) the composition of the board or governing body of the large financial cooperative is commensurate with the nature and scale of the business to be conducted.

Duration of a licence

7. A licence issued to a large financial cooperative shall be valid for one year and may be renewed on application by a large financial cooperative.

Renewal of a licence

8. (1) Prior to renewing a licence, the Commissioner shall carry out an examination of the financial position of the applicant, its physical and technological infrastructure, the professional quality of the managers and the training of the personnel, as well as the accuracy and completeness of the documentation presented in the application for renewal.

(2) Within 60 days after the receipt of the complete application for renewal of a licence, the Commissioner may renew the licence to operate as a large financial cooperative or, where the application for renewal has been rejected, the Commissioner shall provide written grounds upon which the rejection is based.

(3) A large financial cooperative which continues to operate before renewing its licence shall be liable to a fine as set out in the Schedule.

PART III – ORGANISATION AND GOVERNANCE

Constitution of a large financial cooperative

9. The constitution of a large financial cooperative shall, in addition to the provisional requirements under the Cooperative Societies Act of 2000 provide -

- (a) that the determination of the remuneration and other benefits of its directors, including the managing director, shall be at the annual general meeting;
- (b) for the composition of an audit and risk committee consisting of persons who are not members of the cooperative;
- (c) for the establishment of a management committee and the manner in which it is to be constituted;
- (d) for the appointment of a managing director of the large financial cooperative;
- (e) for the settlement of disputes between and among members or between a member and the large financial cooperative;
- (f) that any membership shares issued are to be fully paid up;
- (g) that certificates, share statements or any other proof of shareholding shall be issued to members; and
- (i) that members have a right to attend annual and other meetings of members.

Amendment to the Constitution

10. (1) An amendment to the constitution of a large financial cooperative shall be approved by the Commissioner prior to its submission to the Commissioner for Cooperative Development.

(2) The Commissioner may approve or refuse the proposed amendment, and in the case of a refusal, the Commissioner shall provide written reasons for the refusal.

(3) The Commissioner may, at any time, issue a directive to a large financial cooperative to amend its constitution to remove anomalies or undesirable divergences in its activities.

(4) A directive referred to in subregulation (3) shall be considered by the members of the large financial cooperative at its next general meeting and, if approved, the amendment shall be submitted to the Commissioner for Cooperative Development in accordance with the Cooperative Societies Act, 2000.

(5) If a large financial cooperative refuses or fails to amend its constitution in accordance with subregulation (4), it may be liable to a penalty as prescribed in the Schedule.

Board of Directors and Management Committee

11. (1) A large financial cooperative shall have a board of directors and a management committee, appointed by the general meeting in accordance with the Cooperative Societies Act 2000.

(2) The Board shall be responsible for establishing operational and financial policies, as well as appointing a general manager and approving management responsible for all executive duties including the approval of loans and advances to members.

(3) The Board shall -

(a) have all the duties and responsibilities assigned to the board of directors under Part VII of the Act;

(b) appoint an audit committee which shall -

(i) assist the board in its evaluation of the adequacy and efficiency of internal control systems, risk management systems, accounting practices, accounting systems, information and auditing processes within the large financial cooperative;

(ii) facilitate and promote communication regarding the matters referred to in paragraph (a) or any

other related matter between the members, board, executive officers, auditor and the employees charged with the internal auditing of the transactions of the large financial cooperative; and

- (iii) introduce measures that in the committee's opinion may serve to enhance the credibility and objectivity of financial statements and reports prepared with reference to the affairs of the large financial cooperative.

(4) Members of the Board and Management Committee shall be subject to the sanctions and penalties set out in the Act.

Functions of a large financial cooperative

12. Notwithstanding the Cooperative Societies Act, 2000, a large financial cooperative may provide the following services to its members -

- (a) soliciting and acceptance of savings, call deposits and fixed deposits from members;
- (b) withdrawal of monies;
- (c) grant of secured and unsecured loans to members in the manner and form as prescribed by its loan policy as determined by the directors from time to time;
- (d) provision of trust or custody services;
- (e) investment of deposits for the purposes of earning returns for the benefit of the large cooperative and for offshore investments they shall seek prior approval of the Commissioner;
- (f) provision of money transfer and payments services;
- (g) receipt and distribution of member remittances;
- (h) any other financial services as may be incidental to the achieve-

ment of the above objects as resolved by the board, or governing body, and approved by the Commissioner.

Powers

13. A large financial cooperative may -
- (a) be a member of, and enter into agreements with, a representative body or support organization; or
 - (b) make, draw, accept, endorse or negotiate negotiable instruments that are made to the order of, or made out and endorsed by that cooperative.

Limitations

14. (1) A large financial cooperative shall not provide, participate in or undertake financial services other than the services authorised in respect of the large financial cooperatives as registered in terms of these regulations.
- (2) Failure to comply with subregulation (1) shall constitute an offence for which the Commissioner may impose a penalty as prescribed in the Schedule.

PART IV – CAPITAL, RESERVES AND ACCOUNTS

Minimum capital requirements

15. (1) A large financial cooperative shall maintain a minimum core capital made up of members' shares, 20% of retained net surplus and 10% of members savings yearly until the capital reaches M10 000 000.00.
- (2) A large financial cooperative shall operate with a total capital of not less than 8% of its loans, advances, and off balance sheet items.
- (3) Special purpose reserves such as education, social services membership in secondary cooperative societies or others shall not be considered in the computation of the capital.

Distribution of annual surplus

16. (1) The annual general meeting of the large financial cooperative shall approve the amounts of general and special purpose reserves, to be created from the annual surplus audited by an independent auditor in accordance to applicable regulations, as well as the amounts, if any, to be given to managers and employees as a bonus for their performance.

(2) Not less than 20% of the annual net surplus shall be dedicated to the creation of general reserves for unanticipated losses, which shall be accounted in capital accounts and included in the calculation of the core capital.

Accounts and audit

17. (1) The Board shall ensure that proper books of accounts and other records are kept in relation to the operations of the cooperative and shall prepare in respect of each financial year, a statement of accounts in such form as the Commissioner shall prescribe.

(2) The statement of accounts referred to in subregulation (1) shall be ready for submission to the auditors within 2 months of the close of the financial year of a large financial cooperative.

(3) A large financial cooperative shall, annually, appoint an independent auditor approved by the Commissioner.

(4) The Auditor appointed under subregulation (3) shall submit, directly to the Commissioner, copies of financial statements audited by him or her.

(5) A large financial cooperative shall prepare and submit, quarterly to the Commissioner within 20 days after the end of the quarter to which the statement relates, a summary statement of its financial position.

(6) As soon as the accounts of a large financial cooperative have been audited, and in any case not later than 3 months after the close of the financial year, the board shall send a copy of the statement of accounts to the Commissioner together with a copy of any report made by the auditor.

(7) The Commissioner may arrange trilateral meetings with a large financial cooperative and its auditor from time to time, to discuss matters rele-

vant to the Commissioner's supervisory responsibilities which have arisen in the course of the statutory audit of the cooperative including relevant aspects of the cooperative's business, its accounting and control system and its annual accounts.

(8) Entries in the books of accounts of large financial cooperatives shall be in the English language.

(9) A large financial cooperative shall post, at a conspicuous place at the normal place of business, annual information on the state of books of accounts and a summary statement of its financial position duly certified by the auditor.

(10) If a large financial cooperative contravenes or fails to comply with these regulations, it shall be liable to a default fine as prescribed in the Schedule.

PART V – SUPERVISION, REGULATION, COORDINATION AND CONTROL

Supervision and powers of the Commissioner

18. (1) Notwithstanding any other law, the power relating to the supervision, control and regulation of a large financial cooperative is vested in the Commissioner which, for the purposes of these regulations and without prejudice to the generality of the power conferred by the foregoing, shall have power to -

- (a) carry out inspections over the operations of a large financial cooperative in accordance with regulation 19;
- (b) regulate the investment, finance and credit policies of a large financial cooperative so as to be in line with the prevailing credit, currency, exchange control and policies of the financial sector, with a view to facilitating the more efficient discharge of the functions of the Commissioner relating to the formulation, implementation and monitoring of the financial sector institutions;
- (c) require a large financial cooperative within such time as

it may stipulate, to furnish any information or to comply with any order, directive or determination issued or made by the Commissioner pursuant to the powers of the Commissioner conferred on it under these regulations and the Act;

- (d) require any large financial cooperative to provide periodical written reports at such times and in such manner as may be prescribed by the Commissioner.

(2) A large financial cooperative which contravenes or fails to comply with a requirement under regulation 18(1)(c) and (d), shall be liable to a default fine as prescribed in the Schedule.

Inspections

19. (1) The Commissioner may, at any time upon application by at least ten per cent of the members of, or at the request of the judicial manager of, a large financial cooperative, inspect the business of a financial cooperative; and or at any other time that the Commissioner considers fit, or has reason to believe that the large financial cooperative is not conducting its affairs in accordance with these regulations, inspect the business of a large financial cooperative.

(2) The Commissioner shall provide the Commissioner of Cooperative Development with a copy of inspection reports.

(3) A direct inspection activity by the Commissioner of Cooperative Development shall be coordinated with the Commissioner before it takes place and the report thereof shall be made available to the Commissioner.

(4) The Commissioner may take any measures and make any recommendations it considers appropriate following an inspection in terms of sub-regulation (1).

Coordination and control by the Commissioner

20. If, in the opinion of the Commissioner, following an examination as authorised under section 52 of the Act and under regulation 19, it is shown that a large financial cooperative is conducting its business in an unlawful or unsound manner or that it is otherwise in an unsound condition, the Commissioner may,

in addition to any other course of action open to it:

- (a) require the cooperative to take such measures as it may consider necessary to rectify the situation;
- (b) appoint a qualified person who, in the opinion of the Commissioner, has capacity to advise the cooperative on measures to be taken to rectify its situation, and the person shall fix his remuneration which shall be paid by the cooperative;
- (c) prohibit the declaration or payment of a dividend until the situation is corrected;
- (d) withhold approvals on establishment of new branches or other expansion of operations;
- (e) apply for a court order against the cooperative and its management either to stop an unacceptable practice or take affirmative action to cure an undesirable condition;
- (f) apply to court for a removal or suspension order requiring a person in the position of management of a cooperative to cease participating in the affairs of the cooperative on either a temporary or permanent basis;
- (g) impose fines, consistent with the provision of this regulation and the Act, on individual members of management for violations of these regulations.

Power of the Commissioner to give directives

21. (1) The Commissioner may, in order to ensure the implementation and administration of these regulations or to protect the members and the public in general, issue directives to a large financial cooperative.

(2) A directive referred to in subregulation (1) may apply to cooperatives generally or be limited in its application to a particular cooperative.

(3) A directive issued in terms of subregulation (1) takes effect on the date determined by the Commissioner in the directive, and may take effect

immediately.

(4) The Commissioner shall, where a directive is issued for public protection of the members and the public in general, publish the directive in the Gazette.

(5) Where the Commissioner intends to exercise its function under sub-regulation (1), the Commissioner may consult with the Minister responsible for cooperatives.

Establishment of branches in secondary societies

22. (1) Where a large financial cooperative wishes to establish a branch, the large financial cooperatives shall seek and obtain approval of the members in a general meeting.

(2) A branch shall be opened only in locations approved by the Commissioner.

Holding

23. A member of a large financial cooperative shall not hold more than 20% of outstanding shares, except where it is approved by the Commissioner for the purposes of addressing a situation of financial distress.

Other events requiring prior authorisation

24. (1) A large financial cooperative shall not, without the prior written authorisation of the Commissioner -

- (a) effect any voluntary merger, consolidation or other re-organization of its business or affairs with another cooperative or financial institution;
- (b) transfer to any other institution the whole or any of its assets or liabilities in Lesotho;
- (c) alter its name;
- (d) amend its by-laws or constitution under which it is or-

ganized or established.

(2) Notwithstanding any other law, the Commissioner may, in respect of any large financial cooperative, advise the merger of that large financial cooperative with any other financial institution if the financial condition of the concerned large financial cooperative so requires.

(3) The withdrawal by a member of the whole or any amount of shares shall have the prior authorisation of the Board.

(4) A member of the Board shall be personally responsible for authorizing a withdrawal of shares that causes the large financial cooperative to fail to comply with any statutory limits related to capital accounts.

(5) Withdrawal of shares shall be subject to prior approval of the Commissioner for Cooperative Development, and of the Commissioner.

PART VI – ADDITIONAL DUTIES OF LARGE FINANCIAL COOPERATIVES

Exhibition of licences

25. (1) A large financial cooperative shall, at all times, exhibit the licence granted to it under these regulations in a conspicuous position in the public part of its principal place of business and shall similarly exhibit copies of such licence in each of its branches.

(2) If a large financial cooperative fails to comply with this regulation, it shall be liable to a fine as prescribed in the Schedule.

Publication of balance sheet

26. (1) A large financial cooperative shall at all times exhibit a copy of its last audited balance sheet in a conspicuous position in the public part of its principal place of business and shall similarly exhibit copies of such balance sheet in each of its branch offices.

(2) A large financial cooperative shall, at least once in every year, publish copies of its last audited balance sheet in such newspapers which have nationwide circulation.

(3) If a large financial cooperative fails to comply with this regulation, it shall be liable to a fine as prescribed in the Schedule.

Fidelity and secrecy

27. (1) A large financial cooperative shall, except as otherwise required by law, observe the practices and standards customary among financial institutions and, in particular, it shall not divulge any information relating to its customers or their affairs except where it is required by law to do so.

(2) A director, a member of a committee, an auditor, advisor, manager, officer and employee of a large financial cooperative shall, before entering upon his or her duties, make a written declaration of fidelity and secrecy, which shall be witnessed by the principal officer or the company secretary of the large financial cooperative concerned.

(3) Except as otherwise required by law, nothing in these regulations shall authorise an enquiry to be made into the affairs of any individual member or customer of a large financial cooperative:

Provided that nothing herein shall prevent a large financial cooperative from providing to a locally registered credit information agency upon a legitimate request relevant information for credit rating, a summary of which, upon request, shall be provided to the member or customer concerned.

(4) A large financial cooperative shall not reveal to any person any information as to the affairs of any of its members in the cooperative unless lawfully required to do so by a competent court of law.

(5) A person who contravenes this regulation commits an offence and shall be liable, on conviction, to a fine as prescribed in the Schedule.

Cash reserves and liquid assets requirements

28. (1) A large financial cooperatives shall maintain -

- (a) minimum cash balances of 1% on deposits and savings with the Commissioner as reserves against the deposit and other liabilities;

(b) liquid assets in Lesotho of 10% on deposits and savings.

(2) A large financial cooperative which fails to maintain the required liquidity assets as provided in this regulation shall be subject to penalty charges applicable as prescribed in section 32 of the Act.

PART VII – MANAGEMENT OF THE LARGE FINANCIAL COOPERATIVES

Duties of directors and other officers of large financial cooperatives

29. (1) The directors, managing director and executive officer of a large financial cooperative shall be appointed in accordance with the conditions provided for in the constitution of such large financial cooperative.

(2) The Commissioner may object to the appointment of a director or the managing director and may, in accordance with regulation 21, direct the financial cooperative to remove the director within the period stated in the directive.

(3) A director, managing director and executive officer of a large financial cooperative:

- (a) owes a fiduciary duty and a duty of care and skill to the large financial cooperative of which such a person is director, managing director or executive officer;
- (b) shall act *bona fide* for the benefit of the large financial cooperative;
- (c) shall avoid any conflict between the interests of the large financial cooperative and the interests of such director, managing director or executive officer, as the case may be;
- (d) shall possess and maintain the knowledge and skill that may reasonably be expected of a person holding a similar position and carrying out similar functions as are carried out by the director, managing director or executive officer of that large financial cooperative; and

- (e) shall exercise such care in the carrying out of their functions in relation to that financial cooperative as may reasonably be expected of a diligent person holding a similar position, and who possesses knowledge and skill mentioned in paragraph (d) and any such additional knowledge and skill as the director, managing director or executive officer may have.
- (4) A person who is a director or officer concerned with the management of a large financial cooperative shall cease to hold office if -
 - (a) he or she is an adjudicated insolvent or suspends payments or compounds with his or her creditors;
 - (b) he or she is convicted of an offence involving fraud or dishonesty.
- (5) A person who has been a director of, or who has been directly or indirectly concerned in the management of a financial cooperative, the licence of which has been revoked shall, without the approval of the Commissioner, act or continue to act as a director, or be concerned directly or indirectly in the management of any large financial cooperative.
- (6) A person acting in contravention of this regulation commits an offence and shall be liable to a fine as prescribed in the Schedule.

Fit and proper test for directors and officers

30. (1) The Commissioner shall, for purposes of assessing whether a director, managing director or executive officer of a large financial cooperative is a fit and proper person have regard to the integrity, competence, financial integrity and the duty of care of the person for the fulfilment of the responsibilities of the particular office to which he or she aspires to in the large financial cooperative.

(2) In determining whether a person is a fit and proper person under sub-regulation (1), Guidelines on Fit and Proper Assessments for Directors and Senior Officials in the Financial Sector issued by the Commissioner shall apply.

Civil liability of Director, Managing Director or Executive Officer

31. (1) A director, managing director, executive officer, including former director, former managing director, former executive officer who knew or knows that the business of a large financial cooperative was or is being carried on recklessly, with intent to defraud creditors of the large financial cooperative or creditors of any other person, or for any fraudulent purpose is personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the large financial cooperative.

(2) The Commissioner may institute legal proceedings against any director, managing director, or executive officer, including former director, managing director, or executive officer during judicial management, dissolution, or at any other time when it appears that the business of a large financial cooperative was or is being carried on recklessly with intent to defraud creditors of the large financial cooperative or creditors of any other person, or for any fraudulent purpose, for all or any of the debts or other liabilities of the large financial cooperative.

(3) Despite any other law, any amount recovered as a result of proceedings instituted by the Commissioner in terms of sub-regulation (2), may be utilized:

- (a) first, to reimburse all expenses reasonably incurred by the Commissioner in bringing such proceedings;
- (b) thereafter to set-off any amount paid to depositors by the Commissioner of Cooperatives, as part or full compensation for the losses suffered by depositors as a result of the financial cooperative having been unable to repay its deposits; and
- (c) thereafter for the *pro rata* repayment of the losses of depositors.

PART VIII – DISSOLUTION AND LIQUIDATION**Voluntary dissolution**

32. (1) A board of directors of a large financial cooperative may propose dissolution for approval by the members and call a meeting for that purpose.

(2) At any time after a proposal for dissolution has been approved by the members, the large financial cooperative shall submit a written application to the Commissioner for authorisation to commence liquidation proceedings.

(3) The application for liquidation referred to in subregulation (2) shall -

- (a) state the name of the large financial cooperative;
- (b) state the date that the dissolution was approved by the members;
- (c) contain a statement to the effect that -
 - (i) the dissolution was approved by the members in terms of the constitution of the large financial cooperative;
 - (ii) the large financial cooperative will be able to pay its liabilities, supported by audited financial statements; and
- (d) state the particulars of the liquidator.

Verification of sufficiency of assets during voluntary dissolution

33. The Commissioner shall verify that the assets of the large financial cooperative are sufficient to cover the payment of all the liabilities and the shares of the members before granting authorisation to commence liquidation proceedings.

Corporate existence after commencement of voluntary dissolution

34. A large financial cooperative's corporate existence shall continue after it commences liquidation proceedings, but it shall not carry on business except business that is required to wind up and liquidate its affairs, including -

- (a) collecting its assets;
- (b) disposing off its property;
- (c) discharging its liabilities;
- (d) distributing its remaining property to members after payment of liabilities;
- (e) doing every other act necessary to wind up its affairs.

Duties of liquidator under voluntary dissolution

35. Within 14 days of his or her appointment a liquidator of a large financial cooperative which is under voluntary dissolution shall -

- (a) give public notice of his or her appointment in a newspaper with a wide circulation in Lesotho;
- (b) give address and telephone number to which enquiries may be directed;
- (c) prepare a list of every known creditor;
- (d) prepare a creditors payment schedule and lodge it with the Commissioner.

Completion of voluntary dissolution and liquidation

36. Before one year expires, and after all known liabilities are paid off, the board of a large financial cooperative shall deliver a notice of completion of liquidation proceedings to the Commissioner, which shall -

- (a) state the name of the dissolved large financial cooperative;

- (b) have a written statement that all known claims have been disposed of;
- (c) have a statement that all of the cooperative's assets have been distributed to the members.

Termination of corporate existence

37. Upon delivery of a notice of completion of dissolution proceedings to the Commissioner, the corporate existence of the large financial cooperative shall cease, and the Commissioner shall endorse in the register that the cooperative has been dissolved.

Dissolution by Commissioner

38. The Commissioner, jointly with the Commissioner for Cooperative Development, may apply for an order of court for winding up of a large financial cooperative where -

- (a) three-fourths of the members make a written application to the Commissioner for the winding up of the large financial cooperative;
- (b) after making an examination, the Commissioner is of the opinion that a large financial cooperative ought to be wound up;
- (c) a large financial cooperative has ceased to carry on the business for which it was registered for a period of twelve consecutive months;
- (d) membership in a large financial cooperative has fallen below the required minimum under Cooperative Societies Act, 2000 or any law that amends or replaces it, and the large financial cooperative has continued to operate for six months or longer while membership is so reduced;
- (e) a large financial cooperative is unable to pay its debts.

Appointment of the liquidator

39. Following an order for the winding up of a large financial cooperative under regulation 38, the Commissioner may appoint a liquidator and fix his or her remuneration.

Powers and duties of the liquidator

40. (1) The liquidator shall -
- (a) take immediate possession of the assets belonging to the large financial cooperative and of the books, records and other documents pertaining to the business thereof;
 - (b) carry out the business of the large financial cooperative so far as it may be necessary for winding up, except that he or she shall not for this purpose be entitled to grant any loan;
 - (c) give directions in regard to the collection and realization of assets of the large financial cooperative as may be necessary in the course of winding up;
 - (d) call meetings of members whenever necessary for the conduct of the liquidation, giving not less than 15 working days' notice for the meeting;
 - (e) compromise any claim by or against the large financial cooperative after obtaining the approval of the Commissioner;
 - (f) institute and defend suits and other legal proceedings on behalf of the large financial cooperative;
 - (g) give public notice of his or her appointment, and fix, by notice published in the Gazette and in a newspaper with a wide circulation in the country, a date before which a creditor shall submit a claim;
 - (h) prepare a list of every known creditor, and prepare a

creditors payment schedule and lodge it with the Commissioner;

- (i) pay claims against the large financial cooperative according to the respective priorities, if any, and in full or to such extent as the assets of the cooperative may permit;
- (j) distribute the assets of the large financial cooperative to members after payment of all claims against the large financial cooperative;
- (k) submit to the Commissioner, once in every 3 months, a report stating the progress made in winding up the affairs of the large financial cooperative, and on completion of the liquidation process, submit a final report and hand over to the Commissioner books, registers and accounts, and documents relating to such proceedings and are kept by him.

Completion of dissolution by Commissioner

41. Upon submission of the report by the liquidator that the assets of the large financial cooperative have been distributed and its affairs and business wound up, the Commissioner shall -

- (a) endorse in the register that the cooperative has been dissolved;
- (b) revoke the licence of the large financial cooperative;
- (c) advise the Commissioner for Cooperative Development that the large financial cooperative has been wound up.

PART IX – PROHIBITED ACTIVITIES

Unlawful use of word “large financial cooperative” or “conduct of financial services cooperatives”

42. (1) A person who is not registered as a large financial cooperative under these regulations shall not:

-
- (a) in connection with any business conducted by him, her or it -
 - (i) use or refer to himself, herself or itself by any name, description or symbol indicating, or calculated to lead the public to infer that such person is a large financial cooperative registered as such under these regulations; or
 - (ii) in any manner, purport to be a large financial cooperative registered as such under these regulations; or
 - (b) use, in respect of any business a name or description that includes the expression “large financial cooperative”, “large financial co-op” or any derivative thereof.

(2) A person shall not conduct the business of any large financial cooperative unless the person is registered as a large financial cooperative in terms of these regulations.

Untrue information in connection with applications

43. A person shall not provide any information known by that person to be untrue or misleading in any material respect in an application for registration as a large financial cooperative.

Criminal liability of director, managing director, executive officer and other persons

44. (1) It is an offence for -
- (a) a director, managing director or executive officer of a large financial cooperative to, directly or indirectly, be involved in or take part in the management of a large financial cooperative while the business of the large financial cooperative is carried on recklessly, with intent to defraud creditors of the cooperative or creditors of any other person, or for any fraudulent purpose;

- (b) a person other than a director, managing director or executive officer to knowingly, directly or indirectly, benefit from, be involved in or take part in the management of a financial cooperative while the business of the large financial cooperative is carried on recklessly, with intent to defraud creditors of the large financial cooperative or creditors of any other person, or for any fraudulent purpose;
- (c) a financial cooperative or other person -
 - (i) to fail to comply with any provision and or directive under these regulations;
 - (ii) to submit a document or information or make a statement under these regulations that to the knowledge of such person is untrue or misleading.

PART X – GENERAL PROVISIONS

Certification of documents

45. A document required to be submitted to the Commissioner by a large financial cooperative in terms of these regulations shall be certified as correct by the managing director and, in the case of financial information, also by the auditor of the large financial cooperative.

Indemnity

46. The Commissioner, a board member, employee, managing director, or member of a large financial institution incurs liability in respect of any act or omission performed in good faith under or by virtue of a provision in these regulations, unless that performance was negligent.

Delegation of powers

47. The Commissioner may delegate any of its powers in terms of the regulations, excluding the power to make regulations.

Exemptions

48. (1) The Commissioner may, where it considers it necessary for the development of a large financial cooperative, by notice published in the Gazette, exempt a large financial cooperative for a specific period from any provision of these regulations or any other regulation administered by it.

(2) An exemption given under subregulation (1) may -

- (a) apply to large financial cooperatives generally; or
- (b) be limited in its application to a particular large financial cooperative or kind of large financial cooperative which may be defined either in relation to a kind, type or budgetary size of a large financial cooperative or to any other matter.

Transitional arrangements

49. Without prejudice to regulation 6(1), a cooperative society whose total savings and deposits have surpassed the amount established in regulation 5, shall continue to operate as such within a period of 6 months from the date of commencement of these regulations.

DATED:

**DR. RETŠELISITSOE MATLANYANE
GOVERNOR CENTRAL BANK OF LESOTHO**

NOTE

1. Act No. 3 of 2012
2. Act No. 6 of 2000

SCHEDULE

Offences and Penalties

OFFENCES	PROVISIONS OF THE REGULATIONS	FINES IN MALOTI
1. Renewal of a Licence	Regulation 8(3)	5000
2. Amendment to the Constitution	Regulation 10(5)	50 000
3. Limitations	Regulation 14(2)	40 000
4. Accounts and Audit	Regulation 17(10)	50 000
5. Supervision and powers of the Commissioner	Regulation 18(2)	5 000
6. Exhibitions of licences	Regulation 25(2)	5 000
7. Publication of balance Sheet	Regulation 26(3)	5 000
8. Fidelity and secrecy	Regulation 27(5)	40 000
9. Duties of directors and other officers of large Financial cooperatives	Regulations 29(6)	3 000

