



LESOTHO

Government Gazette

Vol. 61

Friday – 13th May, 2016

No. 26

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Published by the Authority of His Majesty the King

Price: M40.00

LEGAL NOTICE NO. 40 OF 2016

Financial Institutions (Liquidity Requirements) Regulations, 2016

Pursuant to sections 26(1) and 71(1) and (2)(f) of the Financial Institutions Act 2012¹, I,

DR. RETŠELISITSOE MATLANYANE

Governor of the Central Bank, being the Commissioner of Financial Institutions make the following Regulations -

Citation and commencement

1. These regulations may be cited as the Financial Institutions (Liquidity Requirements) 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) words used have the same meanings assigned to them under the Act;
- (b) “the Act” means the Financial Institutions Act, 2012.

Objectives

3. These regulations are intended to:

- (a) ensure that a bank has in place adequate liquidity management policies to enable it to meet its obligations and commitments when they fall due to fund liquidity contingencies;
- (b) ensure that a bank implements liquidity risk management in line with international standards and best practices;

- (c) promote macro-economic policies and public confidence in banks in Lesotho by ensuring that they have adequate liquidity; and
- (d) provide guidance on compilation of accurate and timely liquidity returns.

Application

4. These regulations shall apply to a bank issued a licence under the Act.

Liquidity risk management

5. (1) A bank shall adopt sound and prudent liquidity risk management systems consistent with the requirements set out under Financial Institutions (Risk Management) Regulations, 2016 or the requirements specified by the Commissioner from time to time.

(2) The Board of Directors of a bank shall be responsible for establishing a system for effectively managing the liquidity risks of the bank and for ensuring their implementation and in that regard, shall establish and maintain -

- (a) a set of liquidity and funding policies which shall reflect, among others, the liquidity strategy and risk tolerance of a bank;
- (b) arrangements for ongoing measuring and monitoring of liquid assets and funding requirements, including management information systems that provide timely and comprehensive data in a suitable format;
- (c) a formal contingency plan for dealing with a liquidity crisis;
- (d) a stress testing program to identify potential sources of liquidity strain in the bank.

-
- (3) The liquidity policies required under sub-regulation (2)(a) shall:
- (a) describe the liquidity goals and the strategies employed by a bank to limit risks to acceptable levels;
 - (b) deal with the behavior of cash flows that banks are expected to have in the ordinary course of business,
 - (c) cover issues such as the diversification of liabilities, the approach to managing liquidity in different currencies, reliance on standby facilities and the liquidity and marketability of the assets of a bank,
 - (d) relate to all related entities within a banking group that has an impact on the liquidity of a bank, and should cover the bank and the group as a whole;
 - (e) be reviewed at least annually to take account of changing operating circumstances and shall reflect the size and complexity of the bank.

(4) The contingency plan required under subregulation (2)(c) shall be reviewed and updated at least annually to ensure that it remains relevant over time and reflects the changing operating circumstances of a bank, and shall -

- (a) provide for the management of a possible crisis situation arising from real or perceived liquidity problems and in particular, the active management of deposit retention;
- (b) name the officer who would assume responsibility for instituting crisis management and who would notify the Commissioner;
- (c) provide procedures to ensure that all necessary information is available to enable senior management to make quick decisions;
- (d) describe clearly the sources of fall-back funding, their expected reliability and the priority in which they be accessed;

- (e) outline courses of action for altering asset and liability behavior;
- (f) assess the likely impact of particular courses of action on the market's perception of the bank;
- (g) provide procedures for determining the priority of customer relationships such as the order in which lines credit would be withdrawn from specific customers; and
- (h) detail plans for dealing with the staff and public, key market participants and the media.

Management structure for liquidity

6. A bank shall -

- (a) establish a management structure to ensure observance of its liquidity strategy and effectively execute its policies and procedures; and
- (b) place responsibility for managing overall liquidity on an identified officer or on an asset or liability committee of the bank.

Management of Information System for liquidity

7. A bank shall establish management information system, integral to making decisions related to liquidity, and the management information system of a bank shall, without limiting the generality of this regulation -

- (a) capture cash flows for both on- and off-balance sheet activities, produce reports on compliance with established policies, procedures and liquidity limits;
- (b) enable management to evaluate trends in the liquidity structure and position of a bank;
- (c) provide the board of directors, senior management and other appropriate personnel with timely, relevant

and accurate information on the liquidity position of the bank.

Analysis of future funding requirements

8. A bank shall ensure that its future funding requirements are analyzed on the basis of projected fund inflows and outflows, prepared on a rolling basis for specified time periods such as one day out to one week, weekly out to one month, and monthly thereafter, and in determining potential funding gaps, a bank must determine, among others -

- (a) the proportion of maturing assets and liabilities that it will roll over or renew;
- (b) the behavior of assets and liabilities with no specified maturity dates;
- (c) potential cash flows from off-balance activities, including draw downs under loan commitments, contingent liabilities and market related transactions;
- (d) its ability to access various markets for funds and to undertake transactions in foreign markets;
- (e) the convertibility of foreign currencies; and
- (f) access to standby facilities or other funding sources.

Stress tests for identifying exposures to future liquidity stresses

9. The Board of Directors of a bank shall -

- (a) oversee a system of stress testing and scenario analyses of the bank in order to identify and quantify its exposures to possible future liquidity stresses, and to analyze possible impacts on the cash flows, liquidity position, profitability and solvency;
- (b) hold mandatory stress tests on an annual basis, but additional stress tests shall be carried out if there are,

real or anticipated, significant changes in the economic environment or if required by the Commissioner; and

- (c) discuss the results of these stress tests thoroughly with the management for the management to use them when taking remedial or mitigating actions to limit exposures to liquidity stresses, build up a liquidity cushion and adjust liquidity profile of a bank.

Monitoring of liquidity in foreign currencies

10. (1) Where a bank has ten per cent or more of its total funding as foreign currency, its liquidity policy under regulation 5(2)(a) shall address the measurement and monitoring of liquidity in foreign currencies.

(2) In the circumstances specified in subregulation (1), a bank shall consider the need to assess the convertibility of individual currencies, the timing of access to funds, the impact of potential disruptions in foreign exchange markets and changes in the value of foreign currencies.

Reduction of volatility of balance sheet

11. (1) A bank may reduce the volatility of its balance sheet by maintaining a diversified funding base and establishing strong and lasting relationships with depositors and other liability holders.

(2) A bank shall not establish limits on the concentration of sources of funding to avoid excessive reliance on any one counterpart or any one product or market and shall ensure that its liquidity management policies promote a stable core of deposits rather than a reliance on large and potentially volatile deposits.

Liquid assets and liquidity requirements

12. (1) A bank shall -

- (a) manage its assets, liabilities and off-balance sheet contracts with a view to meeting its contractual commitments fully.

-
- (b) maintain minimum reserve balance and liquid assets as specified in these Regulations;
 - (c) at all times, maintain reserve balance and liquid assets of not less than three percent and twenty five percent, respectively, of the aggregate of -
 - (i) deposit liabilities;
 - (ii) balances due to banks abroad;
 - (iii) net balances due to local banks;
 - (iv) other liabilities for borrowed money, excluding Central Bank of Lesotho and Government borrowings.

(2) The minimum reserve balance shall be maintained by way of deposits with the Commissioner and the Commissioner shall not pay interest on such reserve account.

(3) Liquid assets shall consist of freely transferable assets, unencumbered by any charge or lien, of the following classes:

- (a) notes and coins that are legal tender in Lesotho;
- (b) deposit balances with the Central Bank, excluding reserve balances;
- (c) net balances due from banks in Lesotho;
- (d) treasury bills issued by the Government of Lesotho or the Central Bank maturing within a period not exceeding 12 months;
- (e) marketable Government securities that are held by banks for trading purposes;
- (f) commercial bills and promissory notes which are eligible for discount by commercial banks or the

Central Bank;

- (g) other marketable securities maturing within a period of 365 days, of which 30 percent or less is invested in equity.

Reporting of failure or inability to comply

13. (1) If a bank fails to comply with this regulation, it shall, within a period of three days after the date it failed to comply, report in writing, such failure and the reasons for the failure, to the Commissioner.

(2) If a bank is unable to fund its liquidity mismatch, it shall forthwith report, in writing, such inability to the Commissioner, stating reasons for the inability, and measures it is taking to rectify the situation.

Submission of the liquid assets reports

14. (1) A bank shall, on or before Monday following the reporting date, submit to the Commissioner, a liquid assets report in the form set out in Schedule 1.

(2) Computation of minimum reserve balance and liquid assets shall be done on a daily basis and reported on a weekly basis, and the reporting week starts on Thursdays and ends on Wednesdays.

(3) Any deficiency in daily liquidity position may be offset against excess liquidity in any other days within the reporting week, provided that the weekly average reserve balance and liquid assets holdings shall not fall below 3 percent and 15 percent respectively, of the weekly average deposits and other liabilities subject to the liquidity requirement.

(4) A bank shall provide data on the contractual and anticipated maturity of its assets and liabilities in the form set out in Schedule 2 and respectively, not later than the 21st day of the following month.

(5) Maturity analysis shall take into account off-balance sheet commitments that are likely to materialise, and the time band into which such commitments are placed will depend on the judgment of management of when are they likely to be called or drawn down.

(6) A bank shall, on or before the 21st day of every month, submit a report in the form set out in Schedule 3.

(7) A bank that submits late or inaccurate returns shall be penalised pursuant to section 32 of the Act.

Verification of reports

15. (1) The Commissioner may verify the accuracy of the reports filed under regulation 14 and direct a bank to adjust the reports as a result of the inspection.

(2) The Commissioner may require an external auditor of a bank to verify the accuracy of the reports submitted under regulation 14, and the external auditor shall inform the Commissioner of any errors or adjustments to the report.

Administrative actions and penalties

16. Where the Commissioner determines that a bank does not comply with these regulations, it may take any or all of the following corrective actions -

- (a) impose a general penalty in accordance with section 32 of the Act which -
 - (i) may be based on the amount of the average weekly deficiency in the reserve balance or liquid assets, or both at a rate equivalent to twice the interest rate on ninety one-day treasury bills of the Government of Lesotho prevailing during the reporting week;
 - (ii) shall be payable to the Commissioner on demand within fifteen days of receipt of written notification.
- (b) where a bank fails to pay a penalty on the stipulated date, it shall debit the bank's reserve account;

- (c) direct a bank to:
 - (i) desist from declaring or paying dividends or other distribution of capital;
 - (ii) desist from paying bonuses, salary incentives and other discretionary compensations to directors or officers of the bank;
 - (iii) increase its reserve balances with Commissioner;
 - (iv) increase the frequency of prudential reporting to the Commissioner;
 - (vi) restrict participation in the interbank market;
 - (vii) restrict the rate of interest payable on savings and time deposits, to such rates as the Commissioner shall determine;
 - (viii) revamp its liquidity risk management systems;
 - (ix) suspend the establishment of new branches or expansion into new banking or financial activities;
 - (x) suspend the acquisition of fixed assets or liquidate some of its assets;
 - (xi) suspend the granting of credit, issuance of letters of credit, or undertaking any new business;
 - (xii) prohibit or suspend any other activity that the Commissioner perceives to be contributing to the liquidity strain in the bank;
 - (xiii) take any other action that it may deem appropriate in accordance with the Act.

- (d) suspend or remove management or officers of the bank.

Repeal

17. The Financial Institutions (Liquidity Requirements) Regulations 2000⁴ are repealed.

DATED:

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

NOTE

1. Act No. 3 of 2012
2. L.N. No. 200 of 2000

SCHEDULE 1

LIQUID ASSETS REPORT
(regulation 14(1))

LIQUIDITY REQUIREMENT REPORT FOR THE WEEK ENDED

(Amounts to the nearest thousand)

INSTITUTION ID:
FINANCIAL YEAR:
START DATE:
END DATE:

	THURS	FRI	SAT	SUN	MON	TUES	WED	WEEKLY AVERAGE
I. REQUIRED LIQUIDITY								
1. Demand and Call Deposits								
2. Savings Deposits								
3. Fixed Time and Special Deposits								
4. Total Deposits (I.1 to I.3)								
5. Net balances due to local banks								
6. Balances Due to Banks Abroad								
7. Other Borrowings								
8. Base Amount (I.4 to I.7)								
9. Required Liquidity								
(a) Reserve Balance (I.8 x 3percent)								
(b) Liquid Assets (I.8 x 25percent)								

II. RESERVE BALANCE AND LIQUID ASSETS HOLDINGS

1. Reserve Balance
with Central Bank
2. Liquid Assets
 - (a) Notes and Coins
 - (b) Deposits with Central
Bank (excluding reserve
balance)
 - (c) Net Deposit with Banks
in Lesotho
 - (d) T/Bills and Securities –
GOL/CBL
 - (e) Marketable securities in
the trading book
 - (f) Eligible Bills & promisory
notes
 - (e) Total Liquid Assets

III. DAILY EXCESS/ (DEFICIENCY)

1. Reserve Balance (II.1
less I.8(a))
2. Liquid Assets (II.2(e)
less I.8 (b))

IV. WEEKLY AVERAGE EXCESS/ (DEFICIENCY)

1. Reserve Balance
2. Liquid Assets

V. PENALTY FOR DEFICIENCIES

SCHEDULE 2

**GAP ANALYSIS REPORT
(regulation 14 (4))**

GAP ANALYSIS REPORT AS AT DATES INDICATED

Assets	0-7 days	8-31 days	32-60 days	61-90 days	91-180 days	181-365 days	366-2years	>2years
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Total Assets

- Cash & Reserves
- Certificate of deposits
- Bankers Acceptances
- Treasury Bills
- Treasury Bonds
- Corporate Bonds
- Loans
- Overdrafts
- Investments in associates
- Demand deposits
- Call deposits
- Fixed Deposits
- Other bills receivable

Total Liabilities

- Demand Deposits
- Call Deposits
- Savings deposits
- Fixed Deposits
- Certificate of deposits
- Bankers Acceptances

Balances due to local banks

- (a) Demand deposits
- (b) Call Deposits
- (C) Fixed Deposits

Balances due to foreign Banks

- (a) Demand Deposits
- (b) Call Deposits
- (c) Fixed Deposits
- (d) Certificate of deposits
- (e) Bankers Acceptances

Borrowings

GAP
CGAP

GAP Limit

Adjustments for re-pricing

GAP to total assets

SCHEDULE 3

(regulation 16 (4))

Top 20 Depositors Amounts in (£ 000)

Depositors	Demand	Savings	Time	Total
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LEGAL NOTICE NO. 41 OF 2016

Financial Institutions (Disclosure of Bank Charges and Interest Rates) Regulations, 2016

Pursuant to sections 71(1), of the Financial Institutions Act of 2012, I

DR. RETŠELISITSOE MATLANYANE

Governor of the Central Bank, 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 (Disclosure of Bank Charges and Interest Rates) 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) “controlled access automated teller machine” means an automated teller machine located in a branch or a point of service of a bank, or in an enclosed area adjacent to a branch or a point of service of a bank, access to which is controlled by a system that permits entry to an automated teller machine user;

“deposit account” means an interest bearing and non-interest bearing deposit account;

“point of service” means a physical location to which the public has access and at which a bank carries on business with the public and opens or initiates the opening of an account by a natural person;

“the Act” means the Financial Institutions Act 2012;

-
- (b) other words used have the same meaning ascribed to them under the Act.

Application

3. These Regulations shall apply to a bank issued a licence under the Act.

Objectives

4. These regulations are intended to:
- (a) promote market discipline;
 - (b) ensure that a bank adheres to practices which enhance the public confidence in the financial system; and
 - (c) provide information relating to bank charges, interest charges and related information to the client to promote transparency and to ensure that customers make informed decisions.

Disclosure of charges

5. (1) A bank shall disclose to its customers and to the public the charges applicable to accounts by means of a written statement, copies of which shall be displayed and made available to customers and to the public at -

- (a) a branch;
- (b) a point of service; and
- (c) on the website of the bank.

- (2) The Commissioner may set minimum criteria for the display of bank and interest rates.

- (3) Where a bank increases or introduces a new charge applicable to an account, the bank shall disclose the increase or new charge, as the case may be, to each customer in whose name such an account is kept:

- (a) in respect of a customer to whom a statement of account is provided, by means of a notice in writing provided to the customer at least 30 days before the effective date of the increase or new charge;
- (b) in respect of a customer who has instructed the bank, in writing, to provide the notice to another person, by means of a notice provided to that other person at least 30 days before the effective date of increase or new charge;
- (c) in respect of a customer to whom a statement of account is not provided -
 - (i) by means of a notice that is displayed, for a period of at least 60 days immediately before the effective date of the increase or new charge, at each of the bank's branches where products or services are offered, at each of the bank's points of service, at each controlled access automated teller machine on which the name of the bank or information identifying the machine with the bank is displayed, and on the bank's website;
 - (ii) by means of a notice, electronic or otherwise, advising customers of the increase or new charge and the manner in which further details can be obtained, which notice shall be provided for a period of at least 60 days immediately before the effective date of the increase or new charge, at automated teller machines, other than controlled access automated teller machines, on which the name of the bank or information identifying the machine with the bank is displayed.

(4) A bank shall, on request, make a list of bank charges and interest rates which shall be available to its customers and to the public for inspection during business hours at each of its branches and points of service.

(5) The Commissioner may publish on its website, newsletters, and reports, bulletin any newspaper of wider circulation, a consolidated list of bank

charges and interest rates.

(6) This regulation does not apply to a customer who has authorised, in writing, the bank to charge an amount other than the amount required to be disclosed.

(7) Notwithstanding these regulations, a bank shall explain to a customer and the public the charges related to products and services provided by it in a language that the customer and the public understand.

List of charges

6. A bank shall disclose to its customers and to the public all charges applicable to its products and services, which at a minimum shall include the charges, products and services set out in the Schedule.

Prohibition on charges

7. Notwithstanding these regulations, an investigation or search on an account of a customer not initiated by the customer shall not be charged on the customer.

Disclosure in respect of interest charges

8. (1) A bank shall disclose to a customer and the public the rate of interest applicable to an account by a general notice displayed -

- (a) at a branch;
- (b) at a point of service; and
- (c) on the website of the bank.

(2) Where a customer opens an account by phone, the bank shall, not later than 7 business days after the account is opened, provide to the customer with a written statement which sets out the rate of interest applicable to the account and how the amount of interest to be paid is to be calculated.

(3) The general notice referred to in subregulation (1) or the written statement referred to in subregulation (2) shall include -

- (a) the annual rate of interest;
- (b) the frequency of payment of interest;
- (c) the manner, if any, in which the balance in the deposit account affects the rate of interest; and
- (d) any other circumstance that affects the rate of interest.

(4) The written statement referred to in subregulation (2) that is sent to a customer by mail shall be deemed to be provided to the customer on the 5th day after the date stamp on the statement.

(5) Where there is a change in the rate of interest, or in the manner of calculating the amount of interest, that is applicable to a deposit or credit account, the bank shall disclose the changes by means of:

- (a) a written statement delivered to the person in whose name the account is maintained;
- (b) a written statement of copies of which are available in each branch of the bank where deposit accounts are kept;
or
- (c) a general notice that is displayed in each of the bank's branches, at each of the bank's points of service and on the bank's websites.

(6) This regulation does not apply in respect of a customer who has authorised the bank, writing, to charge an amount other than an amount required to be disclosed.

(7) Notwithstanding these regulations, a bank shall explain to a customer and the public the charges related to products and services provided by it in a language that the customer and the public understand.

Disclosure in respect of advertising

9. A bank shall, in all advertisements in respect of interest-bearing deposits or debt obligations, disclose how the amount of interest applicable to each deposit and credit obligation is to be calculated by means of a statement in the ad-

vertisement that clearly discloses -

- (a) in respect of interest-bearing deposits, the manner, if any, in which the balance of a deposit account will affect the rate of interest; and
- (b) any other circumstance that may affect the rate of interest.

Reporting requirements

10. A bank shall notify the Commissioner of any change in the -

- (a) bank charges 30 days before the effective date of such change;
- (b) interest rates within 7 days immediately after, or before the effective date.

Supervisory action

11. Where a bank fails to comply with these regulations, the Commissioner may pursue any remedial measures at its disposal as specified in the Act.

DATED:

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

SCHEDULE
CHARGES, PRODUCTS AND SERVICES
(regulation 6)

- (a) acceptance of deposits;
- (b) withdrawal of deposits;
- (c) issuance of cheques;
- (d) issuance of bank cheques;
- (e) dishonoured cheques;
- (f) holding of cheques for deposit;
- (g) processing of a stop payment on a cheque;
- (h) supply of Maloti coins and notes;
- (i) handling of overdrafts;
- (j) transfers between accounts;
- (k) supply of account statements;
- (l) handling of account confirmations
- (m) conducting searches and investigations related to an account;
- (n) provision of information in regard to an account balance;
- (o) closing of an account;
- (p) handling of unclaimed balances in inactive accounts;
- (q) shared services;
- (r) foreign exchange services;

- (s) brokerage services; and
- (t) credit services.

LEGAL NOTICE NO. 42 OF 2016

Financial Institutions (Commercial Banking Permissible Activities) Regulations, 2016

Pursuant to sections 27 and 71(1) of the Financial Institutions Act of 2012¹, I,

DR. RETŠELISITSOE MATLANYANE

Governor of the Central Bank, 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 (Commercial Banking Permissible Activities) 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) words used have the same meanings assigned to them under the Act;
 - (b) “the Act” means the Financial Institutions Act, 2012.

Objectives

3. The objectives of these regulations are to -
- (a) provide for banking and other incidental services in which commercial banking institutions may, in addition to activities as set out in the Third Schedule of the Act, engage in; and
 - (b) establish procedures for securing approval from the Commissioner for such services and activities.

Application

4. These regulations shall apply to a bank issued a licence under the Act.

PART II - PERMISSIBLE BANKING SERVICES AND ACTIVITIES

5. A commercial bank may provide or be engaged in the following services directly or through a subsidiary with the prior approval, in writing, of the Commissioner -

- (a) granting credit and servicing loans;
- (b) making, acquiring, brokering or servicing loans or other extensions of credit (including factoring and forfeiting);
- (c) financial leasing of assets of which the duration of the lease approximately equals the expected life of the asset which is the object of the lease and for which the lessee acquires most of the benefit from the use of the asset and accepts the full risk of the transaction;
- (d) accepting deposits from the public of whatever tenor including from individuals, corporations or other entities, and governments or quasi-governmental organizations;
- (e) payment services and services of electronic money issuance;
- (f) issuing and administering other payment instruments, such as travellers cheques and bankers' drafts;
- (g) issuance of guarantees and other commitments;
- (h) engaging as principal in investing and trading activities in the following -
 - (i) foreign exchange; and

- (ii) forward contracts, options, options on futures, swaps, and similar contract, whether traded on exchanges or not, based on any rate (or an index of a rate), price, value of any financial asset, non-financial asset or group of assets if the contract requires cash settlement;
- (i) engaging as principal in investment transactions such as underwriting and dealing in government and corporate obligations and money market instruments;
- (j) engaging in financial and investment advisory services such as furnishing general economic information and advice, general economic statistical forecasting service and industry studies; providing advice in connection with mergers, acquisitions, divestitures, investments, joint ventures, recapitalizations, capital structuring, financial transactions and similar transactions, and conducting financial feasibility studies;
- (k) engaging in money broking on interbank markets;
- (l) engaging in safekeeping and administration of securities;
- (m) providing safe custodian services;
- (n) providing data processing services or performance of similar operations carried out in support of services provided by one or more credit institutions or investment firms;
- (o) engaging in insurance brokerage and related activities provided such activities are permitted by law generally and under laws governing the insurance business;
- (p) providing other banking services or engaging in such other activities recognized by the Commissioner from time to time as permissible activities based on such factors as market developments;

- (q) accounting and auditing services related to banking ;
- (r) data processing and data transmission services, and management of data bases or facilities or any activity typically conducted by an information technology function;
- (s) human resource management activities related to banking ;
- (t) holding or operating property used wholly or substantially by the commercial bank or by a subsidiary (or affiliate) in its operations or future use; and
- (u) liquidating property.

PART III - APPLICATIONS FOR APPROVAL FOR NEW BANKING SERVICES OR ACTIVITY

Applications for new banking services

6. (1) A commercial bank wishing to engage in a new banking service or activity shall apply, in writing, to the Commissioner for approval to do so.

(2) An application under subregulation (1) shall be in the format set out in the Schedule, and accompanied by a statement of the reason for the proposed addition of the service or activity, and a description of the managerial resources, risk management systems and internal control processes that will be established by the bank prior to offering the service to the public or engaging in the activity.

Consideration of application

7. In considering an application for the introduction of a new service or activity by a bank the Commissioner shall -

- (a) consider whether the proposed service or activity can be reasonably expected to produce benefits to the public such as greater convenience, increased competition, and gains of efficiency, that outweigh possible adverse

effects such as undue concentration of resources, decreased competition and conflicts of interest; and

- (b) undertake an evaluation of the financial and managerial resources of the bank proposing the new service or activity the effect of the proposed transaction on those resources, and the management expertise, internal control and risk management systems, and capital of the bank conducting the service or activity.

Conditions

8. The Commissioner may impose such conditions on any approval as it considers necessary including conditions for the applicant to address permissibility, financial, managerial, safety and soundness, competitive, compliance, conflicts of interest or other concerns to ensure that approval is consistent with the relevant provisions of the Act, regulations, and other relevant laws.

PART IV - PROCEDURES FOR DETERMINING NEW BANKING SERVICES OR ACTIVITIES IN LESOTHO

Procedure for determining banking activities

9. (1) A bank may submit a request to the Commissioner for an advisory opinion regarding the scope of a permissible activity.

(2) A request for an advisory opinion under subregulation (1) shall be submitted in writing to the Commissioner and shall identify the proposed parameters of the activity or describe the service or product that will be provided.

(3) The Commissioner shall provide the bank with an opinion no later than 15 days.

The Commissioner's determination of permissible activity

10. (1) The Commissioner may on its own initiative or in response to a request for opinion by a bank initiate a study to determine whether a service or activity may be permissible for a bank.

(2) The Commissioner may announce to the banking community

that it is initiating a study of the kind specified in subregulation (1) following which a bank may submit to the Commissioner, in writing, its views and evidence that the proposed activity is a proper activity for a bank.

(3) In the event the Commissioner initiates a study under subregulation (2), it shall no later than 30 days from the close of the study, determine whether the proposed activity is proper, and notify the banking community accordingly.

PART V - PENALTIES

Penalties

11. (1) The Commissioner may impose penalties on a bank for violation of any provision of the Act or these regulations.

(2) Without prejudice to the generality of the foregoing, the Commissioner may issue an order terminating any service or activity of a bank where, in the opinion of the Commissioner, such service or activity constitutes a serious risk to soundness or stability of the bank or its subsidiaries or to the safety of the financial sector as a whole.

DATED:

DR. RETŠELISITSOE MATLANYANE
GOVERNOR OF THE CENTRAL BANK OF LESOTHO

NOTE

1. Act No. 21 of 2012

SCHEDULE

APPLICATION FOR A NEW BANKING SERVICE OR ACTIVITY
(regulation 6(2))

Bank ID:

Date of Application:.....

Name of the Product:.....

Description of the Product:.....

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Benefits to the Community:.....

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Managerial Resources (Curriculum Vitae of a person who is going to be responsible for the Product, fit and proper assessment).....

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Description of Risk Management Processes & Internal Controls.....

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Signature

Date

LEGAL NOTICE NO. 43 OF 2016

Financial Institutions (Agent Banking) Regulations, 2016

Pursuant to section 12 and 71(1) of the Financial Institutions Act, 2012¹, I,

DR. RETŠELISITSOE MATLANYANE

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

Citation and commencement

1. These regulations may be cited as the Financial Institutions (Agent Banking) 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 -

“agent” means an entity that has been contracted by a bank and licensed by the Commissioner to act as agent to provide the services of the bank on behalf of and in the name of the bank other than in the course of legal proceedings in terms of section 12 of the Act;

“outlet” means an agent’s place of business dedicated to the principal’s business;

“principal” in relation to an agent, means a bank that appoints that agent;

“real time” means the electronic processing of transactional data instantaneously upon data entry or receipt of command;

“the Act” means the Financial Institutions Act, 2012;

Application

3. These Regulations shall apply to a bank issued a license under the Act.

Objectives

4. The objectives of these regulations are to -
- (a) provide for the use of an agent by a bank as a delivery channel for offering specific banking services in a cost effective manner and in a manner that promotes safety and soundness of the financial sector;
 - (b) prescribe the activities which can be carried out by an agent and a framework for offering such services on behalf of a bank;
 - (c) establish minimum standards for data and network security, customer protection and risk management in the conduct of services by agents on behalf of a bank.

Regulation process

- (1) A bank may conduct any of the activities enumerated in regulation 8 through one or more agents licensed by the Commissioner.
- (2) The Board of Directors of the bank shall be responsible for formulating policies and procedures governing agent banking to ensure that -
 - (a) due diligence is undertaken for an agent;
 - (b) risks associated with agent banking are properly identified and mitigated;
 - (c) anti-money laundering and counter-terrorist financing policies and procedures of the bank are to be applied to an agent;
 - (d) agent activities are constantly monitored to ensure compliance with this regulation and other banking laws and regulations.

Application for licensing

6. (1) A person may act as an agent for a bank and in that capacity represent the bank or undertake any of the activities enumerated in regulation 8 on behalf the bank.

(2) A company only seeking to act as an agent of a bank shall before engaging in such capacity, apply jointly with the bank in question to the Commissioner for a licence under section 12 of the Act.

(3) A bank may appoint more than one agent but the agent shall act for only one bank at a time.

(4) An application for licensing of an agent under section 12 of the Act and regulation 6(2) or (3) shall be in the form as set out in Schedule 1.

(5) On receipt of an application, the Commissioner shall render its decision within 45 days and in the event the Commissioner does not approve of an application, it shall notify the applicant providing reasons for the refusal.

(6) An applicant whose application is refused by the Commissioner may re-apply after fulfilling any additional requirements communicated to it by the Commissioner.

(7) Where the Commissioner approves an application for licensing of an agent, it shall provide notice in writing to the applicant.

(8) A license shall be valid for twelve months from the date of issuance and may be renewed for twelve months at a time following an application to the Commissioner.

(9) Where the agency is terminated, the licence of the agent shall immediately be revoked and the agent shall forthwith cease to hold itself out as agent for that bank or another bank unless it re-applies and is re-licensed by the Commissioner in accordance with the provisions of these regulations.

Assessment of agents

7. (1) A bank shall satisfy itself of the suitability of a proposed agent or network of agents at the point of their appointment and at all times during the

period they act as agents or a network of agents for the bank, by evaluating whether each agent or proposed agent -

- (a) has passed the due diligence criteria and possesses a license to operate its line of business if any;
 - (b) has credit obligations that have not been classified as deficient, doubtful or non-performing by a credit institution in Lesotho or elsewhere for at least two years prior to the date of the application to the Commissioner and thereafter at any material time;
 - (c) possesses appropriate physical infrastructure and human resources to be able to provide the services contracted with the necessary degree of efficiency and security;
- (2) A bank shall have, on file, in relation to each agent -
- (a) a certificate of incorporation of each agent and a valid business license for a lawful commercial activity;
 - (b) audited financial statements for each of the preceding two years and other means to ensure financial integrity of the proposed agent;
 - (c) evidence of availability of funds to cover its agency operations including deposits and withdrawals by customers.

(3) An agent whose proprietors, partners, officers or employees furnish a bank or the Commissioner with false or inaccurate information shall be disqualified from conducting an agent banking business.

Permissible activities

8. (1) An agent may provide any of the following services to a customer of a bank as specifically agreed with the bank -

- (a) cash deposit and cash withdrawal services;

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- (b) cash disbursement and cash repayment of loan services;
 - (c) cash payment of bills services;
 - (d) balance inquiry services;
 - (e) generation and issuance of bank statements;
 - (d) collection of documents in relation to account opening, loan applications, credit and debit card applications;
 - (g) mobile money transfer services;
 - (h) any other activity as the Commissioner may prescribe.

(2) It shall be the responsibility of the bank to determine, based on an agent risk assessment, which services a particular agent should provide.

(3) A service provided at or through any outlet or branch of an agent shall be deemed to be part of its agency operations and any act or omission of such outlet or branch shall be deemed to be the act or omission of the agent.

(4) All monetary transactions conducted through an agent shall be denominated in Maloti.

(5) An agent shall not hold itself out as a bank or other bank, or as conducting the business of banking or other financial services, and shall at all times hold itself out as a licensed agent of a bank with authority to provide agreed services for its principal as approved by the Commissioner.

(6) An agent shall not appoint a sub-agent or outsource any of the services or activities it is mandated to provide or engage in under these Regulations.

Agency contract

9. (1) Subject to these Regulations, a bank shall enter into a written agency contract with an agent for the provision of any banking service specified on its behalf.

(2) The agency contract shall be in compliance with the Act, these Regulations and other relevant laws and regulations applicable in Lesotho.

(3) An agency contract shall contain at a minimum -

- (a) the specific services to be rendered by the agent on behalf of the bank;
- (b) the business hours that the said services will be available to customers of the bank through the agent;
- (c) a description of the technical infrastructure to be employed for the agent's services and technical specifications for any electronic devices to be used;
- (d) the rights, expectations, responsibilities and liabilities of both parties;
- (e) specific measures to mitigate risk associated with the agent's services, including limits, customer transactions, cash management, cash security, security of agent premises and insurance policies;
- (f) the Commissioner shall have free, full, unfettered and timely access to the internal systems, documents, reports records, staff and premises of the agent relative to its services as agent;
- (g) anti-money laundering and anti-terrorist financing policies and procedures of the bank to be applied to the agent's set up and services;
- (h) the nature and timing of information to be provided by the agent to the bank including sufficient documentation covering every transaction and other relevant information and data. All information or data that shall be collected by an agent in relation to its services as agent whether from the customer, the bank or other sources, shall be the property of the bank and shall be handed over to the bank at its request;

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- (i) adequate oversight safeguards for the bank to address instances of non-compliance by the agent with the stipulated obligations;
 - (j) remuneration for the agent and mode and frequency of payment;
 - (k) a prohibition against imposition of fees on the customer by the agent;
 - (l) confidentiality of customer and user information;
 - (m) employees of an agent shall not be treated as employees of a bank.

(4) Notwithstanding anything to the contrary in a contract or in any law, a bank shall be wholly liable for all actions or omissions of its agent, even if not authorised in the contract so long as they relate to banking services or matters connected thereto.

(5) An agency contract shall be terminated on the occurrence of any of the following events -

- (a) if the principal's banking licence is suspended or revoked by the Commissioner;
- (b) if the Commissioner's approval of the agent is suspended or terminated by the Commissioner;
- (c) where -
 - (i) the agent's principal commercial activity has ceased for whatever reason;
 - (ii) the agent is found guilty of a criminal offense, sustains a financial loss or damage to the degree that the bank considers the agent's effectiveness is compromised;
 - (iii) the agent is being wound down or dissolved;

- (iv) the agent transfers or relocates its operations without informing the bank;
- (v) the agent fails to hold or renew a valid business license, or violates any provisions of this regulation or other banking laws or regulations; or
- (vi) for any other reason agreed by the parties in the contract, the agent's appointment is terminated by the bank or the agent terminates the contract on ground specified in the contract.

Responsibilities of the bank

10. (1) A bank shall have clear, well documented agent due diligence policies and procedures that contain at a minimum methods of identifying potential agents, initial due diligence and regular due diligence checks and a list of early warning signals and corrective actions to ensure proactive agent management.

(2) A bank shall be responsible for monitoring and supervising the activities of its agents to minimize potential operational risks for the agent's services and to this end shall -

- (a) establish, assess, manage and monitor quantitative limits for the provision of services to be performed by an agent;
- (b) collect and maintain information on the numbers and volumes of transactions carried out for each type of service provided by each agent;
- (c) appoint a compliance officer to monitor effective compliance by the agent with set limits and establish other prudential measures as appropriate;
- (d) maintain an effective system of internal control and oversight of the agent's activities or functions to enable monitoring of activities for compliance with the bank's policy and procedure, proper security for the safeguarding of information, communication and technology sys-

tems, and for outsourced activities;

- (e) provide agents with such operation manuals and risk management policy documents as shall be needed to ensure proper provision of services to customers; and
- (f) ensure that it has updated or modified its risk management policies and processes to cover agent banking services.

(3) A bank shall provide its agents with sufficient training to enable each agent to adequately perform the operations and provide the services agreed upon, including proper identification of customers, customer service, confidentiality of information, cash security, record keeping and financial education.

Risk management

11. (1) A bank that appoints agents shall put in place an enhanced risk management system and shall -

- (a) pay special attention to risks including credit risk, operational risk, legal risk, liquidity risk, reputation risk and compliance with rules for combating money laundering and financing of terrorism;
- (b) address and manage wireless or electronic banking related risk in a prudent manner according to the fundamental characteristics of any electronic banking services in use;
- (c) ensure that the scope and coverage of its internal audit function is expanded to be commensurate with the increased complexity and risks inherent in the use of agents and the activities of such agents and that the audit function is appropriately staffed with personnel having sufficient technical expertise to perform the expanded role.

(2) A bank shall regularly publish an updated list of all its agents in their headquarters and branches and on its websites and such other publications

as they may deem appropriate.

Settlement of transactions and technology considerations

12. (1) All transactions involving deposit, withdrawal, payment or transfer of cash from or to an account shall be on a real time basis.

(2) A bank shall ensure that transactions carried out by an agent are done with devices that are technically appropriate and are able to, at a minimum -

- (a) transmit transactions in code;
- (b) carry out electronic transactions on a real time basis;
- (c) reverse incomplete transactions due to error, system failure power outage or other defects;
- (d) process or generate durable transactional documents or receipts;
- (e) automatically log off an agent once the agent reaches its daily cash limit or tries to perform an illegal or unauthorised transaction; and
- (f) generate an audit trail.

(3) A bank shall put in place systems that specifically and at a minimum address the following -

- (a) physical and logical security of infrastructure;
- (b) availability of services;
- (c) data confidentiality and integrity;
- (d) encryption of PIN and electronic transactions;
- (e) customer accountability and non-repudiation on transactions; and

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- (f) error messaging and exception handling.

Anti-money laundering and combating the financing of terrorism

13. (1) A bank shall train its agents on anti-money laundering and combating of terrorism requirements and establish procedures with the agents to be informed of suspicious activities and related issues.

(2) An agent shall comply with all laws and regulations in Lesotho related to anti-money laundering and combating of terrorism.

Consumer protection

14. (1) A bank shall establish and maintain at all times, appropriate consumer protection policies and systems against risks of fraud, loss of privacy, loss of service and identify theft in line with any general or specific directives given by the Commissioner.

(2) An agent shall comply with all consumer protection laws, regulations, in effect in Lesotho at any given time in addition to directives made by the Commissioner and policies and procedures established by its principal.

(3) A bank shall establish a channel for communication of complaints by customer to the bank including a complaints redress mechanism and shall ensure proper communication of this mechanism to its customers.

(4) An agent shall disclose to the bank's customers in a conspicuous place on the agent's premises -

- (a) the name of the bank for which it acts as an agent;
- (b) a copy of its license as issued by the Commissioner;
- (c) a list of services it is authorized by its principal to offer as an agent as approved by the Commissioner;
- (d) a notice to the effect that if its electronic system is inoperable, no transactions shall be executed;
- (e) a notice that services shall be provided subject to

availability of funds;

- (f) a list of charges or fees applicable for each service which are payable by the customer to the bank;
- (g) the dedicated telephone number and e-mail, if any, through which customers can contact the bank being the agent's principal;
- (h) the name, telephone number and location of the bank's branch to which the agent reports its agent activities.

Reporting requirements to and supervision by the Commissioner

15. (1) A bank shall, at the end of every three months and not later than the 10th day of the next month, submit to the Commissioner in the form as set out in Schedule 2, data and other information on agent operations on -

- (a) nature, value, volume and geographical distribution of operations and transactions;
- (b) incidents of fraud, theft or robbery;
- (c) customer complaints;
- (d) remedial measures taken to address customer complaints.

(2) The Commissioner or another regulatory authority shall have the power to -

- (a) request any information from any agent at any time as the Commissioner deems necessary in connection with an agent's services;
- (b) carry out scheduled or unscheduled examinations of the books and premises of an agent;
- (c) direct an agent to take such actions or desist from such conduct as the Commissioner deems necessary;

- (d) direct the termination of the agency contract and closure of the agency business as it may find necessary;
- (e) direct the bank to take such remedial actions arising from the conduct of an agent as it may deem necessary.

Supervisory measures and penalties

16. (1) In addition to any penalties set out in section 12 of the Act, the Commissioner may impose any or all of the measures set out in regulation 16 (2) on an agent or any bank as the case may be in the event that any provision of the Act, regulations or directive of the Commissioner is not complied with.

- (2) The Commissioner may -
 - (a) prohibit a bank from engaging the services of agents or an agent from providing services as an agent;
 - (b) revoke the licence of an agent for any reason;
 - (c) issue a directive to a bank or to an agent to take any action or to desist from taking any action in the interest of the bank's depositors or the financial sector as a whole.

DATED:

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

NOTE

1. Act No. 21 of 2012

SCHEDULE 1

APPLICATION FOR A LICENCE TO CONDUCT AGENT
BANKING BUSINESS
(Regulation 6(4))

The Governor
Central Bank of Lesotho
P.O. Box 1184
Maseru 100

I, the undersigned, acting as principal or chairman or chief executive officer of

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hereby apply for AGENT BANKING licence on behalf of

1. Name of the agent

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2. Physical location

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3. Postal Address

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4. Contact details

e-mail:.....
Phone:.....
Fax:.....

5. Activities to be performed by the Agent

- (i).....
- (ii).....
- (iii).....
- (iv).....
- (v).....
- (vi).....
- (vii).....
- (viii).....
- (ix).....
- (x).....

6 The commercial activities the proposed agent has been carrying for the past years

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7 Documentary requirements

- (i) Certified copies of the certificate of incorporation and other constitutional documents of the proposed agent;
- (ii) A copy of the standard contract between the bank and the agent;
- (iii) The bank's delivery channel strategy and the manner in which agents fit into such strategy;
- (iv) A statement by a senior executive officer of the bank that it has carried out its due diligence and suitability assessment of the proposed agent;
- (v) A letter from the other regulatory agent confirming that it has no objection to the proposed agent(s);
- (vi) Policies and procedures applicable to the provision of services

- through agents and a description of the technology to be used;
- (vii) Risk assessment of the operations and the internal control measures;
- (viii) Internal audit report;
- (ix) Other information deemed necessary by the Commissioner in consideration of the application.

8. Certification and Understanding

I, _____ certify that all the above information contained and accompanying this form is complete and accurate to the best of my knowledge and belief and that I do not possess any of the disqualification’s provided under section 43(1) of the Financial Institutions Act 2012

Sworn to at Maseru, Lesotho

This _____ day of _____

Signature of Deponent

Position

Deponent understands contents of this affidavit

Before me,

A COMMISSIONER OF OATHS

N.B

1. All sections in this form must be filled and therefore no section shall be left blank
2. Where information is not provided, please place “NOT APPLICABLE” or “NONE”, as the case maybe.
3. If any space provided in the form is inadequate, the required information or data needed may be supplied, as on annex
4. Reference shall be made in the relevant section of the form by placing the words “REFER TO ANNEX.....”

SCHEDULE 2
REPORT ON AGENT BANKING ACTIVITIES
(**regulation 15(1)**)

Bank ID:
Start Date:
End Date:

List of Activities	Amount (M000)	No. of Transactions
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Geographical Distribution

List of Activity	Name of Agent	Region	Amount	No. of Transaction
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Total

Fraud and Losses report

FRAUD AND LOOSES REVIEW
**NATURE OF
AND LOOSES****First National Branch in Lesotho**

	Agent	Agent	Agent	Remarks
<i>I. ACTUAL</i>				
1. Fraudulent cheques (ACTUAL)				
2. Theft (ACTUAL)				
3. Robbery/Hold up				
4. ATM - related (ACTUAL)				
5. Other (ACTUAL)				
<i>TOTAL ACTUAL</i>				
<i>II ATTEMPTED</i>				
1. Fraudulent cheques (ATTEMPTED)				
2. Theft (ATTEMPTED)				
3. Robbery/Hold up (ATTEMPTED)				
4. ATM - related (ATTEMPTED)				
5. Other ATTEMPTED				
<i>TOTALS ATTEMPTED</i>				

Customer Complaints

List of Activity	Agent	Agent	Agent	Agent	Agent
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