



LESOTHO

Government Gazette

Vol. 61

Friday – 27th May, 2016

No. 29

CONTENTS

| No. | Page |
|-----|------|
|-----|------|

LEGAL NOTICES

| | |
|----|--|
| 45 | Financial Institutions (Minimum Local Assets..... 431 Requirements) Regulations, 2016 |
| 46 | Financial Institutions (Licencing Requirements) 437 Regulations, 2016 |
| 47 | Financial Institutions (Banks) (Asset Classification) 467 Regulations, 2016 |
| 52 | Financial Institutions (Mergers and Transfer of Assets 492 and Liabilities) Regulations, 2016 |

Published by the Authority of His Majesty the King
Price: M58.00

LEGAL NOTICE NO. 45 OF 2016

**Financial Institutions (Minimum Local Assets Requirements)
Regulations, 2016**

Pursuant to sections 25 and 71 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 (Minimum Local Assets 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.

Application

3. These regulations shall apply to a bank licensed to operate in Lesotho.

Objectives

4. These regulations are intended to encourage banks to engage in financial intermediation in Lesotho and ensure that funds raised locally grow the local economy.

Local Assets Ratio

5. (1) A bank shall maintain local assets at an amount not less than 10

percent of the aggregate value of its liabilities to the public in Lesotho and its required paid up or assigned capital, even in the case of a branch of a foreign bank, and shall reserve account under section 22(3) of the Act.

(2) Local assets to be maintained in subregulation (1) shall consist of advances or credit facilities to persons doing business or resident in Lesotho, properties and other assets situated in Lesotho and shall include the following -

- (a) notes and coins that are legal tender in Lesotho;
- (b) deposits with the Central Bank of Lesotho;
- (c) balances due from banks in Lesotho;
- (d) loans and advances excluding those granted to non-residents;
- (e) treasury bills and other securities issued by the Government or the Central Bank of Lesotho;
- (f) other investments in debt or equity securities issued by persons resident in Lesotho; and
- (g) bank premises, furniture and fixtures, equipment, vehicles and fixed assets, at their depreciated value.

(3) A report showing the computation of the minimum local assets requirement as set out in the Schedule shall be prepared as at the end of each month and shall be submitted to the Commissioner not later than 20th day of the following month.

(4) For the purpose of this regulation, 'liabilities to the public in Lesotho' includes -

- (a) total deposit liabilities excluding those received from non-residents;
- (b) balances due to banks in Lesotho;
- (c) other liabilities for borrowed money from any person

resident in Lesotho excluding borrowings from the Government or the Central bank of Lesotho for liquidity purposes.

Supervising actions and penalties

6. A penalty based on the amount of the deficiency may be imposed by the Commissioner at the rate of 3 percent above the interest rate on 91-day treasury bills of the Government of Lesotho prevailing as at the reporting date and such penalty shall be payable to the Commissioner on demand made by it within such date as it may prescribe.

DATED:

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

NOTE

1. Act No. 21 of 2012

SCHEDULE

(regulation 5(3))

Minimum Local Assets Requirements

(Amounts to the
nearest thousand)

Institution Id:

Financial year

Start Date:

End date:

| | TOTAL | DEDUCTIONS (Non-resident, foreign) | AMOUNT |
|--|--------------|---|---------------|
| I. Required Local Assets Holdings | | | |
| 1. Deposit Liabilities | | | |
| 2. Balance due to Banks in Lesotho | | | |
| 3. Other Liabilities for Borrowed Money (deposits substitutes from the public) | | | |

4. Paid-up
or Assigned
capital
5. Statutory reserve
Account
3. Base Amount
(1.1 to 1.5)
7. Required
Holdings
(1.6x10percent)

**II. Local assets
holdings**

1. Loans and
advances
2. Balances Due
from Banks in
Lesotho
3. Investments in
Securities
4. Repos
5. Deposit with
Central Bank
6. Notes and Coins
7. Fixed Assets
(net)
8. Other Local
Assets

9. Total Local
Assets (II.1
to II.8)

**III. Excess/
(Deficiency)
(1.7 less II. 9)**

**IV. Penalty due for
deficiency**

LEGAL NOTICE NO. 46 OF 2016

**Financial Institutions (Licensing Requirements)
Regulations, 2016**

Pursuant to sections 5, 6, 7, 8, 9, 10, 11, 43 and 71(1) 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 -

PART I - PRELIMINARY

Citation and commencement

1. These regulations may be cited as the Financial Institutions (Licensing 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 meant to -
- (a) establish clear and objective criteria for reviewing applications to engage in banking or credit business and to outline the procedure to be followed in the licensing process;
 - (b) enable the Commissioner to determine, among other

things, whether new financial institutions have suitable shareholders, adequate financial strength, and management with sufficient expertise and integrity to operate the institution in a sound and prudent manner; and

- (c) put in place an effective method for reducing the number of unstable institutions that enter the financial system.

Application

4. These regulations shall apply to an institution applying for a licence under the Act.

PART II - LICENSING PROCEDURES

Licensing procedures

5. The licensing procedures shall be as set out in this Part.

Preliminary conference

6. (1) As a first step, an applicant is required to request a preliminary conference with the Commissioner for the purpose of declaring an intention to establish a financial institution and the supervision department shall be obliged to arrange such a conference.

(2) The applicant shall be required at this meeting to explain to the supervision department their objectives and vision for the proposed bank.

(3) At the conference, an applicant shall be provided with an overview of the laws and regulations governing the conduct of banking or credit business in Lesotho, particularly the applicable minimum paid-up or assigned capital requirement, and other licensing prerequisites.

(4) The criteria for evaluating an application shall be explained to the applicant.

Application form

7. (1) If, in the view of the Commissioner, the applicant reasonably

establishes capacity and seriousness of intent to proceed with the proposed establishment of a financial institution, an application form, as set out in Schedule 1, shall be provided together with an information sheet as set out in Schedule 2 and a personal declaration sheet as set out in Schedule 3.

(2) Before providing the forms referred to in subregulation (1), clarifications on the completion of the forms and other documentary requirements as well as other aspects of the licensing process may be requested from and provided by the Commissioner.

(3) On completion of the forms, they shall be submitted to the Commissioner.

Supporting documents

8. (1) Supporting documents and other requirements shall be as of a date not earlier than 90 days prior to the filing of the application except for audited financial statements which shall pertain to the two most recent annual or interim audits.

(2) The applicant shall in addition, submit -

- (a) complete operating manuals including risk management policies and procedures on loans, deposits, foreign exchange, internal control, asset-liability management, data processing and security;
- (b) a clear description of its proposed management information system - including sample forms, reports and Schedules; and any other related documents or information which the Commissioner may require.

(3) The applicant shall also provide an outline of the proposed or existing information systems architecture and any proposed changes or upgrades thereto and describe how -

- (a) the information system will work within technology that will be used;
- (b) the information system is suitable to the type of business

in which the institution will engage;

- (c) the security hardware, software, and procedures will be sufficient to protect the institution from unauthorized tampering or access; and
- (d) the organizers and directors will allocate sufficient resources to the entire technology plan.

(4) Any descriptions of systems and related matters as required under subregulation (3), shall be in such sufficient detail so as to enable the Commissioner to verify cost projections in the applicant's business plan required under regulation 8.

(5) The submission of any untrue or misleading information by the applicant constitutes one of the grounds for refusal of a licence or its revocation under section 16 of the Act even after a licence has been granted.

Acknowledgement

9. (1) Within 10 working days of receipt of an application form together with all supporting documents and the payment of the prescribed fees, the Commissioner shall send the applicant a formal letter of acknowledgement or a letter of deficiency.

(2) The letter of acknowledgement shall serve as the official notice that the documents submitted were found to be complete and that the processing or evaluation may commence.

(3) The letter of deficiency shall outline deficiencies in the application, provide a deadline for rectification of the deficiencies and no further action shall be taken by the Commissioner unless the deficiencies are rectified within the time prescribed.

Processing of application

10. The Commissioner shall, in accordance with section 10 (1) of the Act and within 45 days after the receipt of the complete and accepted application, process the application or, where further information has been requested, process the application only after the receipt of such further information.

Notice

11. (1) If the evaluation of the application establishes that the applicant is likely to be granted a licence as requested, a notice shall be sent to the applicant to comply with the required paid-up or assigned capital.

(2) In addition, the applicant shall submit further proof of its capabilities and capacity to establish the proposed financial institution by submitting the following -

- (a) physical facilities -
 - (i) floor plan of the premises indicating dimensions;
 - (ii) vault - indicating features as to length, width, height, thickness and type of materials;
 - (iii) computers, equipment and other machines - stating whether these are owned or leased; and
 - (iv) communication facilities;
- (b) business hours;
- (c) security - number of guards and security systems in place.

Changes

12. Material changes, such as in the composition of major shareholders, directors, officers, and capital structure while the application is being processed shall be duly communicated to the Commissioner.

Issue or refusal of licence

13. (1) Upon determination that the applicant fully satisfies the licensing criteria and other requirements, the Commissioner shall, in accordance with section 11 of the Act, issue a licence to the applicant to conduct banking or credit business in Lesotho subject to conditions which the Commissioner may impose.

(2) If the Commissioner determines that the applicant does not fully satisfy the licensing criteria and other requirements, the Commissioner shall inform the applicant, in writing, of its refusal to grant a licence and shall refund the registration fee paid by the applicant but not the application fee.

Commencement of operations

14. (1) Within 6 months following the issuance of a licence, the financial institution shall commence operations.

(2) A copy of the licence shall be displayed in each of the approved places of business.

(3) The licensed financial institution shall notify the Commissioner of its opening date at least 30 days before the commencement of operations.

Information and declaration sheet

15. (1) Within 30 days from commencement of operations, a licensed financial institution shall submit a new information sheet to the Commissioner.

(2) Updated information sheets or personal declaration sheets of all persons required to complete these forms shall be submitted to the Commissioner within 15 days from the occurrence of any material change in the information previously submitted.

(3) Directors and officers shall submit personal declaration sheets to the Commissioner as stipulated under schedule III on an annual basis and personal declaration sheets for prospective directors and officers shall be submitted to the commissioner for scrutiny.

(4) A licensed financial institution shall immediately comply with the Commissioner's reporting requirements once it commences operations.

(5) No major changes or additions to the line of business or principal activities to be conducted by a licensed financial institution shall be effected without prior approval of the Commissioner.

PART III - REGULATORY REQUIREMENTS

Licensing criteria

16. The criteria set out in this Part shall be considered by the Commissioner in evaluating an application to conduct banking or credit business in Lesotho.

Ownership structure

17. (1) There shall be sufficient transparency in the ownership structure of the proposed financial institution as to enable the Commissioner to evaluate its principal, direct and indirect shareholders and its corporate affiliations.

(2) A review shall be done of the controlling shareholders' past banking and nonbanking business ventures and their integrity and standing in the business community, as well as the financial strength of all principal shareholders and their ability to provide further financial support should it be needed.

(3) The source of the initial capital to be invested and that of any future funding shall be determined by the Commissioner.

Directors and officers

18. (1) The applicant shall prove, to the satisfaction of the Commissioner, that the applicant's management satisfies the fit and proper criteria specified in Schedule 4 by submitting the personal history, business or employment records, experience, and other background information of all directors and officers.

(2) The qualifications of the directors and officers shall be at a level which shall enable them to conduct business competently and competitively with existing financial institutions and shall be in compliance with section 43 of the Act and Schedule 4 of this regulation.

Capital adequacy

19. (1) The applicant's capital shall be adequate to support the projected volume and type of services planned in a highly competitive environment.

(2) A bank shall not be granted a licence unless it fulfills a minimum

paid-up or assigned capital as specified under section 9 of the Act.

(3) A bank shall also demonstrate the ability to maintain a capital adequacy ratio in accordance with regulatory requirements as may be determined by the Commissioner.

Overall viability

20. (1) The overall strategy of the applicant for succeeding in the market shall be conceived and developed into a business plan which is sufficiently robust to support a comprehensive review and viability analysis.

(2) The business plan shall respond to the requirements of Schedule 5 and shall take into account projected activities, existing and potential competitors, anticipated problems as well as possible remedies, and other elements that may affect the growth and projected performance of the proposed financial institution.

(3) The business plan shall -

- (a) include detailed financial projections which demonstrate medium-term viability and sufficient information on the financial resources of the founders to support the institution through its initial phase;
- (b) describe how the institution is to be organized and controlled internally and shall include internal policies and procedures.

Effects on competition, community and economy

21. (1) The effects that the proposed financial institution may have on competition, the community and the economy shall be assessed by the Commissioner in coordination with any competition authority or competition policy in force in Lesotho.

(2) An application which establishes a role for the proposed institution in meeting identified needs for a particular area or sector of the economy to be served by it through a carefully conceived plan and strategy, may receive favorable consideration.

Effective supervision

22. (1) The applicant shall make sure that there are no factors which may inhibit effective supervision such as inadequate or non-availability of information and lack of transparency.

(2) With specific reference to proposed foreign financial institutions, a level of cooperation between the Commissioner and the home country supervisor shall be established to permit the conduct of consolidated supervision and the observance of international supervision standards.

**PART IV - ANNUAL LICENCE FEES AND
OTHER REQUIREMENTS****Validity of licence**

23. (1) A licence issued under regulation 13 shall remain valid unless revoked by the Commissioner.

(2) It shall not be necessary to file an application for the renewal of a licence.

(3) The Commissioner may, after giving reasonable notice to the licensed financial institution, amend the terms and conditions of any such licence at any time.

Licence fee

24. A licensed financial institution shall, so long as its licence is not revoked, pay to the Commissioner on or before 31st December of each year the prescribed licence fee.

Updated information sheet

25. An updated information sheet, as set out in Schedule 2, for the licensed financial institution as at 31st December of each year, shall be submitted to the Commissioner not later than 31st January of the following year.

Notice of appointment

26. (1) A licensed institution shall apply to the Commissioner for approval of any appointments or removal of any director, officer or branch manager.

(2) After appointment or removal of such person by the licensed institution with approval of the Commissioner, the licensed institution shall notify the Commissioner within 15 days from the appointment date.

(3) A licensed institution shall ensure that any such director, officer, or branch manager appointment shall complete and submit the personal declaration in Schedule 3.

(4) A personal declaration sheet, as set out in Schedule 3, for each of the appointed directors, officers or branch managers shall be submitted together with such notification.

Approval of changes in shareholding

27. (1) A person intending to directly or indirectly acquire 10 percent or more of the voting rights of a licensed institution whether acting alone or in concert with other persons, shall apply to the Commissioner for prior approval in writing, by completing the information required in Schedule 3.

(2) A person intending to, directly or indirectly, acquire 33 percent and up to 50 percent of the voting rights of a licensed institution whether acting alone or in concert with other persons, shall apply to the Commissioner for prior approval in writing, in accordance with the following procedures -

- (a) applicant submits an application supported by information required in Schedules 1, 2, and 3 to the Commissioner;
- (b) within 15 days from the applicant's submission of the information required in paragraph (a), the Commissioner shall consider the application for approval or otherwise based on fit and proper criteria for bank shareholders, and other criteria for considering applications for mergers or acquisitions of banks or application for licensing

of banks, notwithstanding that the applicant may already own shares in the bank.

DATED:

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

NOTE

1. Act No. 21 of 2012

SCHEDULE 1

Application for a Licence to Conduct Banking or Credit Business

(regulation 7(1))

The Governor
Commissioner of Lesotho
P.O. Box 1184
Maseru

1. I, the undersigned, acting as principal or duly authorized agent on behalf of or as chairman of chief executive officer of

.....

.....

.....

.....

Banking business Credit business

2. Principal Business activities

.....

.....

.....

.....

.....

3. The following documents are being submitted to comply with the initial requirements for evaluation. Where a document is not applicable this is so stated-

(1) Information Sheet (Schedule 2)

.....

.....

.....

.....

.....

.....

(2) Personal Declaration Sheet (Schedule 3)

| Name | Position |
|-------|----------|
| | |
| | |
| | |
| | |

(3) Proposed Capital Structure

.....

.....

.....

.....

(4) Economic justification and outline of short, medium, and long term business plans with details on -

- (a) financial, commercial, and other business establishments within the proposed area of operation or targeted markets;
- (b) deposits or other fund gathering sources as well as lending and investment potentials;
- (c) financial services to be offered by the applicant.

(5) Financial projections (balance sheets, income statements, and cash flow statements) for at least a three-year period, including details of estimated organisation expenses. Assumption used and other bases for projections are indicated.

(6) Schematic presentation, with regard to the group of companies of which applicant is a member, reflecting all interests held in and by each member company including the nature of business or each of these entities.

(7) List of existing shareholdings of the applicant and its controlling shareholders, directors, officers and officials in other licensed financial institutions.

(8) Certified true copies of the audited financial statements or annual reports for the past two years prepared in accordance with generally accepted accounting principles.

(9) Authenticated copies of the memorandum and articles of association or, in case of foreign institution, such similar documents regulating its affairs.

(10) If the applicant is a foreign financial institution, a statement from the supervisory authorities of the home country declaring that: (a) it has given its prior approval for the establishment of a subsidiary, branch or any other office in Lesotho, (b) it shall exercise comprehensive supervision over the parent institution on a consolidated basis, and (c) the applicant's chairman, directors, principal officers and management as a whole are fit and proper persons.

(11) Latest tax compliance certificate or certified true copy of corporation tax returns.

(12) Individual credit references for the applicant and each of its principal shareholder, director, officer and official from at least two banks or financial institutions with whom such persons have had financial dealings within the past two years.

(13) Certified true copy of the board resolution of the Head Office of Parent Company authorizing the establishment of a branch or subsidiary.

(14) Any query, clarification or additional requirements regarding the acquisition of a specified number of shares in applicant institution (if major shareholder is a corporation or company).

(15) Any query, clarification or additional requirement regarding this application maybe directed to the following officers authorized to liase with the Commissioner.

Name Telephone
No.:

Name Telephone
No.:

Certification and Undertaking

I, the undersigned, hereby certify that all information contained in and accompanying this application is complete and accurate to the best of my knowledge and belief.

I also undertake to forthwith notify the Commissioner of Lesotho, of any material change in the particulars of this applications.

Sworn at Maseru, Lesotho

This..... day
of.....

Signature of Deponent (Position)

Deponent understands contents of this Affidavit

Before me,

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 “not applicable” or ‘NONE”, as the case may be.
 3. If any space provided in the form is adequate, the required information or data needed may be supplied, as on annex.
 4. Reference shall be made in the relevant section on the form by placing the words “refer to annex”.

For Central Bank use:

Received by

Date

Application documents checked for completeness by:

.....

Letter of Deficiency or Acknowledgement sent on:

.....

Action Taken:

.....
.....
.....
.....

Action:

.....
.....
.....
.....

.....
.....

Evaluating Officer
Department

Director

Supervision

SCHEDULE 2

Information Sheet

(regulation 7(1))

1. Name:

2. Principal Business Activities:

3. Head/Main Office:
 (a) Address:

 (b) Telephone
 No.:
 (c) Telefax
 No.:

4. Branches:

| Address Opened | Date Approved or Date |
|-------------------|-----------------------|
| | |
| | |
| | |

| Subsidiaries & Affiliates: Shares Held | Amount of Shares Held | percent of to Total |
|---|-----------------------|------------------------|
| Name & Type of business | | |
| | | |
| | | |

6. Management:

(I) Board of Directors:

| Name | Designation | Present Term | No. of Years as From- To Board Member |
|-------|-------------|--------------|--|
| | | | |
| | | | |
| | | | |

(1) Board Committee(s):

| Name & Purpose of Committees(s): | Name of Members |
|----------------------------------|-----------------|
| | |
| | |
| | |

(2) Officers:

| Name Officer | Position | No. of years as |
|-----------------|----------|-----------------|
| | | |
| | | |
| | | |

(3) Description of the duties and responsibilities of each officer listed in 6(2) above

7. Ownership Profile:

| Name | Country of Residence | Paid-up Capital Amt. | percent Citizenship |
|---------|----------------------|----------------------|---------------------|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |

Other Shareholders owing less than 5percent (number)

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 may be.
3. If any space provided in the form is adequate, 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”

(2) Present Residential Address:

(Lesotho since)

(Outside Lesotho since)

.....
.....
.....
.....

(3) Last two addresses in Lesotho, if any, during the past 10 years:

(Since)

(Since)

.....
.....
.....
.....

5. Professional Qualifications:

Particulars

(1) Highest Academic Degree Year Obtained

(2) Special Awards or Honors

.....
.....
.....

(3) Training Courses or Seminars

.....
.....
.....

(4) Membership in Professional Organizations

.....

(6) Occupation or Employment (Present or most recent and for the

last 10 years):

| | | | |
|-----------------------------|----------------|-------|-------|
| Inclusive Date | (Mth & Yr) | | |
| Name & Business of Employer | Positions Held | From | Year |
| | | | |
| | | | |

(7) Other Business Affiliations (Direct and Indirect);

Nature of Affiliation i.e
 Director, Officer, ShareHolder with percent holdings
 Inclusive Date

| | | | |
|------------------|------------|-------|-------|
| Specified etc | (Mth & Yr) | | |
| Name of Business | | From | To |
| | | | |
| | | | |

(8) Family Group

Business Affiliation (State Name of Business and Nature of Affiliation i.e. Director, Officer, Shareholder with, percent holdings specified)

Name

- (1) Spouse:
- (2) Children:
- (3) Parents:
- (4) Brothers or Sisters:

9. Record of court cases or any investigation by governmental, professional or any regulatory body (including pending cases or on-going investigations):

| Name of Court or Investigative | Body Full Particulars | Status |
|--------------------------------|-----------------------|--------|
| | | |
| | | |

10. For each principal shareholders and director, describe the extent, if any, of involvement in the day-to-day management of the institution (applicant):

11. For each principal shareholders and director, disclose any conflict of interest in relation to the institution (applicant):

12. Describe any transactions, contracts, professional fees (other than director fees) and other types of business relationships involving promoters, principal shareholders, directors, officers or their related parties and the institution (applicant):

13. Documentary Requirements -

(1) Certified statement of assets and liabilities;

(2) Latest tax compliance certificate or certified true copy of income tax returns;

(3) Two letters of character reference certified and duly notarized from individuals other than relatives who have personally known the undersigned for at least ten years;

(4) Two letters, duly certified and notarized, from financial institutions with whom the undersigned has had dealings for the last two years on the performance of past and present accounts such as, unauthorized overdraft on deposit accounts, past-due or delinquent accounts; and

(5) Police Clearance.

11. Certification and Undertaking

I, certify that all the above information contained in 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.

I also undertake to notify the Commissioner of Lesotho within period of fifteen days, of any material change to this Personal Declaration Sheet.

Sworn 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 may be.
3. If any space provided in the form is adequate, 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 word “REFER TO ANNEX”.

SCHEDULE 4

Fit and Proper Requirements**(regulation 18)**

1. The following criteria may be used to enable the Commissioner to assess fitness and propriety of a person; whether the person has -

- (a) the educational or technical qualifications, knowledge, skills, and experience to satisfactorily discharge the responsibilities of the position;
- (b) failed to discharge his or her responsibilities as a shareholder, director or officer with competence, diligence, sound judgment, honesty or integrity;
- (c) been subject to discipline, punishment, or adverse findings, directions or orders, by a court, tribunal, official inquiry, regulatory agency, complaints handling body, dispute resolution body or professional or industry body;
- (d) been subject to any adverse finding or settlement in civil or criminal proceedings (other than minor traffic offenses), or enforcement actions;
- (e) been associated, expelled or excluded from, or refused admission to, a professional or industry body;
- (f) or any other person with whom they were associated, was refused a licence or authorization relating to a commercial or professional activity;
- (g) terminated, resigned or asked to resign, from a position as director or officer of a professional service provider or financial institution under circumstances which reflected adversely on his or her competence, diligence, judgment, honesty or integrity in discharging his or her responsibilities;

-
- (h) seriously or persistently failed to manage his or her debts or financial affairs satisfactorily;
 - (i) acted as or was, a director or officer of a professional service provider or financial institution which came to be insolvent or under insolvency administration which was attributable in part by the actions or inactions of the person;
 - (j) contravened any regulatory requirement or professional standard relating to the management of a financial institution;
 - (k) been obstructive, misleading or untruthful in dealing with a court, tribunal, official inquiry, complaints handling body, dispute resolution body, or regulatory agency;
 - (l) perpetrated or participated in negligent, deceitful or otherwise discreditable business or professional practices;
 - (m) failed to disclose a conflict of interest, failed to disqualify himself or herself because of a conflict of interest, participated in deliberations relating to a matter in which he or she had a conflict of interest, or acted in his or her own interests in preference to the interests of others contrary to a legal, professional or ethical obligation which applied to the person.

2. The above criteria are inclusive of and not exhaustive. For the avoidance of doubt, the Commissioner shall be entitled to consider any other factor that may render a person prejudicial to the financial condition or stability of the applicant or licensed financial institution.

SCHEDULE 5

Information Requirements for a Business Plan**(regulation 20(2))**

A business plan required to be submitted by an applicant under regulation 9 such as a minimum, contain the following information:

Identifying Information

1. Name and Location - State the name and provide the address of the proposed financial institution.
2. Organizational structure - describe and provide a diagram of the bank's organizational structure including any principal shareholders as defined in FIA 2012, directors and officers
3. Ownership structure - describe and provide a diagram reflecting all subsidiaries and affiliated entities of the bank and principal shareholders, directors and officers and their related parties, both directly and indirectly, and in whatever form, including such forms as nominee and trustee relationships

Provided that the information provided in Schedule II may be used if CBL deems it to be satisfactory.

4. Summary - briefly describe how the organizing group came together, and indicate the reasons for submission of the application for a banking licence

Market Analysis

1. Market - identify the markets proposed to be served by the bank, including proposed branch or other office facilities;
2. Characteristics - describe the target market demographic and economic characteristics. Include any anticipated changes in the market, factors influencing such changes, and possible effects on the bank;

3. Competition - identify and describe the competition (include all other financial service providers including banks, micro-lenders, insurance companies and credit cooperatives) located within the target markets.

Business Strategy and Objectives

1. Market area - identify the market areas from which the bank expects to generate 75 percent of its business. Include information on any significant competing financial service providers.

2. Services and products - list and briefly describe the services and products to be offered. Distinguish among depository, credit and other services and products contemplated. Identify and describe any proposed new services which the applicant will be offering which are not currently available from existing financial service providers.

Management

1. Officers - describe the responsibilities of each officer, including those responsible for major functional areas of the bank, including but not limited to lending and credit administration; operations and internal controls; asset/liability management, liquidity and interest rate risk management; treasury and foreign exchange operations; and branch management.

2. Qualifications - discuss the qualifications of the proposed directors and officers showing the nature and extent of experience each possesses.

3. Compensation - provide a list of the proposed fees, salaries and other forms of compensation, including benefits, for each director and officer.

4. Agreements or outsourcing arrangements - describe any agreement (for example, data processing or loan processing) the bank intends to make or obtain services of others. Provide the names of proposed service providers and relationships, if any, to authorized representatives, principal shareholders, directors or officers of the bank.

5. Lease agreements - describe any lease agreement the bank intends to enter into with any third party or organizer, principal shareholder, director or officer of the bank. Provide a copy of the proposed lease agreement, information showing market rate comparisons of terms and rates, and the names of any organizer, principal shareholder, director or officer who is involved.

6. Audit - discuss the provisions that are being made for independent, annual external audit services including the name of the proposed external auditor; and provisions made to establish an internal audit function and a compliance function in the bank

Capitalization

1. Capital - describe the bank's proposed capital structure. State the initial proposed capitalization and justify the amount proposed relative to minimum capital requirements contained in FIA and risk-based capital requirement prescribed by CBL, and market factors, strategies and expenses. Additional capital may be required by CBL based upon its evaluation of the application.

2. Capital plan - describe plans to raise capital and for financing growth over the first three years of operations. Detail expenses to be paid from the initial capital offering or which will be capitalized and amortized over a future period.

3. Debt - describe any debt, current or proposed, for capitalization or acquisition by any individual or entity that will own or control, directly or indirectly, ten percent or more of the equity or of any class of shares with voting rights of the bank. Describe any anticipated dividends, fees or salaries that will be paid by the bank, directly or indirectly, to service the debt.

Pro Forma Statements

Detailed pro forma balance sheet and income and expense statement must be submitted, reflecting projected performance of the bank over a three year period. Assumptions underlying the projections must be provided with a justification for selecting the assumptions at the expressed level. List all assumptions, including at a minim, market growth rates, loan interest rates and cost of funds, overhead costs. Asset mix, return on assets, dividend payments and capital ratios.

LEGAL NOTICE NO. 47 OF 2016

**Financial Institutions (Banks) (Asset Classification)
Regulations, 2016**

Pursuant to section 71 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 -

PART I - PRELIMINARY**Citation and commencement**

1. These regulations may be cited as the Financial Institutions (Banks) (Asset Classification) 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 -

“non-performing asset” means an asset which ceases to generate income for the bank;

“classification” means the determination of the category of an asset based on its performance using either subjective or objective criteria;

“credit facility” means any asset or off balance sheet item which contains credit risk, such as loans, overdrafts, advances, leases, acceptance, bills discounted, guarantees and other assets or contingencies connected with credit risk;

“hardcore” means an overdraft facility which shows little or no turnover over a period of 12 consecutive months;

“non- accrual asset” means that an asset has been placed on a cash basis for accounting and financial reporting purposes, thus income earned or

due but unpaid is not credited to income account but instead to a suspense account;

“overdraft” means a facility under which a bank allows funds withdrawn to exceed funds deposited in accordance with specified terms and conditions;

“specific provision” means an allowance or amount set aside for presently identified and potential impairment of assets; and

“general provision” means an allowance or amount set aside to guard against potential impairment of assets.

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

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

Objectives

3. These regulations are intended to ensure that -

- (a) assets of a bank are regularly evaluated using objective classification criteria;
- (b) banks are in compliance with capital adequacy requirements by recognising possible impairments in assets; and
- (c) banks’ financial statements properly reflect the financial impact of all adversely classified assets.

Application

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

PART II - REGULATORY REQUIREMENTS

Assets quality review and classification

5. (1) A bank shall establish and adhere to adequate policies, practices and procedures for evaluating the quality of its loan portfolio, investments and off balance commitments and the adequacy of its provisions for probable losses.

(2) A bank shall be required to conduct a qualitative appraisal of their loan portfolios comprising all loans, overdrafts, receivables, and other extensions of credit on a monthly basis coinciding with a calendar quarter and classify the loan portfolio into the following 5 categories -

- (a) pass;
- (b) special-mention;
- (c) substandard;
- (d) doubtful; and
- (e) loss.

(3) The management shall maintain adequate records in support of their appraisals and classifications and shall make them available for examination by the Commissioner.

(4) A bank shall be required to undertake an assessment of investment portfolio and off balance sheet commitments on a monthly basis.

PART III - ASSETS CLASSIFICATION CRITERIA

Credit information

6. A loan portfolio shall be classified based on the review of the following information -

- (a) the original amount of the credit facility, terms, interest rate, current balance and status, and purpose of the credit facility;

- (b) the business of the borrower, balance sheets, income statements, cash flows and other financial data both on the business and the guarantors;
- (c) an evaluation of the project being financed;
- (d) the collateral taken including up-to-date appraisals, legal assignments and insurances among others;
- (e) track record of the borrower including the repayment history of previous borrowings from the bank and other credit providers;
- (f) if part of a group, the performance of credit accommodations to other members of the group; and
- (g) the operating and economic environment of the borrower.

Basis

7. (1) The evaluation of each account shall be based upon the credit-worthiness of the particular borrower.

(2) The focus of the assessment shall be the ability of the borrower to repay the account.

(3) The assessment shall reflect all relevant factors as of the evaluation date that affect the collectability of principal and interest.

(4) Factors relevant to the assessment of the debtor's ability to repay shall include the debtor's payment record, overall financial condition and resources, debt service capacity, financial performance, net worth and future prospects.

(5) Significant departure from the primary source of repayment may warrant adverse classification even if a loan is current and supported by underlying collateral value or guarantees.

(6) Adverse classification may be appropriate if repayment terms

originally were too liberal or if a delinquency has been technically cured by modification of terms, refinancing or additional advances.

(7) Where the Commissioner undertakes a review, upon completion of an on-site examination, a list of reclassified accounts shall be provided some of which shall be downgraded from categories earlier classified by the bank.

(8) An account from this list shall be upgraded by the bank without sufficient justification.

(9) When an account has more than one deficiency, the deficiency which attracts the worst classification category shall be considered.

(10) The Commissioner shall not be precluded from requiring a more severe classification for an account if such is warranted based upon any additional information.

(11) "A Pass" category referred to in regulation 5(2)(a) includes the following -

- (a) where the financial condition of the borrower is sound;
- (b) where there is adequate documentation to support the granting of credit, such as current financial statements, cash flows, credit checks, and evaluation report on collateral held; and
- (c) if the account is supported by collateral, such collateral shall be unimpaired.

(12) The classification in subregulation (10) may be assigned to -

- (a) a loan which is up-to-date in repayments; and
- (b) an overdraft -
 - (i) operating within the approved limit;
 - (ii) with unexpired credit line;

- (iii) with interest charges covered by deposits; and
- (iv) with no hardcore and showing turnovers which conform to the business cycle.

(13) “A Special mention (potential problem credits)” category referred to in regulation 5(2)(b) includes any one or more of the following -

- (a) an account which is currently up-to-date but evidence suggests that certain factors could in the future affect the borrower’s ability to service the account properly or impair the collateral;
- (b) where there is inadequate credit documentation or other deviations from prudent credit extension practices;
- (c) where collateral is not fully in place, or its value is deteriorating;
- (d) an account which may deteriorate because of current market conditions affecting the sector or industry;
- (e) a renegotiated account which is up-to-date in repayments and adequately secured for a minimum of one year after rescheduling and during which period there would have been no inherent weaknesses affecting repayment;
- (f) for a loan or an account with fixed repayment dates when -
 - (i) the principal or interest is due and unpaid for 1 month to less than 3 months; or
 - (ii) the interest charges for 1 to 2 months have been refinanced rolled-over, or a specific allowance offsetting such amount of interest due has been established;
- (g) for an overdraft or an account without fixed repayment dates when -

-
- (i) the approved limit has been exceeded for 1 month to less than 3 months;
 - (ii) the credit line has expired for 1 month to less than 3 months and has not been renewed;
 - (iii) the interest charge for 1 to 2 months has not been covered by deposits; or interest charge is due and unpaid for 1 to 2 months; or
 - (iv) the account had turnovers which did not conform to the business cycle.

(14) “A Substandard” category referred to in regulation 5(2)(c) includes any one or more of the following -

- (a) where there are well-defined credit weaknesses, such as, shortfalls in the borrower's cash flow and several renewals;
- (b) where the primary source of repayment is insufficient to service the debt and the bank may have to look at secondary sources, such as collateral or refinancing, for repayment;
- (c) the well-secured portion of a loan or an overdraft which may otherwise have been classified as doubtful or loss;
- (d) for a loan or an account with fixed repayment dates when -
 - (i) the principal or interest is due and unpaid for 3 months to less than 6 months; or
 - (ii) the interest charges for 3 to 5 months have been, refinanced, rolled-over, or a specific allowance offsetting such amount of interest due has been established;
- (e) for an overdraft or an account without fixed repayment

dates when -

- (i) the approved limit has been exceeded for 3 months to less than 6 months;
- (ii) the credit line has expired for 3 months to less than 6 months;
- (iii) the interest charges for 3 months to 5 months have not been covered by deposits; or interest charges are due and unpaid for 3 to 5 months; or
- (iv) the account has developed a hardcore which was not converted into a term loan after 3 months to less than 6 months.

(15) “A Doubtful” category referred to in regulation 5(2)(d) includes any one or more of the following -

- (a) where the collection of the debt in full is highly questionable or improbable;
- (b) where there is the possibility of a loss, but some factors exist which could improve the situation;
- (c) the unsecured portion of a loan or an account with fixed repayment dates when -
 - (i) the principal or interest is due and unpaid for 6 months to less than 12 months; or
 - (ii) the interest charges for 6 to 11 months have been refinanced, rolled-over, or a specific allowance offsetting such amount of interest due has been established;
- (d) the unsecured portion of an overdraft or an account without fixed repayment dates when -

-
- (i) the approved limit has been exceeded for 6 months to less than 12 months;
 - (ii) the credit line has expired for 6 months to less than 12 months; or
 - (iii) the interest charges for 6 months to 11 months have not been covered by deposits; or the interest charges for 6 to 11 months are due and unpaid;
 - (vi) the account has developed a hardcore which was not converted into a term loan after 6 months to less than 12 months.

(16) "A Loss" category referred to in regulation 5(2)(e) includes any one or more of the following -

- (a) an account considered uncollectible;
- (b) an account which may have some recovery value but it is not considered practical nor desirable to defer write off;
- (c) an account classified as doubtful with little or no improvement over the 12 month period it has been classified as such;
- (d) the unsecured portion of a loan or an account with fixed repayment dates when -
 - (i) the principal or interest is due and unpaid for 12 months or more; or
 - (ii) the interest charges for 12 months or more have been refinanced, rolled-over, or a specific allowance offsetting such amount of interest due has been established;
- (e) the unsecured portion of an overdraft or an account with

out fixed repayment dates when -

- (i) the approved limit has been exceeded for 12 months or more;
- (ii) the credit line has expired for 12 months or more; or
- (iii) the interest charges for 12 months or more have not been covered by deposits; or interest charges is due and unpaid for 12 months or more;
- (iv) the account has developed a hardcore which was not converted into a term loan after 12 months or more.

Past due and non-performing accounts

8. (1) The principal balance outstanding (and not the amount of delinquent payments) shall be used in calculating the aggregate amount of past-due and of non-performing accounts.

Past-due account

9. An account shall be reported as past-due when -

- (a) for a loan or an account with fixed repayment dates -
 - (i) the principal or interest is due and unpaid for 1 month or more; or
 - (ii) the interest charges for 1 month or more have been refinanced, or rolled-over;
- (b) for an overdraft or an account without fixed repayment dates -
 - (i) the approved limit has been exceeded for 1 month or more;

- (ii) the credit line has expired for 1 month or more;
- (iii) the interest charges for 1 month or more have not been covered by deposits; or
- (iv) the account had turnovers which did not conform to the business cycle.

Non-performing accounts

10. (1) A loan with fixed repayment dates shall be reported as non-performing when -

- (a) the principal or interest is due and unpaid for 3 months or more; and
- (b) the interest charges for 3 months or more have gone unpaid or not been covered by deposits refinanced, or rolled-over;

(2) An overdraft with fixed repayment dates shall be reported as non-performing when -

- (a) the approved limit has been exceeded for 3 months or more;
- (b) the credit line has expired for 3 months or more;
- (c) the interest charges for 3 months or more have gone unpaid and not been covered by deposits; or
- (d) the account has developed a hardcore which was not converted into a term loan after 3 months or more;

(3) Where a bank has multiple loans and other credits outstanding to a single borrower and one account meets the criteria for non-performing status, then the bank shall evaluate every other exposure to that borrower and, if appropriate, place any other account in non-performing status also.

Non-accrual status

11. (1) When a facility is placed on non-accrual, a bank should cease to recognize any interest earned but not yet received. Accrued interest on the balance sheet for that facility should generally be reversed back to the date when the interest was last paid.

(2) Uncollected interest that has been previously accrued shall be reversed or included in the account balance with an adequate specific allowance to offset the full amount which was previously accrued.

(3) Interest on loans to the Government and on any other loans or overdraft secured by cash, cash substitutes, government securities or government guarantees may be accrued up to the limit of the said collateral or government guarantee.

Interest income recognition

12. (1) If an account has been placed on a "non -accrual status" and ultimate collectability of the remaining principal balance is in doubt, then any cash payments received shall be applied only to reduce the principal.

(2) However, if the remaining book balances after a partial write-off of the principal is considered fully collectable, then cash payments received may be treated as interest income.

(3) When recognition of interest income on a cash basis is appropriate, the amount of income which may be recognised shall be limited to that which would have been accrued on the remaining book balance at the contractual rate.

(4) Any cash payments in excess of the amount referred to in sub-regulation (3) (and not applied to the remaining book balance) shall be recorded as recoveries of prior write-offs until all such write-offs have been fully recovered.

(5) Any determination that an account is ultimately collectable shall be supported by a current, properly-documented credit evaluation, including analysis of the borrower's historical repayment performance and any other relevant factor.

Restoration to accrual status

13. A non-performing account may be restored to accrual status when -
- (a) all principal and interest in arrears have been paid and the borrower has resumed paying the full amount of the scheduled contractual principal and interest payments for at least 6 months and all contractual payments are deemed to be collectable in a timely manner; or
 - (b) an account otherwise becomes well-secured and in the process of collection.

Well secured account

14. For the purpose of this regulation -
- (1) (a) a “well-secured account” means that the collateral is sufficient to protect the financial institution from loss of principal and interest through its timely disposition under a forced liquidation programme.
 - (b) “sufficiency” means the existence of proper legal documentation, a net realisable market value which is adequate to cover the amount of principal and interest outstanding as well as cost of collection, and the absence of prior liens on the collateral which would diminish its value or otherwise prevent the bank from acquiring clear title.
- (2) Collateral such as specialised manufacturing facilities and equipment for ongoing operations which involve large-scale employment of workers may not normally be considered well-secured because of the difficulties of actual foreclosure or of disposing of the collateral in a timely manner at values sufficient to protect the financial institution from loss.
- (3) An account may also be considered as well-secured if the collateral includes irrevocable guarantees issued by first-class banks and other licensed financial institutions, multinational companies, and governments where the beneficiary or licensee has performed the financial analysis necessary to de-

termine that the issuer is financially sound, well-capitalised, and able to pay the guarantee on demand.

(4) Such guarantees shall be unconditional and payable upon the default of the borrower and shall be properly acknowledged by the issuer through independent confirmation.

Investment and other assets classification

15. (1) Apart from the loans and advances portfolio, banks may have other assets such as but not limited to, investment with banks, marketable securities, deposits with institutions under statutory management and liquidation, investments in associates, subsidiaries and joint ventures and sundry debtors which may be subject to loss or diminution in value.

(2) A bank shall regularly review other assets, classify them as warranted, and make necessary charges as the need arises.

(3) A bank shall make provision where an actual loss of an asset occurs or when the recoverable amount of the asset is less than its carrying value and the provisions made shall not be lumped together with provisions for loans and advances.

(4) Where a bank assumes ownership of real estate in settlement of all or part of a debt, such asset falls within the category of impaired assets, and shall be treated as a problem asset.

(5) A bank shall record such assets in its financial statements at the assets' fair market value.

(6) An asset repossessed by a bank through foreclosure or other enforcement of collateral securities, shall be classified as substandard or worse during the entire time that they remain on such bank's balance sheet, regardless of the size of the income stream, if any, that a bank may have derived from the asset.

Off-balance sheet exposures

16. (1) The principal off-balance sheet exposures captured are direct credit substitutes and commitments.

(2) Direct substitutes shall be converted into on-balance sheet item when called.

(3) Notwithstanding subregulation (2), circumstances may permit calling of such instruments at a future date because of uncertainty about the counterparty.

(4) In the case referred to in subregulation (2) the off-balance sheet exposure shall be regarded as impaired.

(5) The bank shall treat an exposure to a derivative instrument that experiences a decline in its credit standing as impaired.

(6) A bank shall calculate its derivative instrument exposures to counterparties using the current exposure or mark to market method.

(7) Where a bank wishes to use another method, approval shall be sought first from the Commissioner.

(8) Derivative exposures shall be valued regularly so as to maintain reasonably current assessments of the extent of credit risk attached to those transactions.

(9) As a general rule, a bank shall create a provision or take a charge against profit, equal to the full amount of the current credit exposure and potential credit exposure, unless satisfied that a lesser amount is appropriate.

PART IV - PROVISIONING REQUIREMENT

Provision for probable loss

17. (1) A bank shall at all times maintain an adequate level of provision for probable losses and failure to do so shall be considered an unsafe and unsound practice as it may result in a mis-statement of assets, earnings and capital.

(2) The loan portfolio classification exercise referred to in regulation 6 shall provide a basis for determining this level of provisioning which shall be created through charges to provision expense in the income statement and credited to reserve or allowance for probable losses which is a contra-asset account

in the balance sheet.

(3) Write-downs, charge-offs and recoveries in the loan portfolio shall only be made to the reserve or allowance for probable losses account and not directly to a capital account such as retained earnings or undivided profits.

Minimum levels for required provisioning

18. (1) The level of provisioning indicated under these regulations shall represent the minimum levels of provisions required.

(2) In establishing the appropriate level of provisioning, a bank shall consider not only historical loan performance and asset quality information, but also conservatively evaluate the possibility of future circumstances causing deterioration in the credit portfolio.

(3) A bank with a relatively high-risk loan portfolio or clearly identifiable and potentially serious asset quality problems shall be expected to maintain an average level of provisions as set out in the Schedule.

(4) Where the Commissioner is of opinion that losses are likely to be more than the minimum percentages set out in the Schedule, the Commissioner may require a bank to provide a higher amount against estimated credit losses.

(5) If impairment charges computed under internationally accepted accounting standards are lower than provisions required under this regulation, the excess provisions shall be treated in accordance with internationally accepted accounting standards.

(6) Under internationally accepted accounting standards, any amounts set aside for impairment losses on loans and advances in addition to the losses recognised under internationally accepted accounting standards represent appropriations of retained earnings and not expenses in determining profit and loss shall be realised under the retained earnings as credit risk reserve.

(7) Similarly, any credits resulting from the reduction of such amounts results in an increase in retained earnings and are not included in the determination of profit and loss.

(8) Where the impairment charges computed under internationally accepted accounting standards are higher than provisions required under this regulations, the impairment charges will be considered adequate.

(9) For groups of homogenous loans of small amounts where it is often not practicable to investigate the credit worthiness of each individual borrower on a regular basis, the provisioning level shall be determined on a portfolio basis by applying formulae that take into consideration factors such as an analysis of arrears, ageing of balances, past loss experience, current economic conditions and other relevant circumstances.

(10) The general provision required to be maintained under Schedule 1 may be determined by using any of the methodologies specified in this regulation to provide guidance as to the intrinsic risk to be estimated to exist in a bank's credit portfolio.

(11) The methodologies permitted for purposes of this regulation are as follows -

- (a) applying a formula to a portfolio that takes into account factors such as past loss experience;
- (b) migration analysis;
- (c) the use of statistical applications; and
- (d) estimating losses having regard to a bank's judgment of the impact of recent events and changes in economic conditions on credit activities.

(12) The application of the methodologies in subregulation (11) to a bank's credit portfolio shall be consistent with the nature and scale of the bank's credit operations and management information systems.

Net realisable value

19. (1) An underlying collateral's net realisable value which refers to that amount left after deducting from the market value all reasonable and estimable cost of recoveries and sale, shall be considered for the purpose of determining the appropriateness of provision amounts.

(2) For accounts classified as special mention, substandard, doubtful or loss under regulation 5(2), the net realisable value of the collateral may be deducted from the outstanding balance before applying the provisioning percentages.

(3) Collateral in the form of hold-outs on deposits or other funds with the financial institution may be deducted in full.

Deduction from provision

20. (1) The net realisable value of real estate held as collateral may be allowed to be deducted before applying the provisioning percentages only where there is a fully perfected lien and when there is an active market for such property.

(2) The net realisable value to be deducted shall be based on an appropriate appraisal or other documentation of verifiable value.

Collateral

21. (1) The loan classification exercise shall not depend on the amount or quality of collateral pledged.

(2) Collateral shall be regarded as a secondary source of repayment and shall only be considered in assessing the amount of provision required.

(3) where security is obtained, it shall be perfected in all aspects , namely -

(a) duly charged and registered;

(b) adequately insured;

(c) valued by a registered valuer; and

(d) perfected in all other areas specified in the credit facility letter or letter of offer.

(4) For the purpose of determining the value of security in accounts, security shall be valued on a reasonable and regular basis and shall be clearly

stated in the bank's credit policy.

(5) The Commissioner may discount the value of the securities depending on the prevailing circumstance of each case.

(6) If the Commissioner considers it necessary, it may require the bank to have a valuation carried by another valuer registered in Lesotho at the bank's expense.

Guarantee

22. (1) For a guarantee to be deductible it shall be affirmed, irrevocable and unconditional and shall be issued by -

- (a) the Government of Lesotho;
- (b) an institution rated not lower than the 3 highest grades by an internationally recognised institution's rating agency; or
- (c) a third party who has pledged notes, bonds, treasury bills, and other similar debt instruments issued by the Government of Lesotho and which are in the possession of the lending financial institution.

(2) Guarantees that are not supported by tangible assets shall not have any value while sovereign bonds shall be considered at 80 percent of the realisable market value.

PART V - OTHER REQUIREMENTS

Overdraft facilities

23. (1) The hardcore of an overdraft facility shall be converted into a term loan which specifies a fixed repayment programme.

(2) Overdraft facilities referred to in subregulation (1) shall be restructured at the end of 12 months or earlier depending on the circumstances.

(3) A bank shall maintain an analysis sheet for each account show-

ing monthly balances and a summary of movements indicating the total amount and number of deposits and withdrawals, and the accruals and repayments of interest charges to facilitate review of overdraft facilities.

Restructured loan

24. (1) A restructured loan is a loan which has been refinanced, rescheduled, rolled-over, or otherwise modified because of weaknesses in the borrower's financial position or the non-payment of the debt as arranged and shall be subject to the following conditions -

- (a) the existing financial position of the borrower can service the debt under the new conditions;
- (b) an account classified as doubtful or loss shall not be restructured unless an up-front cash payment is made to cover, at the least, unpaid interest, or there is an improvement in the collateral taken which will make the restructured account, including unpaid interest, a well-secured account;
- (c) a commercial loan shall not be restructured more than twice over the life of the original loan;
- (d) a mortgage or personal loan shall not be restructured more than twice in a five-year period;
- (e) a restructured loan shall not be reclassified upward for a minimum of 1 year following the new arrangements;
- (f) a restructured loan shall maintain its adverse classification unless a sustained record of performance repayment program has been maintained;
- (g) if, after a formal restructuring a loan deteriorates, it shall revert to a non-performing classification and be classified accordingly; and
- (h) a restructured loan shall not be restored to accrual status unless there is evidence of a relative improvement in the

borrower's condition and debt service capacity and only after a one year period of sustained payment performance.

(2) For the purposes of paragraph (f), a sustained record of performance means that all principal and interest payments are made according to the modified repayment schedule.

Reclassification of non-performing loans and advances

25. An account classified in a certain category will only be reclassified upwards if -

- (a) all past due principal and interest is repaid in full , in which case it may be upgraded to normal classification;
- (b) all past due interest is repaid in full and a sustained repayment is maintained for a period of six months , then it may be upgraded to normal; and
- (c) a provision for non- performing loans may not be written back unless the accounts have been upgraded strictly on the basis mentioned in paragraphs (a) and (b).

Write-offs

26. (1) An account shall be written-off 3 months after being classified as a “Loss”, unless it shows a definite and significant improvement which indicates recovery within the next 6 months.

(2) Write-off is evident at the stage where:

- (a) all forms of securities or collateral have been called, realised, but proceeds failed to cover entire outstanding balance;
- (b) the institution is not able to collect or there is no longer reasonable assurance that the institution will collect all amounts due according to the contractual terms of the loans and advances agreement;

- (c) the borrower becomes insolvent; and
- (d) where efforts to collect debts are abandoned for any other reason.

(3) A record of bad debts written-off shall be maintained in a memorandum account for monitoring purposes and should be periodically audited.

(4) Any recoveries made from accounts written off should be credited to the provisions account in the Income Statement.

(5) All credit policies should adequately cover the write-off procedures in order to minimize potential abuse.

PART VI - REPORTING REQUIREMENTS

Reporting and frequency

27. (1) A bank shall report in its monthly banking statistics the outstanding balance of its loan portfolio considered to be past-due and those considered to be non-performing.

(2) A summary of the consolidated (head or main office and branches) loan portfolio review shall be prepared and submitted to the Commissioner on a quarterly basis not later than the end of the following month which shall be in the form as prescribed by the Commissioner and each review shall cover at least 70 percent of the loan portfolio and, shall include the following -

- (a) large loans to single borrowers or group of borrowers above one percent of the loan portfolio;
- (b) all past-due accounts;
- (c) all non-performing accounts;
- (d) all accounts classified special mention, substandard, doubtful and loss; and
- (e) large off-balance sheet commitments above one percent of the loan portfolio.

PART VIII - SUPERVISORY ACTIONS

Audit and inspections

28. Pursuant to section 52 of the Act, the Commissioner may carry out inspections or instruct an independent auditor to verify the accuracy of the reports prepared in accordance with these regulations.

Corrective measures

29. Pursuant to section 54 of the Act, when the Commissioner determines that a bank is not in compliance with these regulations, it may impose any or all of the following corrective actions -

- (a) instruct a bank to -
 - (i) revise classification of its assets and increase provisions;
 - (ii) instruct a bank to inject additional capital to absorb probable losses in the loan portfolio;
 - (iii) instruct a bank to increase frequency of monitoring its assets;
 - (iv) diversify its assets;
 - (v) instruct the bank to revamp its credit management systems;
 - (vi) cease the declaration and payment of dividends;
 - (vii) cease payment of bonuses, salary incentives and other discretionary compensations to directors or officers of the bank ;
 - (viii) suspend the establishment of new branches or expansion into new banking or financial activities;

- (ix) suspend lending, investment or other credit extension operations;
- (ix) suspend the issuance of letters of credit; and
- (x) suspend the acquisition of fixed assets;
- (b) suspend the bank's access to the Central Bank's credit facilities;
- (c) restrict all transactions between the bank and its related parties; and
- (d) prohibit or suspend any other activity of the bank that the Commissioner perceives to be contributing to the liquidity strain in the bank.

DATED:

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

NOTE

1. Act No. 21 of 2012

SCHEDULE

MINIMUM LEVELS REQUIRED FOR PROVISIONING

(regulation 18 (3))

1. The following minimum levels set out opposite the level of provisioning.

| Specific Provision | Level of Provision |
|--------------------|--------------------|
| Pass | 0% |
| Special Mention | 10% |
| Substandard | 20% |
| Doubtful | 50% |
| Loss | 100% |

2. A general provision equivalent to 2 percent of the pass category shall be maintained.

LEGAL NOTICE NO. 52 OF 2016

**Financial Institutions (Mergers and Transfer of Assets and Liabilities)
Regulations, 2016**

Pursuant to sections 19(8)(a)(b), 19(9)(a) and 71 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 -

PART I - PRELIMINARY

Citation and commencement

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

Interpretation

2. (1) In these regulations unless the context otherwise requires -

“merging institution” means an institution contemplating on effecting a merger under these regulations;

“receiving institution” means the institution to which assets and liabilities are transferred through a transaction affected under these regulations;

“resulting institution” means an institution resulting from a merger affected under these regulations;

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

“transferor institution” means an institution which transfers its assets and liabilities to a receiving institution;

-
- (2) Words used have the same meaning assigned to them in the Act.

Application

3. These regulations shall apply to financial institutions issued a licence under the Act.

PART II - SPECIFIC REQUIREMENTS

Application procedures

4. (1) A merging or transferor institution shall not effect a merger or transfer of assets and liabilities unless a written application has been made which shall be in the form set out in Schedule 1 and approved by the Commissioner under these regulations.

- (2) A merging or transferor institution shall -

- (a) Before submitting an application to the Commissioner under subregulation (1), write a letter of intent and send it to the Commissioner; and
- (c) Seek approval from the Commissioner for a name, which they intend to use in case of a change of name and ascertain with the Registrar of Companies that the selected name may be used.

- (3) A merging or transferor institution shall submit a due diligence report signed by the director of the institutions involved which should contain -

- (a) the scope of the due diligence review;
- (b) issues identified by the merging or acquiring institution such as are related to capital adequacy, credit risk and asset quality, and balance sheet structure and reflected in liquidity and interest rate risk management reports, contingent liabilities arising from law suits or other issues that would affect the financial condition of the institution, and how they plan to resolve these issues.

(4) The merging or transfer institution shall notify the public of the merger or transfer within 14 days of the approval by the Commissioner.

PART III - REGULATORY REQUIREMENTS

5. (1) The Commissioner shall not approve or process an application, for a merger or transfer of assets and liabilities of an institution unless satisfied that -

- (a) The merger or transfer shall -
 - (i) be in the public interest;
 - (ii) be viable; and
 - (iii) not result in the creation of a cartel or monopoly;
- (b) the business of which the applicant proposes to conduct is that of a financial institution or an ancillary financial service provider;
- (c) every person proposed as a director or an officer in the resulting institution is a fit and proper person in accordance with the regulations and guidelines issues by the Commissioner;
- (d) the transfer of assets and liabilities to another institution is approved by the Commissioner for the purpose of the transfer;
- (e) the resulting institution or the institution taking over such assets and liabilities, shall have the same rights and be subject to the same obligations as those applicable prior to the merger or transfer;
- (f) all agreements, appointments, transactions and documents entered into, made, drawn up or executed with, by or in favour of the merging or transferor institutions and in force immediately prior to the merger or transfer

shall remain in force and in effect, and shall be construed for all purposes as if they had been entered into, made, drawn up or executed with or in favour of the resulting institution; and

- (g) the resulting institution shall be in compliance with the Act and other applicable statutory requirements.

(2) An application for a merger or transfer of assets and liabilities shall be evaluated on the basis of the criteria contained in Schedule 2.

PART IV - POST-MERGER REQUIREMENTS

Permits, licenses and other approvals

6. (1) The Commissioner shall, on approval of an application, issue a license in the name of the resulting institution.

(2) All other licenses, permits and approvals shall be in the name of the resulting institution.

(3) After the license has been issued membership of various trade associations and other similar bodies shall be in the name of the resulting institution.

Maintenance of records

7. (1) The resulting institution shall ensure that the appropriate accounting system and procedures are in place, and expert advice may be required to ensure proper consolidation of the different accounts and systems used.

(2) Books of the merging or transfer institution including accounts, income tax file, pay as you earn file, shall be closed or transferred.

(3) The consolidated accounts of the resulting institution, and the transfer of assets and liabilities of the transfer institution shall be accounted for in accordance with International Financial Reporting Standards (IFRS).

(4) All policy and procedure manuals shall be reviewed and consolidated.

(5) All contracts or agreements from the merging or transferor institution shall be transferred to, or reviewed or renegotiated with, the resulting institution.

Miscellaneous issues

8. The following issues, in so far as they are applicable, shall be considered -
- (a) consolidation of insurance policy covers;
 - (b) transfer of lease agreements in respect of all rented premises, including premises occupied by staff;
 - (c) transfer of all electricity, water and telephone accounts;
 - (d) transfer of credit facilities from various suppliers to be resulting institution.

Application of other laws

9. If the provisions of any other laws applicable to mergers of transfer of assets by companies are inconsistent with the provisions of these regulations, the regulations shall prevail to the extent of such inconsistencies.

DATED:

DR. RETŠELISITSOE MATLANYANE
GOVERNOR OF THE CENTRAL BANK OF LESOTHO

NOTE

1. Act No. 21 of 2012

SCHEDULE 1

APPLICATION FOR A MERGER OR THE ACQUISITION OF AN
INSTITUTION**(regulation 4(1))**

1. State the date of application.
2. State the form of transaction (merger, acquisition, transfer of assets and/or liabilities).
3. Name of Applicant Institution.
4. Name of Target Institution
5. Name and Address of Resulting Institution.
6. Contact person - Name, Title, Institution with whom currently affiliated, telephone numbers, email address, fax number.
7. Describe the transaction's purpose, structure, significant terms and conditions, and financing arrangements, including any plans to raise additional equity or incur debt.
8. Provide a copy of -
 - (a) the proposed merger or transaction;
 - (b) Board of Directors resolutions related to the transaction;
 - (c) extract of minutes of the general meeting of the shareholders at which the resolution to conduct the transaction was passed; and
 - (d) incorporating documents of the merging or transferor institutions.
9. Provide the indicated financial information and describe the assumptions used to prepare the projected statements, including those about the effect of the transaction. The consolidating financial statements should be

prepared in accordance with International Financial Reporting Standards; as such, indicate the valuation methodology employed. The consolidating statements of the resulting institution must be duly certified by an independent auditor and must meet minimum disclosure requirements.

- (a) At the date of the application, provide a set of consolidating financial statements. Indicate separately for the applicant and the target institution each principal group of assets, liabilities and capital accounts, debit and credit adjustments (explained by footnotes reflecting the proposed merger or acquisition); and the resultant pro forma combined balance sheet;
 - (b) Pro forma consolidated balance sheet for the first three full years of operations and for the most recent quarters prior to the first three years of operations.
 - (c) Pro forma combined statements of income for the first partial of operations and for the first three full years of operations.
 - (d) Pro forma regulatory capital scheduled for the most recent quarter and the first full year of operations.
10. Proposed organizational structure of the resulting institution.
 11. Proposed ownership structure of the resulting institution, Report affiliated institutions and other related organizations, owned directly or indirectly by the resulting institution's shareholders, including relationship such a trustee and nominee holdings.
 12. Proposed Board of Directors in accordance with the reporting requirements established in Schedule II Item 6 of the Licensing Regulation.
 13. Proposed details of senior management in accordance with the reporting requirements established in Schedule III of the Licensing Regulation.
 14. Describe how the proposal will meet the convenience and the needs of the community. List any significant changes in services or products that will result from the transaction. If certain products are to be discontinued, explain the reasons.

-
15. List all offices that will be established or retained as branches, including the main office, and/or existing branches that will be closed as a result of the proposal to the extent the information is available. (Note: the establishment of new branches, relocation of existing branches, relocation of existing branches or the closure of branches must be in compliance with the regulations on branching).
 16. Proposed staff rationalization program, which should take into account:
 - (a) The management structure of the resulting institution, and as amended description as necessary;
 - (b) The provision of a trade union agreement, if any, that may require advance negotiations with the union;
 - (c) The accumulated leave and other benefit as computed and possibly transferred to the resulting institution for not-union staff;
 - (d) An appraisal of the staff requirements and excess staff eliminated, including additional staff specialized areas;
 - (e) Staff pension schemes or provident fund schemes.
 - (f) The transfer of work permits to the new entity for expatriate staff;
 - (g) The transfer or introduction of new contracts for contract employees;
 - (h) The review and harmonization of salary scales, benefit and the remuneration structure;
 - (i) The review and consolidation of staff training programs;
 - (j) Harmonization of personnel policies.
 17. Provide a copy of the income tax clearance certificate for the year preceding the transaction.
 18. Provide a copy of the licences issued to the institutions involved in the merger.

SCHEDULE 2

CRITERIA FOR EVALUATING A MERGER OR ACQUISITION
PROPOSAL**(regulation 5(2))**

1. Competition - CBL will not approve a transaction that would result in substantially adverse competitive effects and could result in the creation of a cartel or monopoly.
2. Convenience and Needs of the Community - Central Bank will consider the impact of the resultant institution on the communities to be served to determine whether it is in the public interest. Under consideration will be such factors as branch accessibility and changes in services or products.
3. Financial and Managerial Resources - Central Bank considers the financial and managerial resources and prospects of the combining and resultant institutions. Central Bank will approve a combination that will result in an institution with adequate capital, unsatisfactory management or poor earnings prospects, Members of the Board of Directors and senior management of the resultant institution must pass the fit and proper criteria. A merging institution or acquiring institution must possess a CAMELS rating of 1 or 2 and a risk management evaluation of at least moderate.
4. Risk Management Practices - Central Bank will evaluate the quality of risk management policies and practices proposed in the resultant institution to ensure that the management of risk is as seamless as possible.
5. Ownership Structure - Central Bank will evaluate the ownership structure of the resultant institution to determine its capacity as a source of strength to the institutions and proposed relationship with affiliated organizations; and to determine whether the ownership structure is transparent.

