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Regulations 2004**

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LEGAL NOTICE NO. 211 OF 2004

**Financial Institutions (Merger and Transfer of Assets and Liabilities)
Regulations 2004**

In exercise of the powers conferred on me by sections 18 (4) and 71 of the Financial Institutions Act 1999¹, I,

E.M. MATEKANE

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 2004 and shall come into operation on the date of publication in the Gazette.

Interpretation

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

(a) **“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 effected under these regulations;

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

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

(b) words used have the same meaning assigned to them in the

Financial Institutions Act 1999.

Objective

3. The object of these regulations is to set out the procedures to be followed by a financial institution in effecting a merger or transfer of assets and liabilities and the minimum conditions that shall be fulfilled by a merging or transferor institution.

Application

4. These regulations are applicable to all financial institutions licensed to conduct banking, credit business or auxiliary financial services.

PART II SPECIFIC REQUIREMENTS

Application procedures

5. (1) A merging or transferor institution shall not effect a merger or transfer of assets and liabilities unless a written application has been made to and approved by the Commissioner in terms of 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 Director, Supervision Department, Central Bank of Lesotho, P.O. Box 1184, Maseru 100, and attach all the documents specified in regulation 7(3); and

(b) 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 may be used.

(3) A merging or transferor institution shall submit a due diligence report signed by the directors of the institution involved.

- (4) The report shall, at a minimum, contain the following -
- (a) an extract of minutes of the general meeting of the shareholders of the institutions involved at which the resolution to merge or transfer of assets and liabilities was passed, and the term, and conditions of the relevant agreement;
 - (b) copy of a resolution of the Board of Directors of all the participating companies approving the proposed merger or transfer of assets and liabilities;
 - (c) latest audited accounts of assets and liabilities of the merging or transferor institutions involved or a copy of consolidated accounts of the institutions duly certified by an independent firm of auditors as at the date of application for approval, which meets minimum disclosure requirements;
 - (d) articles and memoranda of association of the merging or transferor institutions;
 - (e) a statement of the nature and objectives of the merger or transfer of assets and liabilities;
 - (f) a copy of the proposed agreement for the merger or transfer of assets and liabilities;
 - (g) financial projections for the first three years of operation after merger or transfer of assets and liabilities together with respective assumptions;
 - (h) proposed details of the method of valuation of assets and liabilities of the merging or transferor institutions and the valuer;
 - (i) proposed organisational structure of the resulting institution;
 - (j) proposed Board of Directors set out in Schedule I of the Financial Institutions (Licensing Requirements) Regulations 1999²;

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- (k) proposed shareholding structure set out in Schedule II of the Financial Institutions (Licensing Requirements) Regulations 1999;
 - (l) proposed details of senior management set out in Scheduled III of the Financial Institutions (Licensing Requirements) Regulations 1999;
 - (m) proposed branch network set out in the Schedule of the Financial Institutions (Branching Requirements) Regulations 1999³;
 - (n) proposed staff rationalisation programme, which should take into account the following -
 - (i) the management structure of the resulting institution as agreed upon, properly structured and where necessary, amended job descriptions;
 - (ii) the provision of a trade union agreement, if any, that may require advance negotiations with the union;
 - (iii) in respect of staff which had not joined a trade union, the accumulated leave and other benefits as computed and possibly transferred to the resulting institution;
 - (iv) an appraisal of the staff requirements and excess staff eliminated, including additional staff in specialised areas;
 - (v) staff pension schemes or provident fund schemes;
 - (vi) any expatriate staff in possession of work permits shall be required to transfer their work permits to the new entity;

- (vii) contracts of employment shall be transferred to the resulting institution or the resulting institution may draw up new contracts;
- (viii) salary scale, benefits and remuneration structure shall be carefully reviewed and harmonised to avoid any inconsistencies;
- (ix) staff training programmes shall be reviewed and consolidated;
- (x) new personal policies as shall be agreed upon;
- (o) income tax clearance certificate for the year preceding the merger or transfer;
- (p) a copy of a valid banking, credit or auxiliary financial services license as at the time of the merger or transfer.

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

Approval procedures

6. The Commissioner shall not approve or process an application, 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) result in the creation of a cartel or monopoly;
- (b) the business 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 Schedule III of the Financial Institutions (Licensing Requirements) Regulations 1999;
- (d) the transfer is to another institution approved by the Commissioner for the purpose of the transfer;
- (e) the resulting institution or the bank 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;
- (g) the resulting institution shall be in compliance with the Financial Institutions Act and other applicable statutory requirements;

PART III REGULATORY REQUIREMENTS

Criteria for merger and transfer

7. An application for a merger or transfer of assets and liabilities shall be evaluated on the following criteria –

- (a) increase in capital base;
- (b) widening of shareholding structure and limita-

- tion of individual ownership and control;
- (c) economies of scale in operations;
- (d) increased credibility to the institution;
- (e) increased resources for technological innovations;
- (f) increased client base;
- (g) risk reduction with a stronger cushion;
- (h) increased professionalisation of operations;
- (i) pooling of resources, experiences and expertise;
- (j) enhancement of exposure limits in terms of credit and foreign exchange;
- (k) betterment of chances of attracting a sound strategic partner.

PART IV

POST – MERGER REQUIREMENTS

Permits, licences and other approvals

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

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

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

Banking and finance facilities

10. (1) All facilities enjoyed by the merging or transfer or institution includ-

ing correspondent banking facilities shall be transferred to the resulting institution.

(2) Any hire purchase finance lease which exist shall be assigned or transferred to the resulting institution.

Maintenance of records

11. (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 bank accounts, income tax file, pay-as-you-earn file, shall be closed or transferred.

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

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

Miscellaneous issues

12. 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

Enquiries

13. Enquiries on any aspect of these regulations shall be referred to –

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

DATED 19TH NOVEMBER 2004

E.M. MATEKANE
COMMISSIONER, CENTRAL BANK OF LESOTHO

1. Act No.6 of 1999
2. Legal Notice No. 110 of 1999
3. Legal Notice No. 135 of 1999