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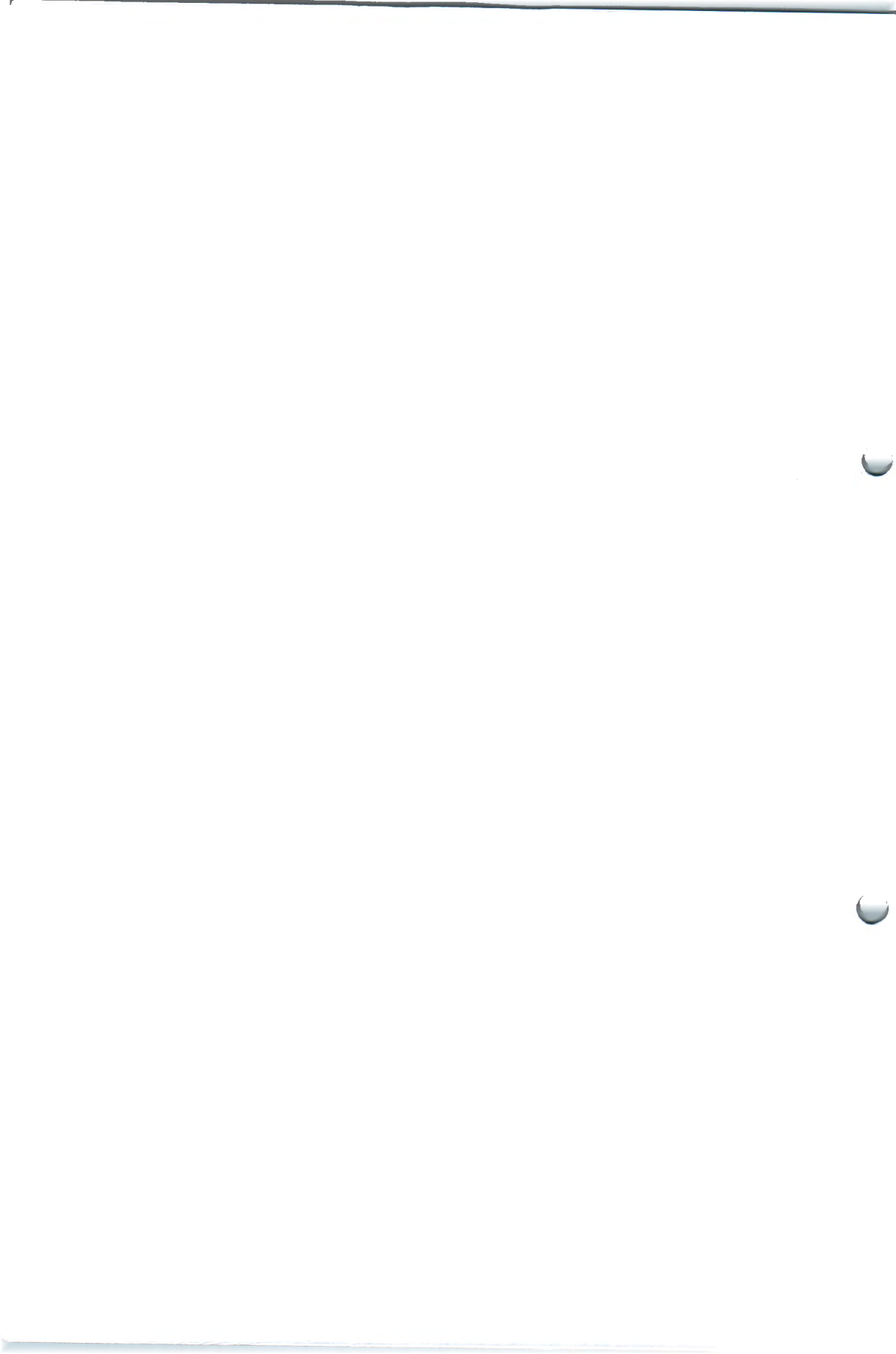
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LEGAL NOTICE

- 53 Financial Institutions (Foreign Financial Institutions- 567
Conduct of Business by Branch) Regulations, 2005

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LEGAL NOTICE NO. 53 OF 2005

**FINANCIAL INSTITUTIONS (FOREIGN FINANCIAL
INSTITUTIONS-CONDUCT OF BUSINESS BY BRANCH)
REGULATIONS, 2005**

Pursuant to sections 4,5,6,7,8,10,18 and 20 of the Financial Institutions Act, 1999¹, the

CENTRAL BANK OF LESOTHO

being the Commissioner of the Financial Institutions, makes the following Regulations –

Citation and commencement

1. These regulations may be cited as the Financial Institutions (Foreign Financial Institutions-Conduct of Business by Branch) Regulations, 2005 and shall come into operation on the date of publication in the gazette.

Interpretation

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

“Act” means the Financial Institutions Act, 1999;

“assets of a branch” mean assets of a foreign financial institution that are-

- (a) situated in Lesotho;
- (b) allocated and provided by a foreign institution to its branch;
- (c) maintained in the possession or under the control of the management of a branch of the foreign institution; and
- (d) maintained in Lesotho under sections 23 and 24 of the Act;

“assigned capital” means the amount which-

- (a) is expressed in monetary unit of Lesotho;
- (b) is transferred from the head-office of foreign financial institution which is not incorporated in Lesotho;
- (c) is specifically assigned to the capital account of a foreign financial institution licensed to operate in Lesotho; and
- (d) is, for the purposes of the Act, the regulations relating to banks and these regulations, deemed to comprise primary capital of the branch;

“associate” means –

- (a) in relation to a juristic person-
 - (i) which is a company, a subsidiary or holding company of a parent company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;
 - (ii) which is a co-operative or a corporation, a member thereof;
 - (iii) which is not a company, co-operative or corporation as contemplated in this definition, another juristic person that would have been a subsidiary of the first mentioned juristic person-

Provided that the first mentioned juristic person had been a company or where that other juristic person is not a company, that the first mentioned juristic person and that other juristic person had been a company; and

- (iv) a person in accordance with the instructions the board of directors of or, in the case where the juristic person is not a company, the governing body of the juristic person, is accustomed to act; and
- (b) in relation to a person means-

- (i) a juristic person of which the board of directors, or where the person is not a company, of which the governing body is accustomed to act in accordance with the instructions of the juristic person; and
- (ii) a trust controlled or administered by that person;

“foreign financial institution” means an institution which –

- (a) is lawfully established in a country other than Lesotho;
- (b) lawfully conducts a business similar to the business of a bank in another country; and
- (c) is not registered as a bank in terms of the Act;

“regulations” means regulations under the Act.

Application of these regulations

3. These regulations shall apply to all branches of foreign financial institutions licensed to engage in banking business in Lesotho.

Application forms

4. The foreign financial institution shall comply with sections 4 and 5 of the Act for authorization to establish a branch.

Fees

5. (1) An application for authorization to establish a branch shall be accompanied by an application fee prescribed in the Act or the regulations.

(2) A certificate of authorization to conduct the business of a bank by means of a branch shall be issued on payment of a registration fee prescribed in the Act or regulations.

(3) The provisions of the Act or the Regulations which relate to the license fees, shall also apply to a branch.

Name of the branch

6. (1) A branch shall only use a name under which it was authorized, or a literal translation or abbreviation or another name which has been approved by the Commissioner.

(2) The name of a branch shall not –

- (a) be identical to a name under which an existing bank or mutual bank has already been registered;
- (b) closely resemble the name of an existing bank or mutual bank that the one is likely to be mistaken for the other; and
- (c) be identical to, or closely resemble the name under which a bank or another institution that was registered under any law repealed by the Act, or a mutual bank or mutual building society, which was previously registered to the extent that reasonable grounds exist for objection against the use of the name by a branch.

(3) The Commissioner shall satisfy itself that the name of a branch does not mislead the public.

Capital

7. (1) A foreign financial institution, together with the banking group of which the foreign financial institution forms part, shall hold net assets of one billion Maluti, eighteen months prior to the foreign financial institution's application to establish a branch and at all times during the operation of its branch in Lesotho.

(2) The net assets of the foreign financial institution shall be certified and reflected in the audited financial statements to a total value stated in sub-regulation (1):

Provided that-

- (a) in the calculation of the value of the net assets, the intangible assets that are not readily marketable shall be excluded; and
 - (b) where a foreign financial institution has to rely on net assets of a banking group to which it belongs in order to meet the requirement of net asset of One billion Maluti, the foreign financial institution shall hold net assets of its own, calculated and held in accordance with provisions of this subsection, of not less than four hundred and fifty million Maluti.
- (3) The branch of a foreign financial institution shall manage its affairs in a way that the sum of its assigned capital shall not amount to less than the greater of-
- (a) an amount of ten million Maluti; or
 - (b) a minimum of eight percent or a higher percentage as may be determined by the Commissioner, of the amount of the assets and other risk exposures of the branch, calculated in accordance with the provisions of the Act or regulations.
- (4) Sections 20 and 24 of the Act shall apply directly to a local branch of a foreign financial institution.

Business operations

8. (1) A branch may accept deposits from a -
- (a) juristic person; or
 - (b) natural person.
- (2) Subject to sub-regulations (3) and (4) a foreign financial institution may conduct business by means of not more than two branches in Lesotho.
- (3) Written approval from the Commissioner shall be obtained before an additional branch is opened;

(4) Where the foreign financial institution maintains more than one branch, the different branches shall, for the purposes of the Act and the regulations, constitute a single entity.

(5) The business operations shall be covered and supported by a valid letter of comfort and undertaking issued by the relevant foreign financial institution and the foreign financial institution shall, to the satisfaction of the Commissioner –

- (a) confirm its understanding and acceptance of the ultimate objective of the maintenance of financially stable branches in the interests of an efficiently functioning overall financial system in Lesotho;
- (b) confirm that the performance of the supervisory functions of a branch shall be directed towards the promotion of the standards of risk management practiced by the branch;
- (c) accept adherence to-
 - (i) core principles for effective banking supervision;
 - (ii) minimum standards in respect of consolidated supervision of banking groups and their cross-boarder establishment;
 - (iii) recommendations which relate to the supervision of cross-border banking; and
 - (iv) proposals, guidelines and pronouncements issued by the Basel Committee on Banking Supervision;
- (d) accept adherence to the provisions of the Act, or the regulations, which relate to a branch;
- (e) undertake, within reasonable standards, to ensure that the management of a branch consists of persons who are fit and proper to fulfill their responsibilities and tasks;

- (f) undertake, within reasonable standard, to strive towards the enhancement of standards of risk management which are applied in the business operations and management of a branch;
- (g) accept the responsibilities for the business operations of a branch;
- (h) undertake to safeguard the financial stability of a branch;
- (i) have been afforded a long-term investment grade debt by an internationally recognized rating acceptable to the Commissioner.

Supervision

9. (1) The Commissioner shall satisfy itself that the foreign financial institution conducts a lawful business similar to the business of a bank in a country other than Lesotho.

(2) The Commissioner shall satisfy itself that the home-country supervisory authority of a foreign financial institution-

- (a) has authorised the proposed establishment by a foreign financial institution, of a branch in Lesotho;
- (b) complies with, and is committed to, the proposals, guidelines and pronouncements of the Basil Committee on Banking Supervision;
- (c) is not legally impeded from complying with the provisions of subparagraph (b);
- (d) accepts responsibilities stipulated under the regulations as the home-country supervisory authority;
- (e) ensure that members of board and the executive management of the foreign financial institution consist of fit and proper persons;

- (f) is satisfied with the standards of risk management maintained by the foreign financial institution; and
- (g) is committed to keeping the bank supervisory authorities in Lesotho informed of all material information in relation to financial stability of the foreign financial institution and its branch.

(3) The foreign financial institution and the branch shall ensure that the home-country and host-country supervisory authorities are enabled to adhere to the-

- (a) core principles for effective banking supervision;
- (b) minimum standards which relate to consolidated supervision of banking groups and their cross-boarder establishments;
- (c) accommodations which relate to the supervision of cross-boarder banking; and
- (d) proposals, guidelines and pronouncements issued by Basel Committee on Banking Supervision.

(4) The Act and the regulations shall apply to a branch as if a branch were a bank.

(5) A branch shall furnish the Commissioner with all statutory returns as prescribed in the regulations.

Management

10. (1) A person who holds the office of an executive officer of a branch shall be a fit and proper person to hold the position.

(2) Sections 43 and 44 of the Act shall also apply to the appointment of an executive officer and officers of a branch.

(3) A foreign financial institution shall appoint at least two natural persons who reside in Lesotho to manage the business of a branch, and one of the appointed natural persons shall be appointed as the Chief Executive Officer of the branch;

Provided that the Commissioner is furnished with the particulars of the persons before such persons are appointed.

(4) The persons appointed under subsection (3) shall be responsible for fulfilling the responsibilities of the Board of directors of the bank in terms of the provisions of the Act and unless otherwise provided for in the Act or these regulations.

Failure to comply with the regulations

11. (1) A branch which fails to comply with the provisions of these regulations shall report the failure to comply to the Commissioner-

- (a) in writing; and
- (b) state the reasons for failure to comply.

(2) The Commissioner may summarily take action under the Act or these Regulations against the branch referred to in sub-regulation (1).

(3) The Commissioner, may, if he or she deems it fit to do so, condone the failure and afford the branch of an opportunity, subject to conditions as the Commissioner may determine, to comply with the relevant provisions within a specified period.

DATED:

E.M. MATEKANE
GOVERNOR, CENTRAL BANK

