

## Financial Institutions (Lending Limits) Regulations 1999

IN EXERCISE OF THE POWERS CONFERRED UPON THE COMMISSIONER OF FINANCIAL INSTITUTIONS BY SECTION 25 AND 71 (2) (d) OF THE FINANCIAL INSTITUTIONS ACT 1999, THE COMMISSIONER MAKES THE FOLLOWING REGULATIONS -

### PART 8544;

#### PRELIMINARY Citation and commencement

1. These Regulations may be cited as the Financial Institutions (Lending limits) Regulations 1999 and shall come into operation on the date of publication in the Gazette.

#### Interpretation

2. In these Regulations, unless the context otherwise requires, words used have the same meaning assigned to them in the principal law.

#### Objective

3. These Regulations are intended to prevent a financial institution from making unduly large exposure to a single borrower or a group of connected borrowers or to any one of its directors or officers or to any other related persons under section 25 (1) (c) (ii) and (iii) of the Financial Institutions Act 1999 and to ensure that all insider loans and advances made by a financial institution are on terms not more favourable than those afforded other borrowers.

#### Application

4. These Regulations apply to all licensed financial institutions in Lesotho.

### PART II

#### REGULATORY REQUIREMENT Lending limits

5. (1) A financial institution shall have an adequate management information system that shall enable it at all times to identify large exposures within the loan portfolio and to ensure compliance at a consolidated level (head or main office and branches) with the following lending limits under section 25 of the Financial Institutions Act 1999

(a) 25% of unimpaired capital and reserve account for total direct or indirect advances, credit facilities or financial guarantees to any person, single borrower, or group of connected borrowers, subject to certain exclusions enumerated in the Act;

(b) 1% of unimpaired capital and reserve account for aggregate direct or indirect unsecured advances or credit facilities to any one of its directors or officers or to any other related persons under section

25 (1) (c) (ii) and (iii) of the Financial Institutions Act 1999;

(c) the equivalent of one years emoluments for aggregate direct or indirect unsecured advances or credit facilities for any one employee; and

(d) outright prohibition for granting direct or indirect advances, credit

facilities or financial guarantees to any one of its shareholders holding at least 10% share in the bank.

(2) To enable the Central Bank to monitor compliance with the prudential lending limits set out in sub-regulation (1), all financial institutions are required to submit within 30 days from the end of each calendar quarter, the following reports

- (a) a report on exposures to Top 20 Borrowers as set out in Schedule I; and
- (b) a report on loans to directors, officers, shareholders, and related persons as set out in Schedule II.

(3) The facts and circumstances of each particular situation or transaction shall determine whether the total indebtedness should be calculated on a single borrower basis or for a group of connected borrowers. In this connection, either the use test (where the proceeds are used for the benefit of a single borrower), the source test (where the expected source of repayment is the same) or the control test (where the persons are related through common control, including where one person is controlled directly or indirectly by another person or where the persons are so financially interconnected that financial difficulties encountered by any one of them would be likely to result in repayment difficulties for the other or others) may be used.

(4) For the purposes of this regulation "unsecured advances or credit facilities to directors, officers and employees" means advances or credit facilities granted without security, or, in the case of advances and credit facilities granted against security, any part of such advances and credit facilities which at any given time exceeds the net realisable value of the assets comprising the security given, or which exceeds the valuation approved by the Central Bank whenever it deems that no market value exists for the said assets.

#### Large exposures

6. (1) Deposits in and loans or advances with a settlement period of not more than 30 days to a bank licensed to do business in Lesotho shall be exempt from the 25% single borrowers limit specified in regulation 5(1) (a).

(2) When 2 or more financial institutions collectively make a loan or advance to a single borrower, only the amount actually loaned by each financial institution and representing its pro rata share of the syndicated loan shall count against the loan limits specified in regulation 5(1) (a).

(3) If an advance, credit facility or financial guarantee complies with the lending limits in regulation 5 (a) and (b) when it is made but later fails to comply because the financial institutions capital and reserve account declines or the collateral securing the loan or guarantee fails to qualify as an exception, then such account shall be treated as non-conforming.

(4) The financial institution shall report all such non-conforming accounts to the Central Bank within 30 days from the date it became non-conforming and shall use all reasonable efforts to promptly bring the account into compliance with the lending limits.

## Insider loans

7. (1) Loans, advances or other credit facilities granted to directors, officers or to other related persons shall not be on terms and conditions more favourable than the general terms and conditions applicable to other borrowers.

(2) Sub regulation (1) shall not apply to loans granted under a duly approved officer fringe benefit plan or under formal internal policies which define the general terms and conditions on the type of loans which may be given preferential treatment.

(3) The fringe benefits plans or internal policies shall be disclosed to the Central Bank upon request.

(4) Each officer of a financial institution who becomes indebted to any other financial institution on an unsecured basis in an aggregate amount greater than 1% of the unimpaired capital and reserve account of the financial institution in which he is an officer, shall, within 30 days from exceeding the 1% level, make a written report to the board of directors of the financial institution in which he is an officer.

(5) The report shall state the lenders name, date and amount of each loan, use of the proceeds and source of repayment.

## Supervisory action

8. If a financial institution fails to comply with these prudential lending limits, the Central Bank may pursue any remedial measures at its disposal, including imposition of fines and penalties and requiring the financial institution to take any or all of the following measures

- (a) require the infusion of additional capital;
- (b) suspend lending, investment or other credit operations;
- (c) restrict declaration or payment of dividends or remittance of profits; and
- (d) prohibit payment of bonuses, salary incentives, management fees or other discretionary compensation to directors or officers.

## Saving

9. (1) All financial institutions which, prior to the commencement of the Financial Institutions Act 1999, had entered into any transactions incompatible with the limits stated in regulation 5 are required to submit to the Central Bank within 3 months from such commencement date a plan indicating how such transactions may be liquidated or brought into compliance as soon as possible.

(2) Such plan of compliance shall be subject to approval by the Central Bank.

S. M. SWARAY

GOVERNOR, CENTRAL BANK OF LESOTHO

NOTE

1. ACT NO. 6 OF 1999