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ACT NO. 3 OF 2012

Financial Institutions Act, 2012

An Act to repeal and replace the Financial Institutions Act 1991, to provide for the authorisation, supervision and regulation of banking and non-banking financial institutions, agents of financial institutions and ancillary financial service providers and for related matters.

Enacted by the Parliament of Lesotho.

PART I – PRELIMINARY

Short title and commencement

1. This Act may be cited as the Financial Institutions Act 2012 and shall come into operation on the date of its publication in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires -

“affiliate”, in respect of any licensed institution means -

- (a) a company, association, syndicate, partnership or other body of persons corporate or unincorporated in which such licensed institution is a principal shareholder;
- (b) a company, association, syndicate, partnership or other body of persons corporate or unincorporated in which the election of a majority of directors is controlled in any manner by such licensed institution;
- (c) a company of which the licensed institution is a subsidiary, including a holding company;
- (d) a company that is under common control with the licensed institution as a subsidiary of another company, including holding companies, or subject to such common control by other means as the Commissioner may determine; and

-
- (e) a company, association, syndicate, partnership or other body of persons corporate or unincorporated that is a principal shareholder of another company in which the licensed institutions also is a principal shareholder;

“ancillary financial service provider” means a person who engages in providing auxiliary services such as electronic fund transfer services, foreign exchange dealing services, supporting services to financial institutions, and other similar auxiliary financial services;

“applicant” means a person interested in obtaining a license under this Act and filing the corresponding application or on behalf of whom such application is filed;

“bank” means a company, incorporated in accordance with the provisions of the Companies Act 1967 or any other law that may replace it, which is licensed under this Act to conduct banking business;

“banking business” means the business of receiving funds from the public through the acceptance of money deposit and using such funds for loans or other financial activities;

“borrower” means a person who or institution that, has applied for credit or has entered into a credit agreement with the credit provider;

“branch” means any place of business of a financial institution that is open to the public, and includes a mobile office and an automated teller machine;

“capital base” in respect of any licensed banking financial institution means core capital or tier I and supplementary capital or tier II , and for any licensed non-bank financial institution means an initial investment plus subsequent investments made by an investor into the portfolio;

“collateral substitute” means collateral not ordinarily used as security in conventional banking;

“Commissioner” means the Central Bank of Lesotho established by the Central Bank of Lesotho Act, 2003;

“Companies Act” means the Companies Act 1967 or any law replacing it;

“company” has the meaning assigned to it in the Companies Act;

“competent authority” means administrative authority or law enforcement agency concerned with preventing or detecting a criminal activity and shall include the financial intelligence authority and supervisory authorities;

“compliance risk” means a risk arising upon a financial institution’s failure to comply with laws, regulation, rules, or failure to comply with the code of conduct applicable to its activities or failure to comply with its own policies and procedures;

“compulsory savings” means funds that must be contributed to by borrowers of an institution as a condition for receiving a loan either as a percentage of a loan or as a nominal amount;

“control” means having a relationship with a person that makes it possible to exercise a direct or indirect power to determine its financial and operational policy or to influence its decision-making or management pursuant to its Memorandum and Articles of Association or to an agreement or in any other manner;

“core capital” means for non-bank financial institutions, shareholders’ equity in the form of issued and fully paid-up shares including retained reserves approved by the central bank;

“counterparty risk” means the probability that a counterparty may not meet its obligations as they fall due;

“court” in relation to any licensed institution means the High Court of Lesotho and, in relation to any offence against this Act, includes a subordinate court having jurisdiction in respect of that offence;

“credit business” means the business of extending credit to any person from sources other than deposits from the public;

“credit guarantee fund” means a financial back-up aimed at facilitating bank lending to businesses by mitigating the risk of non-repayment;

“credit risk” means the potential that a borrower or counterparty may fail to meet its obligations in accordance with agreed terms, resulting in economic loss to a financial institution;

“currency or foreign exchange risk” means the current or probable risk to profits and capital, arising from adverse movements in currency exchange rates;

“deposit” means -

- (a) a sum of money paid on terms -
 - (i) under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it;
 - (ii) which are not referable to the provision of property or services or to the giving of security, and for the purposes of this paragraph, money bond is paid on terms which are referable to the provision of property or services or the giving of security if, and only if -
 - (aa) it is paid by way of advance or part payment for the sale, hire or other provision of property or services of any kind and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided;
 - (bb) it is paid by way of security for payment for the provision of property or services of any kind provided or to be provided by the person by whom or on whose behalf the money is accepted; or
 - (cc) it is paid by way of security for the delivery or return of any property, whether in a particular state of repair or otherwise;
- (b) money or other assets contributed by investors to participate in a collective investment scheme;

“deposit taking institution” means a bank or a specialised deposit taking institution;

“deposit taking microfinance business” means a microfinance business in which the person conducting the business holds himself out as accepting deposits on a day to day basis;

“director” includes any person, by whatever title he may be referred to, carrying out or empowered to carry out substantially the same functions in relation to the direction of licensed institution as those carried out by a director of a company incorporated under the Companies Act, and any person in Lesotho responsible for carrying out such functions for a licensed institution not incorporated in Lesotho;

“exposure” means the risk of loss that a licensed financial institution has with a single person or a group of inter-related persons, because of credit facilities, off-balance sheet items, including guarantees, holding of shares, investments or placements and other contingent liabilities;

“financial activities” means any of the activities referred to in section 27;

“financial cooperative” means a financial institution that is owned and operated by its members to provide products and services that are comparable to those offered by major diversified banks;

“financial institution” means a deposit taking institution or a non-deposit taking institution carrying out financial activities as stipulated in its licence, irrespective of whether it is a banking or a non-banking financial institution;

“financial year” means, for the purpose of this Act, the period from first January until December thirty first of each year;

“foreign financial institution” means a financial institution, authorised or registered to conduct banking or other financial business under the laws of any state, country, colony, or territory other than Lesotho, doing banking business or other financial business in Lesotho, whether incorporated or not;

“group of interrelated persons” in respect of any financial institutions means those persons referred to under section 28(2);

“insider” means -

- (a) a principal shareholder in a licensed institution;

-
- (b) a member of the board or directors, the audit committee, or any other official of a committee of the licensed institution;
 - (c) a member of the senior management of a licensed institution, including the chief executive officer, the president, vice president, chief accountant, chief lending officer, chief treasury, or their equivalents, as well as any person who alone, or together with one or more has the authority to enter into commitments on account of the licensed institution;
 - (d) any employee of a licensed institution who is responsible for the management of one or more of the risks to which a financial institution is exposed namely -
 - (i) solvency risk;
 - (ii) liquidity risk;
 - (iii) credit risk;
 - (iv) currency risk;
 - (v) market risk (position risk);
 - (vi) interest rate risk;
 - (vii) counterparty risk;
 - (viii) technological risk;
 - (ix) operational risk;
 - (x) compliance risk; or
 - (xi) any other risk regarded as material by the bank;
 - (e) Any person who is related by marriage, blood or kinship to the second degree or business interest to a person listed in this definition;

“indirect shareholdings” means those shares held alone or in concert with others through a holding company, an agent or other persons or means;

“interest rate risk” means the exposure of a financial institution’s financial condition to adverse movements in interest rates;

“large exposure” means an exposure of a licensed financial institution that is equivalent to ten percent or more of its capital base;

“licensed institution” -

- (a) in relation to a financial institution, means an institution licensed under sections 5 and 6; and
- (b) in relation to an agent of a financial institution or an ancillary financial service provider means licensed under section 12 or 13 respectively;

“liquid asset” means an asset which can easily be converted into cash;

“liquidity risk” means the potential that an institution will not be able to meet its obligations when they fall due, or the inability to transform its assets into cash or cash equivalent in a timely manner, at a reasonable price;

“local financial institution” means a financial institution established under the laws of Lesotho;

“market or position risk” means the day-to-day potential for an investor to experience losses from fluctuation in securities prices;

“microfinance institution” means an institution licensed to do microfinance business;

“microfinance business” means the business carried on as a principal business of -

- (a) acceptance of deposits;
- (b) employing such deposits wholly or partly by lending or extending credit for the account and at the risk of the person accepting

those deposits, including provision of short term loans to small or micro enterprises and low income households, usually characterised by the use of collateral substitutes such as group guarantees or compulsory savings;

- (c) transacting such other activities as may, by regulations under this Act, be prescribed by the Commissioner of Financial Institutions;

“Minister” means the Minister of Finance;

“non-deposit taking institution” means an entity that is not authorised to receive deposits from the public but to perform credit business consisting of certain financial activities as specified in its license as the Commissioner may determine;

“officer” means -

- (a) the chairman or deputy chairman of the board of directors, or president or vice-president;
- (b) the managing director, the general manager, the chief executive officer, the company secretary or the treasurer;
- (c) any other individual who holds the title or office or who performs any function similar to those normally performed by the holder of the offices specified in subparagraph or (b);

“operational risk” means the risk of loss resulting from inadequate or failed internal processes, people, systems or from external events;

“person” includes any individual or company, partnership, syndicate, association or body of persons, corporate or unincorporated;

“place of business” means any branch or office of a financial institution in Lesotho, including a mobile agency, open to the public;

“principal interest” means a direct or indirect shareholding of a person, which represents ten percent or more of its capital or the voting rights which makes it possible to exercise a significant influence over such person, as the Commissioner may determine;

“principal officers” means the president, the chief executive officer or the secretary of the board of directors;

“principal shareholder” means a person holding, directly or indirectly, a principal interest in another person;

“promoter” means a person carrying out the necessary tasks for another person to obtain a license under this Act;

“related parties” in respect of any financial institution means -

- (a) any one of its affiliates, insiders or principal shareholders;
- (b) any firm, partnership, syndicate, association, company or other body of persons corporate or unincorporated in which it or any one or more of its affiliates, insiders or principal shareholders, owner, director, officer, partner, manager, agent, member;
- (c) any individual, firm, partnership, syndicate, association, company or other body or persons corporate or unincorporated of whom or of which it or any one or more of its affiliates, insiders or principal shareholders is a guarantor;
or
- (d) any persons deemed related person to the persons referred to in these previous subparagraphs (a), (b), or (c);

“reputable financial institution” means a financial institution licensed to conduct banking or other financial institution business, which is subject to consolidated supervision in accordance with international standards under the laws of any state, country or territory;

“significant influence” means having any interest in a person that makes it possible to exercise a direct or indirect power to determine or control the management or policies of a person;

“solvency risk” means the risk that a creditor may lose his entire investment if a debtor cannot pay him in full, even if all the debtor’s assets are liquidated or a probability that financial soundness of financial institution may not allow it to

discharge all its obligations when they fall due;

“specialised deposit taking institution” means a financial institution authorised to receive deposits from the public and to perform other financial activities of a specific nature as stipulated in their licenses, including microfinance institutions, collective investment schemes, financial cooperatives and other institutions of similar character;

“subsidiary” means any company whose voting share is more than fifty percent controlled by another company, including a holding entity;

“technological risk” means a risk of loss arising from failure of information technology systems;

“unit of risk” means a potential financial loss which may arise from exposures of a financial institution with a group of interrelated persons;

“unsecured advances” or “unsecured credit facilities” 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 market value of the assets comprising the security given, or which exceeds the valuation approved by the Commissioner whenever he or she deems that no market value exists for the said assets.

Delegation of powers

3. The Commissioner may delegate the powers conferred upon him or her under this Act.

Application and exemptions

4. (1) This Act shall apply to deposit taking and non-deposit taking financial institution as specified by or pursuant to it.

(2) This Act shall not apply to -

- (a) an institution licensed or registered and supervised by the Commissioner in accordance with the Central Bank of Lesotho Act 2000 and pursuant to the Money Lenders Act 1989, the Building Finance Institutions Act 1975 and

the Insurance Act 1976;

- (b) an association, a small financial cooperative, a society and an informal self-help organisation as the Commissioner may determine by notice published in the Gazette.

(3) With the exception of the commercial banks referred to in the Second Schedule, a financial institution may be exempted from all or part of the provisions of this Act as the Commissioner may determine by notice published in the Gazette:

Provided that such exemptions shall not pose risks to the public or endanger the activities of other financial institutions under this Act.

PART II – LICENCES

Licences

5. (1) Banking or credit business as defined in section 2 shall not be transacted, either in Lesotho or abroad by a local financial institution, or in Lesotho by a foreign financial institution, or by any other person, unless that financial institution or person is in possession of a license issued by the Commissioner under this Act.

(2) A local financial institution shall not be granted a license under this Act unless it is incorporated as a public company under the Companies Act 1967.

(3) Notwithstanding subsection (2), a company intending to operate as a financial institution shall not be registered without prior written approval of the Commissioner.

(4) A company licensed to carry on banking business in Lesotho on the date on which this Act comes into operation shall be deemed to have been issued a licence under this Act.

(5) Any person who contravenes the provisions of subsection (1) commits an offence and is on conviction, liable to a penalty of either or both penalties provided in the First Schedule:

Provided that where the person found guilty of such offence is a body corporate, the term of imprisonment set out in the third column of the First Schedule shall apply to any director, officer or person responsible for carrying out such unauthorised business.

Licensing of financial institutions

6. (1) In order to obtain a licence under this Act as a financial institution, an applicant shall apply in writing to the Commissioner and submit -

- (a) authenticated copies of the memorandum and articles of association or, in the case of a foreign financial institution which is not incorporated in Lesotho, such similar documents regulating its affairs;
- (b) a statement of the address of its head office, and the name, nationality, qualifications, experience and address of its chairman, of every director and of every officer;
- (c) if it is a foreign financial institution, a statement from the supervisory authorities of the home country that its principal shareholders, chairman, directors, principal officers and management team as a whole are fit and proper persons and that it is subject to comprehensive supervision on a consolidated basis;
- (d) where applicable, a copy of audited financial statements for the last 2 years and that of its head office or parent company;
- (e) the full particulars of the business it proposes to carry on, and of the manner in which it proposes to carry on that business, including but not limited to the operating and financial plans, the system of internal controls, internal audit and accounting and the structure for its functioning;
- (f) the location of the principal and other places of business in Lesotho where it proposes to carry on its activities and, in the case of a mobile agency, the area to be served;

- (g) the prior consent of its home country supervisor where the proposed owner or parent organisation of the applicant is a foreign financial institution; and
- (h) such other information as the Commissioner may require.

(2) The application and every document submitted in accordance with subsection (1) shall be signed by the principal officer of the applicant or the promoter of the applicant.

(3) The Commissioner may amend the terms and conditions of any license when it becomes evident that changes in the circumstances considered in the issuance of such license have occurred.

(4) The Commissioner shall refuse to grant a license if it is not satisfied that the conditions specified by, or pursuant to, this Act for issuing such license are fulfilled, stating in its decision the reasons for such refusal.

(5) A license shall not be granted if -

- (a) the information has not been provided as required;
- (b) there has been a failure in meeting the licensing criteria;
- (c) there is a serious risk of endangering the financial stability of the market where the proposed financial institution would operate; or
- (d) the manner in which the applicant proposes to carry on its business may hinder the Commissioner to exercise an effective supervision over the proposed institution.

(6) The Commissioner may make regulations to establish the procedure for any person to obtain a license to act as financial institution under this Act, taking into account whether such application is for acting as a deposit taking financial institution or a non-deposit taking financial institution under this Act.

Fees

7. An applicant shall -
- (a) pay a non-refundable investigation fee to the Commissioner, as the Commissioner may prescribe by notice published in the Gazette; and
 - (b) deposit with the Commissioner the registration fee and the licence fee for the first year, as the Commissioner may prescribe by notice published in the Gazette:

Provided that such deposit shall be returned to the applicant if the license has not been granted.

Licensing criteria and inquiries

8. (1) In considering an application for a license, the Commissioner shall conduct such investigation and inquiries as may be deemed necessary to determine whether the applicant, and its promoters, principal shareholders, chairman, directors, principal officers, and management team are fit and proper to be granted a license under this Act.

(2) In conducting such investigation and inquiries, the Commissioner shall, in relation to the applicant, consider:

- (a) the financial resources and history of the applicant;
- (b) its ownership structure;
- (c) the integrity and standing of direct and indirect principal shareholders;
- (d) prior business activities and financial resources;
- (e) the character and experience of -
 - (i) the promoter;

- (ii) the chairman;
- (iii) the directors;
- (iv) the principal officers; and
- (v) management;
- (f) the adequacy of its capital;
- (g) the convenience and needs of the community it intends to be served;
- (h) the earning prospects afforded by the area primarily to be served;
- (i) the prospective effect on existing financial institutions; and
- (j) such other matters and criteria as the Commissioner may deem appropriate.

(3) Subject to subsections (1) and (2), the Commissioner shall issue regulations to define, in detail, the criteria to be followed in considering an application for a license under this Act, taking into account whether such application is for acting as a deposit taking institution or a non-deposit taking institution under this Act.

Minimum capital

9. (1) A financial institution shall before licensing fulfill the minimum cash capital provided for in the Second Schedule and be licensed according to the type of activities as provided for in the Third Schedule.

(2) A type IV financial institution shall not be granted a license unless it fulfils a minimum cash capital, to be determined by the Commissioner in the regulations.

Decision of Commissioner

10. (1) Within 45 days after the receipt of the complete application, or, where further information has been requested, after the receipt of such information, the Commissioner shall either grant a licence or inform the applicant that he has refused to grant a licence.

(2) Where the Commissioner is unable to observe the 45 day period stipulated in subsection (1) for the application, the Commissioner shall inform the applicant of the delay in writing indicating the reasons for the delay and further period required to take the decision, which period shall not exceed 30 days.

(3) Where the Commissioner has refused to grant a license, a person aggrieved by this decision may appeal against it as stipulated under section 76.

Conditions

11. (1) In granting a licence, the Commissioner may impose conditions to be satisfied by the licensee, including a condition that the licensee carry on business at a designated place or places, or provide or refrain from providing specified services or facilities.

(2) In the case of a foreign financial institution, without limiting the generality of the foregoing, the Commissioner shall require as a condition for the commencement of operations that there be filed with it -

- (a) a duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing with the prior written approval of the Commissioner a true and lawful agent resident in Lesotho, upon whom any action or proceeding against it on a cause of action arising out of a transaction with its places of business in Lesotho, may be served with the same force and effect as if it were organised in Lesotho had been lawfully served with process therein; and
- (b) a written certificate of designation, which may be changed from time to time thereafter by the filing of a new certificate of designation, specifying the name and address of the officer, agent or other person in Lesotho -

- (i) to whom such process shall be forwarded; or
- (ii) upon whom any process not served upon the agent under paragraph (a) may be served.

(3) A financial institution shall be licensed to engage in providing the categories of financial services, including those under section 27, in accordance with its nature of deposit taking financial institution or non-deposit taking financial institution, as set out in this Act.

(4) A person, other than a licensed deposit taking institution, shall not accept any deposits from the public.

(5) Demand deposits or funds from the public repayable on demand by cheque, draft or order may only be accepted by a licensed commercial bank.

(6) Any person who contravenes the provisions of subsection (4) commits an offence and shall, on conviction, be liable to either or both penalties provided in the First Schedule:

Provided that where the person found guilty of such offence is a body corporate, the term of imprisonment set out in the third column of the First Schedule should apply to any director, officer, or person responsible for carrying out such unauthorised act.

Licensing of agents of financial institutions

12. (1) Any person, acting or proposing to act as agent of a financial institution, who is representing such institution, or undertaking any activity on its behalf in Lesotho, other than in the course of legal proceedings, shall, before engaging in such representation or activity, apply to the Commissioner for a licence under this section.

(2) A financial institution may make an application for a licence to the Commissioner on behalf of an agent.

(3) In applying for a licence, the applicant shall submit in writing to the Commissioner full particulars of -

- (a) his authority to make the application;

-
- (b) the business he proposes to carry on;
 - (c) the manner in which, and the place where, he proposes to carry on such business;
 - (d) proof of satisfactory financial performance in the last 5 years;
 - (e) adequacy of capital and financial backing by a parent company;
 - (f) competence of management team and staff; and
 - (g) proof of a good track record in complying with the laws, established practices, and norms, in the country of origin, supported by the authorities of the home country.

(4) An applicant shall, upon the granting of a licence, pay to the Commissioner the licence fee for agents of a financial institution as prescribed in the regulations to be made by the Commissioner.

(5) The Commissioner may amend the terms and conditions of any such licence on every anniversary of the issue thereof.

(6) The Commissioner may, at his discretion, refuse to grant such licence.

(7) A person who contravenes the provisions of subsection (1) commits an offence, and is on conviction, liable to a penalty of either or both penalties provide in the First Schedule:

Provided that where the person found guilty of such offence is a body corporate, the term of imprisonment set out in the third column of the First Schedule shall apply to any director, officer, or person responsible for carrying out such unauthorised act.

Licensing of ancillary financial service providers

13. (1) An ancillary financial service provider shall not conduct its or his

business without holding a valid license issued by the Commissioner in accordance with the regulations made under this Act.

(2) On the application of a person who intends to conduct ancillary financial service, the Commissioner shall consider such application and issue a licence if the applicant meets the requirements indicated in the regulations made by the Commissioner.

(3) A person who contravenes the provisions of subsection (1) commits an offence and is, on conviction, liable to a penalty of either or both penalties provided in the First Schedule:

Provided that where the person found guilty of such offence is a body corporate the term of imprisonment set out in the third column of the First Schedule shall apply to any director, officer or person responsible for carrying out such unauthorised business.

License and other fees

14. (1) A licensed institution shall, so long as its licence is not revoked, pay to the Commissioner on or before the first day of January of each year, licence fees as prescribed in the regulations to be made by the Commissioner.

(2) The Commissioner may from time to time, by notice published in the Gazette, amend the schedule of fees and specify such other annual fees which shall be paid by a licensed institution.

Use of the word “bank” in title

15. (1) A person other than a bank, or an agent of a bank licensed under section 12, shall not use the word “bank” or any of its derivatives in any language, or any other word indicating the transaction of banking or credit business, in the name, description or title under which such person is transacting business in Lesotho, or make or continue to make any representation to such effect in any bill-head, letter-paper, notice, advertisement or in any other manner whatsoever for the purpose of transacting business in Lesotho.

(2) Nothing in subsection (1) shall prevent a person from using the word “bank” or any of its derivatives in any language, when -

-
- (a) it is for the sole purpose of establishing a company for the purpose of applying for a licence to act or operate as a bank under this Act;
 - (b) it is included in the title of an association formed by banks for the purpose of representing the common interests of the members of such association; or
 - (c) it is expressly permitted by the Commissioner, in cases where the use of the word 'bank' will not induce the public to misunderstand the nature of the operations performed by the entity receiving the permission.

(3) The Commissioner may, at any time, direct in writing, any person to withdraw, amend, or refrain from making any representation to such effect in any bill-head, letter-paper, notice, advertisement or in any other manner for the purpose of transacting business in Lesotho, which in its sole discretion it considers to be misleading and inducing the public to misunderstand the nature of the operations intended to be performed in connection with the concerned representation or endangering the activities of the financial institutions under this Act.

(4) A person who contravenes the provisions of subsection (1) commits an offence and if the person fails or refuses to comply with the direction under subsection (3), the person shall, on conviction, be liable to a penalty of either both penalties provided in the First Schedule:

Provided that where the person found guilty of such offence is a body corporate, the term of imprisonment set out in the third column of the First Schedule shall apply to any director, officer, or person responsible for carrying out such unauthorised act.

Revocation of licence

16. (1) The Commissioner may revoke the licence of any licensed institution if the holder -

- (a) fails to commence operations within a period of 6 months following the grant of the licence;

- (b) has, in the opinion of the Commissioner, obtained the licence on the strength of untrue or misleading information furnished by any person to the Commissioner;
- (c) fails to comply with the conditions of the licence or with any measure required by the Commissioner in accordance with section 54;
- (d) ceases to carry on the business for which he is licensed or in the case of a financial institution of which the main place of business is situated outside Lesotho, the authorisation to conduct banking or financial business is revoked by the competent authority in such other country;
or
- (d) is in breach of any other provision of this Act.

(2) Before revoking the licence of any institution, the Commissioner shall give such institution a notice of his intention to do so, and shall afford it a reasonable opportunity to show cause why such licence should not be revoked:

Provided that in no event shall a licence be revoked earlier than 14 days after the notice of intention is served on the institution, and:

Provided further that the Commissioner may obtain a temporary injunction upon application to the court for the suspension of any part or all the business being conducted by such institution after the notice of intention has been served upon it.

(3) Where the Commissioner has revoked a licence, he shall as soon as possible, publish the notice of the revocation in the Gazette and use other means appropriately calculated to inform the public of such revocation, including publication of notice of revocation in a newspaper of general circulation in 3 consecutive editions in each of the places in which there is situated a place of business of the licensed institution and through the electronic media including a radio station with national coverage during prime time for at least 3 consecutive days.

Names of institutions not to be similar

17. (1) A licensed institution shall not be granted or continue to hold a licence under a name -

- (a) that is prohibited by law;
- (b) which so closely resembles the name of an existing licensed institution as would be likely, in the opinion of the Commissioner, to mislead the public;
- (c) that is the same as or, in the opinion of the Commissioner, similar to, any existing trade-mark or trade name, or corporate name of a body corporate, except where the trade name or trade mark is being changed or the body corporate is being dissolved or is changing its corporate name and the consent to the use of the trade mark or trade name, or corporate name is signified to the Commissioner in such manner as the Commissioner may require.

(2) A financial institution shall not carry on business as a commercial bank, merchant or investment bank, mortgage or savings bank unless it uses as part of its name the word “bank” or one of its derivatives.

(3) Except with the written consent of the Commissioner, no licensed institution shall use, or refer to itself by a name other than the name under which it is licensed.

Place of business

18. (1) A licence granted under sections 5 to 14 shall authorise the licensee to carry on business at the place or places designated in the licence, and a copy of the licence shall be displayed in each of its places of business.

(2) A licensed institution shall not open a new place of business or change the location of, or close an existing place of business without the prior written consent of the Commissioner.

(3) Before granting consent, the Commissioner may require to be

satisfied by inspection whether the new place of business or the licensed institution as relocated, will continue to meet the applicable criteria.

(4) Where the Commissioner has approved the change of place of business, the licensed institution shall publish a notice of change of place of business in the Gazette and use other means appropriately calculated to inform the public of such change, including publications of notice of change of place of business in a newspaper of general circulation in 3 consecutive editions, in each of the places in which there is situated a place of business of the licensed institution and through the electronic media including radio station with national coverage during prime time for at least 3 consecutive days.

Capital shares and general conditions

19. (1) All shares endowed with voting rights, which are issued by a local financial institution shall be in registered form.

(2) Without prior approval of the Commissioner, a person may not acquire or hold either directly or indirectly, acting alone or through or in concert with other persons, any interest in the capital share of a local financial institution which would confer upon him a voting share that reaches or exceeds ten per cent of the total.

(3) A financial institution, its directors and external auditors shall notify the Commissioner upon acquiring knowledge of any acquisition of shareholdings exceeding the percentages referred to in subsection (2) as shall further be specified in regulations made by the Commissioner.

(4) In considering any application made under subsection (2) for such approval, the Commissioner may call for such information as he may require, and an approval shall not be granted if -

- (a) the applicant does not meet or not continue to meet the criteria of a fit and proper person required to be a principal shareholder of a financial institution, as established by or pursuant to this Act;
- (b) the proposed acquisition or increased shareholding may have adverse effects on the stability and proper management of the concerned financial institution; and

-
- (c) the new ownership structure resulting from the approval may hinder the Commissioner from exercising supervision over the concerned financial institution.

(5) Unapproved acquisitions in excess of the percentages referred to in subsection (2) shall be reversed within a period not longer than 30 calendar days by the applicant after the date on which he has received notification of the decision from the Commissioner.

(6) If the acquisitions are not reversed, the Commissioner may make an application to court for directions in respect of the speedy and efficient sale of such excess to interested parties that shall be approved by the Commissioner; and return the moneys attained to the applicant or direct that such moneys be transferred to the custody of the Commissioner until they are delivered to such applicant.

(7) During the time the unapproved excess of shares remain the property of the applicant, the voting rights of such shares shall be suspended and the Commissioner shall take all necessary actions to leave without effects any decisions approved by using such voting rights.

(8) Without the prior approval of the Commissioner, no local financial institution shall -

- (a) enter into a merger or consolidation;
- (b) transfer the whole or any part of its assets in Lesotho other than in the ordinary course of its business;
- (c) effect an increase or reduction of its authorised share capital or a reduction of its paid-up capital;
- (d) alter its name as set out in its licence; or
- (e) amend its memorandum or articles of association.

(9) Without the prior approval of the Commissioner, no foreign financial institution which is not incorporated in Lesotho shall -

- (a) transfer the whole or any part of its assets in Lesotho other than in the ordinary course of its business;
- (b) effect a reduction of its assigned capital in Lesotho; or
- (c) alter its name as set out in its licence.

(10) A person who contravenes the provisions of subsections (2), (3), (4), (5), (6), (7), (8) and (9) commits an offence and is, on conviction, liable to a penalty of either or both penalties provided in the First Schedule:

Provided that where the person found guilty of such offence is a body corporate, the term of imprisonment set out in the third column of the First Schedule shall apply to any director, officer, or person responsible for carrying out any contravention of such provisions.

Investigation of unlawful business

20. (1) Whenever the Commissioner has reason to suspect that any person is engaging in banking or credit business or acting or pretending to act, whether acting alone or through or in concert with one or more other persons, as a financial institution, an agent of a financial institution or an ancillary financial service provider without a valid license under this Act, he shall call for and examine the books or other documents, accounts, records, titles, securities or cash or any assets of, or in the possession of, such person or other persons referred to above, in order to ascertain whether such person is so acting.

(2) In the event of a situation as described under subsection (1), the Commissioner may appoint inspectors or examiners and for the purposes of the performance of duties under their appointment, they shall, with necessary modification, in relation to the person subject to investigation and in relation to the affairs of that person, have the powers conferred by sections 52 and 53, upon an examiner contemplated in those sections, as if they were an examiner and the person subject to the direction were a financial institution contemplated in those sections. In particular, the inspectors may take possession of any books or other documents, accounts, records, titles, securities or cash or any assets to which they have access under subsection (1) where in their opinion:

- (a) the inspection, copying, or the making of extracts

thereof, cannot reasonably be undertaken without taking possession of them;

- (b) they may be interfered with, disposed or destroyed unless they take possession of them; or
- (c) they may be needed as evidence in any legal proceedings, whether civil or criminal, which may be instituted under or in connection with this Act, or any other law.

(3) If, as a result of an inspection conducted by the inspectors appointed under subsection (2), the Commissioner is satisfied that any person has obtained money by engaging in banking or credit business or acting or pretending to act as described under subsection (1) without having a valid license under this Act, the Commissioner shall in writing direct that person to repay, subject to the provisions of section 21 and in accordance with such requirements and within such period as may be specified in the direction, all money so obtained by that person in so far as such money has not yet been repaid, including any interest and any other amounts owing by that person in respect of such money.

(4) A person who refuses or fails to comply with a direction under subsection (3):

- (a) commits an offence and shall, on conviction, be liable to a penalty of either or both penalties provided in the First Schedule; and
- (b) shall for the purposes of any law relating to the winding up of persons or to the sequestration of insolvent estates, be deemed not to be able to pay the debts owed by such person or to have committed an act of insolvency, as the case may be, and the Commissioner shall, notwithstanding anything to the contrary contained in any law, apply for the winding-up of such a person or for the sequestration of the estate of such a person, as the case may be, to any court having jurisdiction.

(5) Where a person transacts banking or credit business or acts or pretends to act, whether acting alone or through or in concert with one or more other persons, as a financial institution, or an agent of a financial institution or

an ancillary financial service provider, without being licensed as required by this Act, such person and the other persons referred to above commits an offence and shall, on conviction, be liable to a penalty of either or both penalties provided in the First Schedule:

Provided that where the person found guilty of such offence is a body corporate, the term of imprisonment set out in the third column of the First Schedule shall apply to any director, officer, or person responsible for carrying out such unauthorised act and this sanction shall be doubled in the case where the concerned person refuses to make available for examination the books, accounts and records referred to in subsection (1), after having been duly requested to do so by the Commissioner or the inspectors, or if any information supplied or item produced by him or her is false in any material particular, or refuses or fails to comply with a direction under subsection (3).

(6) Nothing in subsections (4) and (5) shall relieve any person from liability to criminal proceedings arising out of any contravention of the provisions of this Act or any other law.

(7) A competent court may, after hearing any challenge, injunction, appeal or any similar measure regarding any decisions undertaken by the Commissioner, the inspectors or the manager under this section and section 20, award monetary damages to injured parties, but shall not enjoin, stay, suspend, vary or set aside such decisions.

Management and control of repayment of money and assets unlawfully obtained

21. (1) Simultaneously with the issuing of a direction under section 20(3), or as soon thereafter as may be practicable, the Commissioner shall, by a letter of appointment, appoint a person (hereinafter in this section referred to as “the manager”) to manage and control the repayment of money in compliance with the direction by the person subject thereto.

(2) On appointment -

(a) the manager shall, as soon as may be practical report to the Commissioner whether or not the person subject to the relevant direction is, in the manager’s opinion, solvent or insolvent;

-
- (b) the manager shall recover and take possession of all the assets of the person subject to the relevant direction.

(3) If the report referred to in subsection (2)(a) concludes that the person subject to the directive is insolvent, the Commissioner shall, notwithstanding anything contrary contained in any law relating to liquidation or insolvency, apply to a competent court for the winding-up or the sequestration, as the case may be, in terms of the applicable law of the person subject to the directive and the competent court shall appoint as liquidator or trustee, as the case may be, the person nominated by the Commissioner.

(4) The manager shall, in respect of the services rendered by him or her in terms of this section, and the inspectors shall, in respect of an inspection referred to in section 21(2), be paid such remuneration by the Commissioner as the Commissioner may determine and the Commissioner may recover an amount equal to the remuneration so paid from the person subject to the direction or the inspection, as the case may be. In such case, the Commissioner shall be regarded as a creditor of the person subject to the direction and the Commissioner shall have the same rights of a creditor in terms of the laws relating to liquidation and insolvency.

(5) The Commissioner shall serve a copy of the letter of appointment referred to in subsection (1) upon the person subject to the relevant direction, and such person shall, with effect from the date of the letter of appointment, be prohibited from disposing of or otherwise dealing with his assets including those that may have been identified in the letter of appointment, except with the written permission of the manager.

(6) The manager shall act under the control of the Commissioner, and the manager may, from time to time, apply to the Commissioner for instructions in regard to any matter arising out of, or in connection with, the performance of his duties in terms of subsection (7).

(7) It shall be the duty of the manager -

- (a) to conduct such further investigation into the affairs or any part of the affairs of the person subject to the direction as the manager may deem necessary in order to establish:

- (i) the exact amount of money unlawfully obtained by that person as contemplated in section 20(3);
 - (ii) the identities of all persons from whom such money was so unlawfully obtained;
 - (iii) where any such money or any assets into which such money was converted, is kept or can be located; or
 - (iv) any other fact which in the opinion of the Commissioner or the manager needs to be established in order to facilitate the repayment of such money in terms of the relevant direction;
- (b) to take all reasonable steps (including the liquidation of assets into which money unlawfully obtained as contemplated in section 20(3) has been converted) which may serve to expedite and ensure the repayment of money in accordance with the requirements of and within the period specified in the relevant direction;
- (c) to report the suspected commission by any person of any offence of which the manager becomes aware in the course of the performance of his duties as manager in terms of this section, to the responsible law enforcement agency having jurisdiction in the area in which such offence is so suspected or having been committed; and
- (d) to perform any other function assigned to the manager by the Commissioner in connection with the finalisation of the repayment of money in accordance with the relevant direction.

(8) For the purposes of the performance of the duties as set out in subsection (7), the manager shall, with necessary modification, in relation to the person subject to the relevant direction and in relation to the affairs of that person, have the powers conferred by sections 52 and 53, upon an examiner contemplated in those sections, as if the manager were an examiner and the person subject to the direction were a financial institution contemplated in those sec-

tions.

(9) The manager shall hold office until the relevant direction has been fully complied with, but the Commissioner may, at any time, in writing, withdraw the appointment of the manager on good cause shown, whereupon the manager shall vacate his office.

(10) A person who -

- (a) when requested by the manager to take an oath or to make an affirmation before a relevant authority, refuses to do so;
- (b) without lawful excuse refuses or fails to answer to the best of his ability a question put to such person by the manager in the exercise of the manager's powers or the performance of the manager's duties, even though the answer may tend to incriminate that person;
- (c) wilfully furnishes the manager with any false information;
- (d) refuses or fails to comply, to the best of his or her ability, with any reasonable request made to such person by the manager in the exercise of the manager's powers or the performance of the manager's duties;
- (e) wilfully hinders the manager in the exercise of the powers or the performance of the duties of the manager; or
- (f) commits any other deed designed to obstruct, or to enable any person to evade the repayment of money as required by a direction under section 20(3), commits an offence and is, on conviction, liable to a penalty of either or both penalties provided in the First Schedule:

Provided that no answer given to a question put by the manager to a person in terms of this section and no information derived there from may be used against such person in any criminal proceedings.

PART III – FINANCIAL REQUIREMENTS AND
LIMITATIONS ON ACTIVITIES

Capital

22. (1) A financial institution shall, at all times, maintain unimpaired, the minimum required capital, either paid-up or assigned if it is a foreign financial institution not incorporated in Lesotho.

(2) In this section -

(a) “paid-up share capital” means capital obtained through the issuance of ordinary shares or non-cumulative nonredeemable (perpetual) preferred shares, excluding such ordinary or preference shares issued in pursuance of the capitalisation of reserves from a revaluation of assets; and

(b) “assigned capital” means capital funds transferred from the head office of a foreign financial institution which is not incorporated in Lesotho and specifically assigned to the capital account of such foreign financial institution licensed to operate in Lesotho. Such assigned capital funds shall be maintained in Lesotho in such form as may be acceptable to the Commissioner and shall serve the same purposes under this Act as the paid-up share capital.

(3) A financial institution shall maintain a reserve account and, before any dividend is declared or any profit is transferred to the head office, parent company or elsewhere, shall transfer to such account out of the net profits of each year, after due provision has been made for taxation, a sum equal to not less than the minimum amounts specified in subsection (4).

(4) There shall be transferred each year to its reserve account a sum equal to -

(a) not less than fifty per cent of its net profits until the balance in the reserve account is equal to one-half the amount of its paid-up share or assigned capital account;

or

- (b) not less than twenty-five per cent of its net profits when ever the balance in the reserve account is equal to more than one-half but is less than the whole amount of the paid-up share or assigned capital account.

- (5) The reserve account shall neither be reduced nor impaired:

Provided that the impairment of the reserve account shall be permitted when it is the only means of preventing an impairment of paid-up share or assigned capital, in which case the Commissioner shall be notified within 10 days of the amount of such impairment.

(6) Whenever there is an impairment of the paid-up share or assigned capital or impairment of its reserve account, no financial institution shall declare credit or pay any dividend or make any other transfer from profits.

Capital accounts according to risk

23. The Commissioner shall, by regulations made under this Act, require deposit taking institutions, and may require non-deposit taking institutions, to maintain capital base accounts in an amount not less than a percentage of total assets, contingencies and off-balance-sheet commitments as the Commissioner may specify as capital adequacy ratio, taking into account the different types of risks taken by such financial institution:

Provided that the regulations shall include provisions to:

- (a) define core capital (Tier I) and supplementary capital (Tier II);
- (b) define core capital or core capital to constitute at least fifty per cent of the total qualifying capital (core capital and supplementary capital);
- (c) prescribe that the Commissioner may require financial institutions to maintain a minimum percentage of capital adequacy ratio at all times and that the Commissioner may be able to modify such percentage by regulations or instructions for individual financial institutions, as the case may be;

- (d) establish that the Commissioner will be able to impose by regulations specific capital charges for market risk, operational risk and other risks as defined by the Commissioner;
- (e) stipulate the criteria to require higher minimum capital adequacy ratio for individual financial institutions;
- (f) determine how capital requirements under or pursuant to this Act shall apply to the different categories of financial institutions, taking into account whether they are deposit taking institutions or non-deposit taking institutions; and
- (g) prescribe the remedial measures that may be imposed by the Commissioner, in case a financial institution subject to capital adequacy requirements fails to comply with capital requirements under or pursuant to this Act.

Provision to be made for certain items

24. In making the calculations necessary to ascertain that a financial institution has complied with the requirements of sections 22 and 23, provision shall be made to the satisfaction of the Commissioner and of the auditor of such institution appointed under section 35(1) for the following items -

- (a) depreciation of assets and bad or doubtful debts;
- (b) operating and accumulated losses;
- (c) preliminary expenses, representing expenses relating to organisation or extension or the purchase of business or goodwill;
- (d) the value of any assets lodged or pledged to secure liabilities incurred under any law where all the liabilities (including contingent liabilities) so secured are not included in the calculation and where the effect of such lodging or pledging is that such assets are not available for the purpose of meeting the liabilities of the institution to the public; and
- (e) such other items as may be prescribed by regulations made under

this Act.

Minimum local assets

25. (1) The Commissioner may, by regulations made under this Act, require a financial institution to maintain a prescribed minimum amount of local assets against such liabilities and capital accounts as may be specified in the regulations.

(2) For the purposes of this section, “local assets” means any asset consisting of advances and credit facilities to persons doing business or resident in Lesotho, properties and other assets situated in Lesotho and such other assets as may be specified in the regulations.

Minimum liquid assets

26. (1) The Commissioner may, by regulations made under this Act, determine the minimum, or minimum average of liquid assets which a financial institution shall hold at any time, or over the period of time against such liabilities as may be specified in the regulations.

(2) If a financial institution fails to comply with the regulations made under subsection (1), it shall, immediately, in writing, report such failure to the Commissioner and shall in such report state the reasons for the failure.

(3) During any period of time which a financial institution fails or is unable to comply with the regulations under subsection (1), it shall not grant any loan or credit to any person without the prior written approval of the Commissioner:

Provided that such approval shall not relieve the responsibility of the financial institution in the granting of individuals’ loans or credits during the period in which it has been in non compliance with the rules under subsection (1).

Financial activities

27. (1) Subject to the terms and conditions imposed under this Act and those stipulated in the respective license, financial activities may include such matters as shall be set out in the Second Schedule or the regulations.

(2) The Commissioner may, in its discretion, and subject to such conditions as it may stipulate by regulations, require that certain financial activities be conducted through separately capitalised subsidiaries that are wholly or majority-owned by the relevant institution and subject to supervision on a consolidated basis and such subsidiaries may be exempted of the limitations referred to in section 28 as the Commissioner may prescribe by regulations made under this Act.

Limitations on specified operations and activities

28. (1) A financial institution shall not directly or indirectly, have a large exposure in the form of loans or credit facilities with a single person or a group of interrelated persons, so that the total value of such exposure is at any time more than twenty-five percent of core capital, and for the purpose if this section core capital shall mean unimpaired paid-up or assigned capital, unimpaired balance in the Statutory Reserve Account as established under section 22(3) and audited retained earnings.

(2) The Commissioner shall aggregate as a single exposure all exposures made by a financial institution to a group of interrelated persons, and for the purposes of this section, “group of interrelated persons” means 2 or more persons holding exposures from a licensed institution, whether on a joint or separate basis, which are mutually associated and meeting at least one of the following criteria -

- (a) the exposure to those persons constitutes a single exposure because of the fact that one of them directly or in directly exercise control over others;
- (b) although the persons to whom the financial institution is exposed are different entities, they are so interconnected that if one of them experiences financial difficulties, an other one or all of them are likely to experience financial problems;
- (c) the persons are affiliates within the meaning of this Act; and
- (d) those persons have common control.

(3) Notwithstanding subsection (1) the following transactions may be partially or totally exempted from the application of such limitation, as the Commissioner may prescribe by regulations made under this Act, if such transactions -

- (a) represent loans guaranteed by the Government of Lesotho;
- (b) represent loans fully collateralised by deposits with the financial institution in respect of which set-off may be applicable, or by obligations of the Government of Lesotho;
- (c) represent such loans to, or loans guaranteed by the World Bank or other similar multilateral lending organisation, or such foreign governments, as the Commissioner may specify for the purposes of this section;
- (d) represent such loans secured by a written financial guarantee issued by a reputable financial institution complying with the criteria as the Commissioner may determine by regulations or by a pledge of financial assets having value in excess of the amount of obligation secured thereby by a percentage to be determined by the Commissioner; or
- (e) represent such other loans or extensions of credit or guarantee as may be determined by the Commissioner.

(4) Any excess of the limitation applicable to single large exposures under subsection (1)(a), shall be deducted from the core capital therein defined.

(5) The total amount of large exposures of any given financial institution shall not exceed eight hundred percent of its core capital as defined in this section and any excess of this limitation shall be deducted from such core capital.

(6) There shall be no limits on loans extended to the Government of Lesotho.

(7) A financial institution shall not, directly or indirectly, grant any advances or credit facilities against:

- (a) the security of its own shares or those of any other licensed financial institution or a company affiliated to it; and
- (b) any instruments which may qualify as capital of the financial institution.

(8) A financial institution shall not, directly or indirectly, have exposures of an amount in excess of ten percent of its core capital as defined in this section with anyone of its related persons consisting in affiliates and insiders.

(9) For the purpose of subsection (8), “insider” and “affiliate” shall exclude the following:

- (a) a member of the senior management of the licensed institution, including the chief executive officer, the president, vice president, chief accountant, chief lending officer, chief treasury, or their equivalents, as well as any person who alone, or together with one or more has the authority to enter into commitments for the account of the licensed institution;
- (b) any employee of the licensed institution who is responsible for the management of one or more of the risks to which a financial institution is exposed namely -
 - (i) solvency risk;
 - (ii) liquidity risk;
 - (iii) credit risk;
 - (iv) currency risk;
 - (v) market risk (position risk);
 - (vi) interest rate risk;

-
- (vii) counterparty risk;
 - (viii) technological risk;
 - (ix) operational risk;
 - (x) compliance risk; or
 - (xi) any other risk regarded as material by the bank.

(10) A financial institution shall not directly or indirectly, have exposures of an amount in excess of ten percent of its core capital as defined in this section with related parties consisting of -

- (a) any firm, partnership, syndicate, association, company or other body of persons corporate or unincorporated in which it or any one or more of its affiliates, or insiders is interested as principal shareholder, owner, director, officer, partner, manager, agent, member;
- (b) any individual, firm, partnership, syndicate, association, company or other body of persons corporate or unincorporated of whom or of which it or any one or more of its affiliates, insiders or principal shareholders is a guarantor; or
- (c) any persons deemed related parties to the persons referred to in the previous subsections:

Provided that:

- (i) the total amount of its exposures with related parties shall not exceed one hundred percent of its core capital as defined in this section;
- (ii) any excess of such limitation may be deducted from the core capital as defined in this section;
- (iii) any transaction with related parties shall be under terms and conditions at least as favourable

to the financial institution as those applicable to similar transactions with the rest of clients of the respective financial institution; and

- (iv) any transaction with related parties shall be approved by the board of directors of the respective financial institution with a majority vote of two thirds of its members, without prejudice of the provisions under section 45.

(11) A financial institution shall not directly or indirectly, grant or permit to be outstanding to its employees, unsecured advances or unsecured credit facilities exposures which in aggregate amount for any one employee including the chief executive officer exceed one year's emolument of such employee.

(12) An advance or credit facility shall not be granted to any employee including the chief executive officer while any other advance or credit facility to that person is non-performing.

(13) A financial institution shall not, directly or indirectly, engage, whether on its own account or on a commission basis in the wholesale or retail trade, including the import or export trade, except in so far as may exceptionally be necessary in the course of banking or credit business or in the course of satisfaction of debts due to it:

Provided that the approval of the Commissioner is obtained.

(14) A financial institution shall not directly or indirectly, acquire or hold any part of the share capital of any financial, commercial, agricultural, industrial or other undertaking except such share-holdings as a financial institution may acquire in the course of the satisfaction of debts due to it which share-holdings shall, however, be disposed of at the earliest suitable moment and not later than a date at which such disposition may occur without incurring a loss, as the Commissioner may approve and, in any case, within 2 years of their acquisition at the latest, this period may be extended for a period of up to one year by approval of the Commissioner:

Provided that this subsection shall not prevent the purchase and sale of shares of stock for trust account or upon the order and for the account of a customer with-

out recourse, and:

Provided further that it shall not apply -

- (a) in respect of any share-holding approved by the Commissioner in any corporation set up for the purpose of - insuring deposits or of promoting the development of a money market or securities market or payments system in Lesotho or of improving the financial mechanism for the financing of economic development;
- (b) to all share-holdings in other undertakings the aggregate value of which does not at any time exceed twenty-five percent of its core capital as defined in this section, or that in each case does not at any time exceed five percent of the paid-up capital of the company issuing the shares:

Provided that:

- (i) the limitations referred to in the provisions of subparagraph (b) shall be calculated on a consolidated basis as the Commissioner may prescribe by regulations; and
- (ii) the acquisition of voting shares of a local financial institution shall be subject to the prior authorisation of the Commissioner under section 19.

(15) A financial institution shall not directly or indirectly, purchase, acquire or lease real property except as may be necessary for the purpose of conducting its business, including provision for future expansion or housing its staff or in such circumstances as the Commissioner may approve, provided that a financial institution may secure a debt on any real or other property and in default of repayment may acquire such property for resale by the financial institution at the earliest suitable moment and not later than a date at which such disposition may occur without incurring a loss, as the Commissioner may approve and, in any case, within two years of their acquisition at the latest. This period may be extended for a period of up to one year by a decision of the Commissioner.

(16) A financial institution which, prior to the commencement of this Act, entered into any transactions incompatible with the provisions of this section shall within 3 months after commencement of this Act submit a statement thereof to the Commissioner and shall, subject to agreement with the Commissioner, liquidate all such transactions as soon as possible.

(17) A financial institution shall report periodically the information required to determine the compliance with the limitations established in this section, as the Commissioner may prescribe by regulations made under this Act.

(18) In the event where a financial institution has made acquisitions of shares in excess of the limits referred to in subsection (14), the Commissioner may make application to the Court for directions in respect of the speedy and efficient sale of such excess to interested parties that shall be approved by the Commissioner. During the time the excess of shares remain the property of the financial institution, the voting rights of such shares will be suspended and the Commissioner will take all necessary actions to nullify the effects of any decisions taken by using such voting rights.

(19) A person who contravenes the provisions of this section commits an offence and, on conviction, shall be liable to a penalty of either or both penalties provided in the First Schedule:

Provided that where the person found guilty of such offence is a body corporate, the term of imprisonment set out in the third column of the First Schedule shall apply to any director, officer, or person responsible for carrying out any contravention of such provisions.

PART IV – SECRECY

Secrecy

29. (1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by a competent court or under the provisions of any Act, no Commissioner, director, officer, employee, or agent of the Commissioner's office, including any examiner duly authorised by the Commissioner to examine the affairs of, or advise concerning, any person, shall disclose to any person any information of non-public nature relating to such office or to the affairs of any person, including any customer of a licensed institution, which he or she has acquired in the performance of his duties

or the exercise of his or her functions.

(2) A person subject to subsection (1) shall, before acting in the execution of his or her office, take and subscribe before a Commissioner of Oaths such oath of fidelity or secrecy as may be prescribed by regulations.

(3) A person who, in contravention of the true intent of the oath of fidelity or secrecy taken by him or her and without lawful excuse, reveals any matter which has come to his or her knowledge in his or her official capacity commits an offence and is, on conviction, liable to a penalty of either or both penalties provided in the First Schedule.

(4) If any person acts in the execution of his or her office before he or she has taken the prescribed oath, he or she commits an offence and is liable to the penalty set out in the First Schedule.

(5) Save as otherwise provided under the provisions of any law or unless he or she is lawfully required to do so by a court of competent jurisdiction, no person who has held any office in a licensed institution or who has been its employee or agent, shall disclose to any person any information of non-public nature relating to such office or to the affairs of any person including any customer of a licensed institution, which he acquired in the performance of his duties or the exercise of his or her functions.

(6) A person who contravenes subsection (5) commits an offence and is, on conviction, liable to a penalty of either or both penalties provided in the First Schedule.

Disclosable information

30. (1) Notwithstanding section 29, the Commissioner may, upon request disclose -

- (a) the nature of a licence;
- (b) any conditions and limitations attached to such licence;
- (c) the places where the holder of such licence may, according to his licence carry on his activities;

- (d) the name of the person upon whom process may be served in lieu of the holder of such licence, when a certificate of designation has been filed with the Commissioner.

(2) Any information provided through formal or informal cooperation arrangements, including memoranda of understanding, with other national or foreign supervisory authorities, in which case the Commissioner shall reasonably ensure that the confidentiality of the information to be provided will be protected by the secrecy laws of the recipient and that it will be exclusively used for the purpose as indicated in the concerned request.

PART V – OFFENCES

Offences in relation to entries in books documents etc.

31. A person who with intent to deceive -
- (a) makes or causes to be made a false entry;
 - (b) omits to make, or causes to be omitted, any entry; or
 - (c) alters, abstracts, conceals or destroys, or cause to be altered, abstracted, concealed or destroyed, any entry, in any book or record, or in any report, slip, statement or other document whatsoever, relating to the business affairs transactions, condition, property, assets, liabilities or accounts, of a licensed institution, commits an offence and is, on conviction, liable to a penalty of either or both penalties provided in the First Schedule.

General penalties

32. (1) The Commissioner may impose by written notice to any licensed institution or any person subject to this Act who contravenes -
- (a) any provision of this Act; or
 - (b) any regulation, specification or requirement made, or any order in writing, direction, instruction, or notice

given, or any limit, term, condition or restriction imposed, or any other thing howsoever done, in the exercise of any power conferred under, pursuant to, or by virtue of, any provision of this Act, the penalty provided in the First Schedule and in the case of a continuing offence, an additional daily penalty provided in the First Schedule.

(2) The penalty referred to in subsection (1) shall be determined by the Commissioner in an amount he deems necessary, taking into account the gravity of the conduct, the presence or absence of wrongful intent of the licensed institution or the concerned person, the financial resources of the licensed institution or the concerned person, and any extenuating or mitigating factors the Commissioner wishes to consider and shall be paid within 30 days of the issue of the notice directly to the Commissioner.

(3) Nothing in this section shall relieve any person from liability to criminal proceedings arising out of any contravention of the provisions of this Act or any other law.

Offences by institutions, servants, and agents

33. (1) Where any offence against any provision of this Act has been committed by any person who at the time of the commission of the offence was a director, or officer, of a licensed institution purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of such institution, or was assisting in such management, he shall be guilty of that offence unless he proves that the offence was committed without his or her consent or connivance and that he or she exercised all such diligence to prevent the commission of the offence as he or she ought to have exercised, having regard to the nature of his or her functions in that capacity and to all the circumstances.

(2) Where any person (in this subsection referred to as “the principal”) would be liable under this Act to any punishment or penalty for any action, omission, neglect or default, he or she shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any clerk, servant or agent of his or her, or of the clerk or servant of such agent:

Provided that such act, omission, neglect or default was committed by the principal's clerk or servant in the course of his or her employment, or by the agent when acting on behalf of the principal, or by the clerk or servant of such agent in the course of his employment by such agent or otherwise on behalf of the agent.

Failure to maintain minimum requirements

34. The Commissioner may impose on any financial institution which fails to maintain the minimum requirements prescribed under sections 25 and 26 a penalty based on the amount of the deficiency, as may be specified in the regulations.

PART VI – AUDITING AND REPORTING

Appointment of auditors

35. (1) A financial institution shall, annually, notify the Commissioner of its intention to appoint an independent auditor, who shall be approved by the Commissioner.

(2) Persons that may be appointed as auditors shall have the qualifications, licenses, experience and background as specified in the regulations issued made by the Commissioner.

(3) No licensed institution shall appoint the same auditor continuously for a period of more than 5 years without an exemption granted by the Commissioner.

(4) An independent auditor appointed under subsection (1) shall audit the operations of the licensed institution on an individual or a consolidated basis, as determined by the Commissioner, and his or her duties shall include the following:

- (a) to make a full review of the financial institution's records and accounts and to make a report to the shareholders in the case of a local financial institution and to the head office in the case of a foreign financial institution not incorporated in Lesotho upon the annual balance sheet and profit and loss account financial statements, and in every

such report he shall state whether in his opinion the balance sheet and profit and loss account annual financial statements are full and fair and properly drawn up, whether they exhibit a true and correct statement of the affairs of the institution in accordance with auditing and accounting standards, and requirements as to format and content which may be specified by the Commissioner, and if the auditor has called for explanation or information from the officers or agents of the financial institution, whether a satisfactory response was received;

- (b) to make a full review of the financial institution's internal control structure, systems for loan classification, provisioning and debt write-offs and risk management procedures, and make a full and fair report of the same to the directors of the institution; and
- (c) to make a full review of the financial institution's procedures for compliance with the requirements of this Act, and make a full and fair report of the same to the directors of the institution.

(5) The reports of the auditor shall be read together with the report of the board of directors of the financial institution at the annual meeting of shareholders of each local financial institution and in the case of a foreign financial institution not incorporated in Lesotho shall forthwith be transmitted to the head office, and a copy thereof sent to the Commissioner.

(6) If a financial institution fails to appoint an auditor in accordance with subsection (1), the Commissioner may appoint that auditor and the remuneration of such auditor shall be paid by the financial institution.

(7) A person having any interest in a financial institution and an officer, employee or agent of a financial institution shall not be eligible for appointment as an auditor to a financial institution.

(8) A person who, after appointment as auditor, acquires any interest, or becomes an officer, employee or agent of such financial institution, shall forthwith cease to be such auditor.

(9) The Commissioner may instruct any auditor to conduct a special audit at the cost of the concerned licensed institution.

(10) For the purpose of subsection (7) “ a person having an interest” does not include a depositor or any other person as may be designated by the Commissioner by notice published in the Gazette.

Auditor to inform the Commissioner

36. (1) If an auditor, in the course of the performance of his duties, learns of any fact, transaction or course of conduct which -

- (a) may pose a substantial risk to the condition of the financial institution;
- (b) may result in a significant loss to the financial institution;
- (c) may prejudice the interest of the financial institution’s depositors and creditors;
- (d) is in violation of this Act or any other Act to which it is subject; or
- (e) in his opinion may be of concern to the Commissioner having regard to the Commissioner’s supervisory functions, in terms of this Act in respect of the financial institution concerned,

the auditor shall, as soon as possible, report such matter to the Commissioner.

(2) Upon request by the Commissioner, the auditor shall make available documents, management letters and such other information relating to his or her audit.

(3) The Commissioner may, from time to time, arrange meetings with the auditors of financial institutions.

(4) Whenever an auditor furnishes the Commissioner with written information, he may at the same time furnish the chief executive officer of the

financial institution to which such information relates with a copy of the information.

(5) The furnishing of information in good faith by an auditor shall in no circumstances be held to constitute a contravention of any provision of the law or a breach of any provision of the law or a breach of any provision of a code of professional conduct to which such auditor may be subject.

(6) Nothing in this section shall be construed as conferring upon any person any right of action against an auditor which, but for the provisions of this section, he would not have had.

Appointment of Board Committees

37. (1) The Board of Directors of a financial institution shall establish committees to be determined by the Commissioner in the regulations.

(2) The persons chairing the committees shall not be employees of the financial institution.

Financial statements

38. A financial institution shall prepare its financial statements in accordance with the requirements of internationally accepted accounting practices or standards as adopted by the accounting bodies in Lesotho.

Financial records

39. (1) A financial institution shall, for purposes of this Act, keep, in relation to its activities, a full and true written record of every transaction it conducts.

(2) The records under subsection (1) shall include -

- (a) accounting records exhibiting clearly and correctly the state of its business affairs, explaining its transactions and financial position so as to enable the Commissioner to determine whether the financial institution has complied with all the provisions of this Act;

- (b) the financial statements;
 - (c) records showing, for each customer, at least on a daily basis, particulars of its transactions with or for the account of that customer, and the balance owing to or by that customer;
 - (d) proper credit documentation;
 - (e) large cash transactions, suspicious transactions and any other information relating to the combating or the money laundering and terrorist financing;
 - (f) customer or beneficiary identification data and business correspondence; and
 - (g) such other records the Commissioner may determine.
- (3) A record under this section shall be kept -
- (a) in written form or kept on microfilm, magnetic tape, optical disk, or any other form of mechanical or electronic data storage and retrieval mechanism as the Commissioner may agree to;
 - (b) for a period of at least 10 years after the completion of the transaction to which it relates;
 - (c) at the principal office of the financial institution in Lesotho, or such other place as may be approved by the Commissioner;
 - (d) in such a manner that it shall be sufficient to enable reconstruction of individual transaction in order to provide evidence for prosecution of a criminal activity.

(4) Where records are kept by a third party, they shall be easily accessible and available within 3 days.

Annual accounts

40. (1) Not later than 3 months after the expiration of its financial year, every local financial institution, in respect of all business transacted by it, and every foreign financial institution, in respect of all business transacted through its places of business in Lesotho shall submit audited financial statements, audited balance sheet and profit and loss account as of the last working day of that year in such a form as the Commissioner may prescribe and under the joint signatures of the principal officer and majority of directors in the case of a local financial institution and of the manager and next most senior officer of the principal place of business in Lesotho, in case of a foreign financial institution to the Commissioner.

(2) The balance sheet and profit and loss account and audited financial statements prepared in accordance with subsection (1) shall be audited in the manner prescribed in section 38.

(3) A financial institution shall -

- (a) within 14 days after the preparation of audited financial statements, balance sheet and profit and loss account in accordance with the provisions of subsection (1) publish a copy of such audited balance sheet and profit and loss account in the Gazette and, where possible, in at least one newspaper of general circulation in Lesotho; and
- (b) exhibit throughout the year in a conspicuous position in every place of business of the financial institution in Lesotho excluding a mobile agency a copy of its latest such balance sheet and profit and loss account.

PART VII – DIRECTORS AND OFFICERS

Board of Directors

41. (1) For the purposes of this Part “board of directors” means the board of directors of a financial institution.

(2) The board of directors shall be responsible for conducting the business and establishing the policies of any licensed institution and in particular, the board of directors shall establish the risk-management standards, investment policies, minimum prudential ratios, accounting policies and internal

control systems of the licensed institution.

(3) The board of directors shall have not less than 5 members and not more than one half of the total number of directors shall be employed by the financial institution concerned, or by any of its subsidiaries or by its holding company, including any of its subsidiaries of the holding company, as the case may be.

(4) The members of the board of directors shall be appointed at the general meeting of shareholders for a period of not more than four years and they may be reappointed for a subsequent period of equal length. No member of the board of directors shall be reappointed for more than 2 consecutive periods.

(5) The remuneration for members of the board of directors shall be established at the general meeting of shareholders.

(6) The board of directors shall elect a chairman from among its members, who shall not be a chief executive officer or managing director.

(7) The chairman and all members of the board of directors shall possess legal capacity and be fit and proper persons.

(8) The members of the board of directors shall have significant business experience and the majority of them, including the chairman, shall have significant banking experience and not work full time for the bank.

(9) The members of the board of directors shall act honestly and in good faith with a view to the best interests of the concerned licensed institution. In carrying out their functions, they shall exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(10) The decisions of the board of directors shall be adopted by majority vote of the members present. If the vote is evenly divided, the chairman's vote shall be the deciding vote.

Management

42. (1) Subject to the provisions of subsection (4), the board of directors of a licensed institution shall appoint a chief executive officer or managing director from one of the members of the board of directors as the authorised man-

ager. The chief executive officer is responsible for the implementation of the decisions of the board of directors and for the management of the day-to-day operations of the licensed institution.

(2) The board of directors shall appoint a chief internal auditor who shall be a qualified member of a recognised professional association with extensive professional experience in the field of accounting or audit.

(3) The board of directors shall designate a compliance officer of the licensed institution.

(4) A person to be appointed to serve as chief executive officer of a licensed institution, branch manager, or other officer as specified by the Commissioner, shall:

- (a) possess legal capacity and be a fit and proper person;
- (b) possess the banking competence and expertise required for the conduct of banking operations;
- (c) not be an administrator or employee of another bank; and
- (d) reside in Lesotho and engage full time in the management of the operations of the concerned institution.

Qualifications of directors and officers

43. (1) A person shall not be a director of a licensed institution and a person shall not be elected or appointed a director or officer of a licensed institution if the person -

- (a) has contravened any provision made by or under an enactment appearing to the Commissioner to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, credit or other services or the management of companies or against financial loss due to the conduct of discharged rehabilitated or unrehabilitated discharged insolvents;

- (b) has been convicted of any offence involving fraud, dishonesty or breach of trust;
- (c) has been found mentally incompetent to manage his affairs and has not recovered from such condition;
- (d) is more than 2 months delinquent without adequate cause as determined by the Commissioner in his sole discretion, with respect to any loan, extension of credit, guarantee or other obligation to that person by any licensed institution for which that person is liable;
- (e) is under suspension or removal from office by order or direction of the Commissioner pursuant to this Act;
- (f) has engaged in any business practice appearing to the Commissioner to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflects discredit on his method of conducting business;
- (g) has an employment record which leads the Commissioner to believe that the person carried out an act of impropriety in the handling of his employer's business;
- (h) has engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement;
- (i) is an unrehabilitated insolvent; or has been declared bankrupt by a court of law within the past five 5 years;
- (j) is not a fit and proper person in terms of section 44;
- (k) has been disqualified or suspended by a competent authority from practicing a profession on grounds of personal misconduct; or
- (l) has been declared unfit to manage a company by a court of law or under an order issued by a competent agency.

(2) Any person who is a director or officer of a licensed institution shall, forthwith, cease to hold office upon -

- (a) becoming insolvent, suspending payments or compounding or proposing a compromise with that person's creditors generally;
- (b) being convicted of any offence involving fraud, dishonesty or breach of trust;
- (c) being declared mentally incompetent in any official proceeding under the laws of Lesotho or elsewhere;
- (d) being suspended or removed from office by order of the Commissioner pursuant to this Act; or
- (e) being found at any time subject to the application of any of the grounds referred to in subsection 43 (1).

(3) A person who has been a director or officer of, or directly or indirectly concerned in, the management of a licensed institution, the licence of which has been revoked, shall not, without the approval of the Commissioner, act or continue to act as a director or officer or be directly or indirectly concerned in the management of any licensed institution.

(4) Subsection (1) shall, with necessary modification, apply to a principal shareholder.

(5) A person who contravenes this section commits an offence and is, upon conviction, liable to a penalty of either or both penalties provided in the First Schedule.

Duties of directors and officers

44. (1) A director or an officer of a licensed institution, in exercising the powers and discharging the duties of his office shall -

- (a) be a fit and proper person to hold the particular position which he holds;

- (b) act honestly and in good faith with a view to the best interests of the licensed institution; and
- (c) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) In determining whether a person is a fit and proper person under subsection (1), regard shall be had to his probity, competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or is likely to fulfil those responsibilities and to whether the interests of depositors or creditors or potential depositors or creditors of licensed institutions are or are likely to be in any way jeopardised by his holding that position.

Conflict of interest

45. (1) A director or officer of a licensed institution who -
- (a) is a party to a material loan, contract or transaction, or a proposed material loan, contract or transaction with the licensed institution; or
 - (b) is a director or officer of, or has a material interest in or a material relation to, any person who is a party to a material loan, contract or transaction, or a proposed material loan, contract or transaction with the licensed institution, shall disclose, in writing, to the licensed institution the nature and extent of the material interest or relation.
- (2) The disclosure required by subsection (1) shall be made by the director or officer when the matter or proposed contract comes or ought reasonably to come to the attention of the director or officer.
- (3) A general notice in writing to the board of directors by a director or officer, disclosing at the time such person assumes or is appointed to his office and from time to time (but in no event less than annually) every material commercial, financial, agricultural, industrial or other business or family inter-

est that such person has at the time, stating that the person is to be regarded as interested in any material contract between the financial institution and any person named in the disclosure, shall be a sufficient declaration of material interest in relation to any such contract.

(4) A director who has a material interest or a material relation within the scope of subsection (1) or (3) shall leave any meeting at which the matter is discussed, and shall refrain from voting on any matter related thereto which becomes the subject of action by the board of directors of the licensed institution:

Provided that such an interest, if so disclosed, shall not disqualify the interested person for purposes of constituting a quorum.

(5) For the purposes of subsections (1) and (3), an interest, loan, contract or transaction shall be material if it is material with reference to the wealth, business, or family interest of the person with the interest, and a person has material interest in any company of which the person is, directly or indirectly, a shareholder or equity holder with a ten percent or more interest in such company, or a director or officer thereof.

(6) Where a director or officer fails to disclose a material conflict of interest in accordance with this section, the Commissioner may, by written order, suspend the director or officer from office for any period not exceeding one year.

(7) A director or officer who contravenes subsection (1) or (3) commits an offence and is, on conviction, liable to a penalty of either or both penalties provided in the First Schedule.

False and misleading statements

46. A director, officer, employee or agent of a licensed institution who, with intent to deceive, makes any false or misleading statement or entry; or omits any statement or entry that should be made in any book, account, report or statement of licensed institution or obstructs or endeavours to obstruct the performance by an auditor of his duties in accordance with the provision of this Act; or a lawful examination of the licensed institution by a duly authorised examiner appointed by the Commissioner commits an offence and is, on conviction liable a penalty of either or both penalties provided in the First Schedule.

Suspension of director or officer

47. The Commissioner may, by written order, suspend from office for any period not exceeding one year any director or officer concerned in the management of a licensed institution who fails to take all reasonable steps to secure compliance by the licensed institution with the requirements of this Act:

Provided that before a person is suspended he shall be given a reasonable opportunity of being heard in his defence.

Appointments of directors, officers and branch managers

48. (1) A licensed institution shall notify, in advance, the Commissioner of its intention to make any appointment of its directors, officers and managers of its branches. In receiving such notification, the Commissioner shall carry out a fit and proper test regarding the person to be appointed to determine the compliance with the provisions under this Part of the Act, in accordance with the procedure as the Commissioner may prescribe by regulations made under this Act.

(2) A licensed institution shall, as soon as practicable, notify the Commissioner of termination of engagement of directors, officers and managers of its branches.

**PART VIII – SUPERVISION OF FINANCIAL INSTITUTIONS
AND OTHER LICENSED INSTITUTIONS****Responsibility for supervision**

49. The Commissioner shall be responsible for the supervision of financial institutions and other licensed institutions both on an individual basis and on a consolidated basis, as the case may be.

Returns

50. A licensed institution shall send to the Commissioner -

- (a) each month, a statement in such form and not later than the day as the Commissioner may prescribe showing the assets and liabilities of its places of business in Lesotho at the close of busi-

ness on the last business day of the preceding month;

- (b) each quarter ending 31st March, 30th June, 30th September and 31st December, a statement in such form and not later than the day as the Commissioner may prescribe giving an analysis of its assets and liabilities in Lesotho at the close of the last business day of the quarter:

Provided that:

- (i) such information shall also be sent on a consolidated basis, if applicable, as prescribed by regulations made by the Commissioner; and
- (ii) the Commissioner may from time to time call for any additional information which he may require for the purpose of the administration of this Act from any licensed institution about its operations in Lesotho or those of its affiliates in Lesotho or from a local financial institution about its operations and those of its affiliates abroad.

Extension of time

51. At the request of a licensed institution, the Commissioner may, in his discretion, extend, from time to time, any period within which such financial institution is obliged, under the provisions of this Act, to furnish any document or information.

Examinations

52. (1) The Commissioner shall, from time to time, appoint examiners to examine, with or without prior notice, the books or other documents, accounts and transactions of any licensed institution and of any office outside Lesotho of a local financial institution, by means of its own officers; any person appointed by the Commissioner on account of his or her special knowledge, including a legal practitioners; or the auditor of the financial institution, or any other auditor appointed by the Commissioner.

(2) The Commissioner may also enter into informal or formal arrangements, including memoranda of understanding, with foreign supervisory

authorities, to examine any office outside Lesotho of a local financial institution.

(3) An examination shall be conducted in respect of any licensed institution in order to determine that it is in a sound financial condition and that the requirements of this Act have been complied with in the administration of its affairs.

(4) For the purpose of determining the financial conditions of a licensed institution and its compliance with this Act in the course of an examination undertaken pursuant to subsection (1), the Commissioner may cause an examination to be made of any of its affiliates and principal shareholders to the same extent that an examination shall be made of the licensed institution.

(5) The Commissioner shall also cause such an examination to be made where application is made by one-fifth of the total number of depositors or creditors, or by any number of depositors or creditors holding not less than one-third of the liabilities to the public in Lesotho of that licensed institution:

Provided that the applicants shall submit to the Commissioner such evidence as he may consider necessary to justify an examination.

(6) The Commissioner may allow foreign supervisory authorities to exercise their duties with regards to the offices or branches of their domestic financial institutions in Lesotho, as provided for in informal or formal arrangements, including memoranda of understanding, with such foreign supervisory authorities.

Production of records and information for examiner

53. (1) A licensed institution and affiliate of such institution shall, pursuant to an examination conducted under section 52, produce for the inspection of any examiner duly authorised by the Commissioner to examine their affairs, at such times and in such places as the examiner may specify being times and places which, in the opinion of the examiner, would not be detrimental to the conduct of the normal daily business of such institution, all books, minutes, accounts, cash, securities, documents and vouchers in their possession or custody, any information relating to suspicious transactions and large cash transactions and any other information relating to their business.

(2) If any books, minutes, accounts, cash, securities, documents and vouchers are not produced or information is not supplied in accordance with subsection (1), the defaulting licensed institution or affiliate, or both as the case may be, commits an offence and is, on conviction liable to a penalty of either or both penalties provided in the First Schedule.

(3) If any information supplied or item produced is false in any material particular, the licensed institution or affiliate, or both as the case may be, commits an offence and is, on conviction liable to a penalty of either or both penalties provided in the First Schedule.

(4) As soon as possible after the conclusion of an examination, the Commissioner shall forward the examination report to the management of the licensed institution concerned.

(5) All expenses of, and incidental to, an examination shall be paid by the licensed institution as may be prescribed by regulations.

(6) The examiner may make copies of any books, accounts and other documents required for the purposes of his or her report.

(7) There shall be no restrictions of the manner in which the examiner receives the information other than those imposed by the laws of Lesotho.

(8) The examiner may take possession of any books or other documents, accounts, titles, securities or cash to which he has access under subsection (1) where in his or her opinion -

- (a) the inspection, copying, or the making of extracts thereof, cannot reasonably be undertaken without taking possession of them;
- (b) they may be interfered with or destroyed unless he takes possession of them; or
- (c) they may be needed as evidence in any legal proceedings, whether civil or criminal, which may be instituted under or in connection with this Act, or any other law.

Power to issue orders or directions

54. Where, in the opinion of the Commissioner a licensed institution, or any affiliate, director, officer or employee thereof is conducting its business in an unsafe or unsound manner or that it is in an unsound financial condition, or in violation of this Act the Commissioner may require such institution forthwith to take such measures as he may consider necessary to rectify the situation and in particular, but without limiting the generality of the foregoing -

- (a) send a written warning to the licensed institution;
- (b) require a meeting of the board of directors together with any person appointed by the Commissioner under section 52(1), to review and examine the violations attributed to the licensed institution and to take the necessary measures to eliminate such violations;
- (c) require that the licensed institution submit a program of measures it intends to take or a detailed description of measures it has taken to eliminate the violation and correct the situation;
- (d) give orders to the licensed institution to correct any non-compliance with this Act or any regulations or acts issued pursuant to it;
- (e) to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
- (f) require that the licensed institution ceases in any of its operations, including acceptances of deposits or funds, the granting of credit or the making of investments;
- (g) bar the licensed institution from distributing profits or dividends;
- (h) require the licensed institution to deposit and maintain balances with the Central Bank without interest for a period deemed appropriate by the Commissioner;
- (i) order the licensed institution to realise any assets;
- (j) order the licensed institution to augment its capital adequacy requirements and to adopt certain transactions from its capital

base;

- (k) require the suspension or removal from office of any director, officer or other person;
- (l) appoint a person, who in his opinion has had proper training and experience, to advise the institution on measures to be taken to rectify its situation, and shall fix his remuneration which shall be paid by the licensed institution;
- (m) impose administrative penalties on the licensed institution provided that at the discretion of the Commissioner, such penalties may be imposed on a daily basis until the violation has ceased or compliance is obtained, and shall not exceed five percent of its capital base, as the Commissioner may specify by regulations;
- (n) suspend the board of directors and appoint an administrator to conduct a temporary administration of the licensed institution in accordance with the instructions of the Commissioner;
- (o) revoke the license of the licensed institution in accordance with provisions under section 16; or
- (p) take such other action as the Commissioner may consider necessary to protect the assets of depositors of the licensed institution.

Publication of information

55. (1) The Commissioner may publish or require publication in whole or in part, in such form and at such time as he may determine, any information or data furnished or collected under this Act:

Provided that no information or data shall be published which might disclose the particular affairs of a particular customer of a licensed institution unless the consent of that customer has been obtained in writing prior to such publication.

Exceptions to Companies Act

56. (1) Subject to the provisions of this section, the provisions of the Companies Act, , relating to the winding up and judicial management of companies (Part IV), the dissolution and liquidation of unregistered associations (Part V), or the winding up of external companies (Part VI) shall be applicable to licensed institutions which are companies, unregistered associations or external companies, respectively, within the meaning of the Companies Act or any other law replacing it:

Provided that -

- (a) for the purposes of this section and notwithstanding section 278 of the Companies Act or any other law replacing it, an unregistered association shall be subject to the provisions of Part V of the Companies Act or any other provision replacing it regardless of the number of its members;
- (b) notwithstanding sections 279, 292(2) and 264 to 271, inclusive, of the Companies Act or any relevant provisions of company legislation relating to liquidation, dissolution or judicial management shall be applicable necessary modifications to licensed institutions which are unregistered associations or external companies;
- (c) the powers and functions assigned to the Master under the Companies Act or any other law replacing it shall be exercised by the Commissioner or a person approved by the Commissioner; and
- (d) the provisions of the Companies Act specially applicable to a creditor's voluntary winding up (sections 218 to 221, inclusive) shall not apply to licensed institutions.

(2) There shall be no winding up, whether voluntary or by the court, or judicial management of a licensed institution without the prior consent in writing of the Commissioner:

Provided that the consent of the Commissioner for a voluntary liquidation shall be granted on such terms and conditions as he may determine and only if it ap-

pears to him that the institution is solvent and has sufficient liquid assets to repay its depositors, and other creditors in full and without delay.

(3) Within 14 days from the granting of consent by the Commissioner under subsection (2) for winding-up, a notice setting forth such information as the Commissioner may prescribe shall be sent by mail to all depositors, other creditors, and persons otherwise entitled to the funds or property held by the licensed institution as a trustee, fiduciary, lessor of a safe deposit box or bailee.

(4) The notice shall also be posted conspicuously on the premises of each place of business of the licensed institution, and the licensed institution shall publish it in the Gazette and in such other places as the Commissioner may prescribe.

(5) Notwithstanding the provisions of sections 187 (2) and 226(2) of the Companies Act or any other relevant provisions of company legislation relating to proof of claims and the relevant provisions of the law relating to insolvent estates, a depositor or creditor of a licensed institution, evidence of whose claim appears, to the satisfaction of the liquidator, in the books, accounts or other documents of such institution, shall be deemed to have proved such claim for the purposes of the aforesaid provisions.

(6) Any other funds or property held by the licensed institution as a trustee, fiduciary, lessor of a safe deposit box, or bailee, which have not been returned to their rightful owners in the course of the winding up of such institution shall, together with the inventories pertaining thereto be placed in the custody of the Commissioner.

(7) Notwithstanding section 256 of the Companies Act or any other relevant provisions of company legislation relating to proof of claims relating to the applications of assets and the costs of liquidation or dissolution and section 103 of the Insolvency Proclamation 1957, in the winding up of a licensed institution unable to pay its debts, any balance of the free residue after making provision for the expenditure mentioned in sections 97 to 102, shall be applied in payments of the remaining claims in the following order of priority -

- (a) the liquidator for all expenses incurred in the process of liquidating the financial institution;

- (b) insured deposit liabilities incurred by the financial institution with non-bank customers, in accordance with a deposit insurance scheme established in Lesotho;
- (c) uninsured deposit liabilities incurred by the bank with non-bank customers;
- (d) uninsured deposit liabilities incurred by the bank with other banks.

Acceptance of deposits of funds by insolvent licensed institutions

57. (1) A licensed institution which receives any deposits or funds while insolvent commits an offence and is, on conviction, liable to a penalty of either or both penalties provided in the First Schedule.

(2) A director, officer or employee of a licensed institution, who knows of, or in the proper performance of his duties, should know of the insolvency of such institution and who receives, or authorises the acceptance of, a deposit or funds commits an offence and is, on conviction, liable to a penalty of either or both penalties provided in the First Schedule.

Seizure of licensed institution

58. The Commissioner may appoint a qualified person to take possession of any licensed institution -

- (a) whose capital is impaired beyond fifty percent of the required amount if it is a bank and twenty five percent in the case of other licensed institution or whose condition is otherwise unsound;
- (b) whose business is being conducted in an unlawful or imprudent manner;
- (c) when the continuation of its activities is detrimental to the interests of its depositors or creditors;
- (d) that refuses to permit an examination to be made as provided in section 52 or has otherwise obstructed such examination; or

-
- (e) on which notice of intention to revoke its licence has been served under section 16(2).

Notice of seizure

59. When taking possession of a licensed institution, the Commissioner shall post at each place of business of a licensed institution a notice announcing his action pursuant to section 58, specifying the time when such possession shall take effect.

Appeal for termination of seizure

60. Within 10 days after the date on which the appointee of the Commissioner has taken possession of a licensed institution, the institution may institute proceedings in the court to have the seizure lifted.

Powers and duties of Commissioner's appointee upon seizure

61. (1) When the appointee of the Commissioner has taken possession of a licensed institution, he shall be vested with the full and exclusive powers of management and control of the institution, including, without limiting the generality of the foregoing, the power to continue or discontinue its operations, to stop or limit the payment of its obligations, to employ any necessary officers or employees, or execute any instrument in the name of the licensed institution, to initiate, defend and conduct in its name any action or proceedings to which the institution may be a party, to terminate possession by restoring the institution to its board of directors or owners, as the case may be.

(2) As soon as possible after taking possession of a licensed institution, the Commissioner's appointee shall make an inventory of the assets and property of the institution and transmit a copy thereof to the court.

(3) The copy of the inventory shall be available for examination by interested parties at the office of the Commissioner or the court.

Effects of seizure

62. When the Commissioner's appointee has taken possession of a licensed institution -

- (a) any term, statutory, contractual or otherwise, on the expiration of which a claim or right of the institution would expire or be extinguished, shall be extended by 6 months from the date of seizure;
- (b) any attachment or lien, except an attachment or lien exceeding six months prior to the seizure of the institution shall be vacated and no attachment or lien, except an attachment or lien created by the Commissioner's appointee in the application of section 61, shall attach to any of the assets or property of the institution so long as such possession continues;
- (c) any transfer of an asset or property of the institution made after or in contemplation of its insolvency or seizure by the Commissioner's appointee with intent to effect a preference shall be void.

Restriction of rights of creditor as to execution in seizure

63. No execution shall be returned against the assets or property of a seized licensed institution except, in the discretion of the Court, an execution effected pursuant to a judgement rendered prior to the date of the seizure.

Limitation on duration of seizure

64. When the Commissioner's appointee has taken possession of a licensed institution, he shall, within a maximum period of 60 days from the effective date of seizure specified pursuant to section 59 -

- (a) terminate the seizure;
- (b) apply to the court by petition for a winding up or judicial management order under the provisions of the Companies Act 1967; or
- (c) propose a compromise or arrangement between the licensed institution and its creditors under section 161 of the Companies Act 1967 or a reconstruction of such institution under section 163 of the said Act:

Provided that for the purposes of this paragraph the provisions of section 161 to 164, inclusive, of the Companies Act 1967 shall apply with necessary modifi-

cation to unregistered associations regardless of the number of members and to external companies.

PART X – ABANDONED PROPERTY

Unclaimed funds and property

65. (1) The following items held or owing by a licensed institution, except as provided in subsection (2), shall be presumed to be abandoned -

- (a) any general deposits or funds placed in Lesotho with such licensed institution, together with any interest or dividend, excluding any lawful charges;
- (b) any funds paid in Lesotho toward the purchase of shares or other interests in such licensed institution, together with any interest or dividend, excluding any lawful charges;
- (c) any sum payable on cheques certified in Lesotho, or on written instruments issued in Lesotho, on which such licensed institution is directly liable;
- (d) any contents of a safe deposit box upon which the lease or rental period has expired and concern into the custody of the Commissioner has been sent by registered letter to the last known address of the lessee.

(2) The items enumerated in subsection (1)(a), (b) and (c) shall not be presumed to be abandoned if the owner has, within 10 years of the date of the initial deposit or any subsequent deposit or withdrawal, payment of funds, or issuance of instruments, as the case may be -

- (a) increased or decreased the amount of the deposits or funds or presented the passbook or other record for the crediting of interest or dividends in respect of the items enumerated in subsection (1)(a) or (b);
- (b) corresponded in writing with the licensed institution concerning the items enumerated in subsection (1)(a), (b) or

(c); or

- (c) otherwise indicated an interest in the items enumerated in subsection (1)(a), (b) or (c), as evidenced by a memorandum concerning them on file with the licensed institution.

(3) Whenever any current or savings account has not been operated for a period of 2 years or a time deposit account has not been operated for a period of 2 years after the date of maturity of the deposit, no withdrawals shall be allowed on the account except with the permission of 2 senior officers of the financial institution out of a number of signatories authorised to grant the permission.

(4) An account referred to in subsection (3) shall be transferred to a separate register of dormant accounts in the books of the financial institution and a notice in writing of that action shall be given to the depositor at his or her last known address.

(5) Where any account which is transferable under subsection (4) is subject to a service charge, the charge may continue to be levied up to the date on which the account has been transferred to the separate ledger of dormant accounts, except that no charge shall be levied beyond 2 years.

(6) Where an account is transferred to a register of dormant accounts and the account has been on the register for 3 years, the institution shall advertise in the media the fact that it has been on the register for 3 years.

(7) Unclaimed balances shall after a period of 5 years from the date of the advertisement be transferred to the Commissioner and the Commissioner shall employ them to offset costs of supervising financial institutions or as may be prescribed.

Reports and disposition

66. (1) A licensed institution holding any funds presumed to be abandoned under section 65 shall annually report such holding to the Commissioner and publish them in the Gazette, and thereafter pay or deliver to the Commissioner all abandoned funds listed in the report, as may be prescribed by regulations.

(2) Upon paying or delivering abandoned funds into the custody of the Commissioner, a licensed institution shall be relieved of all liability to the extent of the value of such funds or other property for any claim in respect thereof.

(3) Any account may be transferred out of the register of dormant accounts if the depositor or, if the depositor is deceased, his legal representative, makes such request.

(4) Notwithstanding the employment of unclaimed funds referred to in subsection 65(7) the Commissioner shall refund any unclaimed balances to the depositor of those balances with the financial institution or, if the depositor is deceased, his legal representative if the request is made after the abandoned fund has been transferred to the Commissioner.

Failure to make a report or payment

67. A licensed institution which wilfully fails to file the report to the Commissioner, or to pay funds presumed to be abandoned into the custody of the Commissioner, in accordance with section 66 is liable to a penalty of either or both penalties provided in the First Schedule.

PART XI – OTHER REQUIREMENTS AND RESTRICTIONS

Reserve for losses due to negligence or dishonesty

68. (1) A licensed institution shall either maintain a special reserve account which is adequate and which is reserved exclusively for the purpose of making good any loss resulting from the negligence or dishonesty of any of its officers and other personnel, or it shall insure itself against such loss with a person approved by the Commissioner carrying on insurance business or the business of guaranteeing against such loss as aforesaid.

(2) The Commissioner may, by regulations made under this Act, determine the standard or adequacy for the special reserve account referred to in subsection (1).

Restrictions on payments of dividends

69. (1) A licensed institution shall not pay any dividend on its shares until all its capitalised expenditure (including preliminary expenses, organisation expense, shares selling commission, brokerage, amount of losses incurred, and any other item of expenditure not represented by tangible assets) has been completely written off.

(2) A licensed institution shall notify the Commissioner of its intention to declare dividends.

(3) A licensed institution shall not pay dividends until the Commissioner has approved the payment.

(4) The Commissioner shall respond to a licensed institution pursuant to sub section (2), within 30 working days of receipt of notification.

Credit requirements

70. (1) A director or officer of a licensed institution shall not give any credit facility in excess of the limit, or outside the scope of any terms and conditions, imposed on him or her by the licensed institution, or in contravention of any directions given to him, or any agreement made with him, by the licensed institution.

(2) The Commissioner may, by a written notice, direct a licensed institution to -

- (a) submit any information relating to its policy and procedure for the giving of any credit facility;
- (b) submit a report on the limit or the terms and conditions imposed, the directions given, and the agreements made, in relation to the authority of every director or officer of the institution authorised to give credit facilities or exercise any power in respect thereof; or
- (c) make such amendments to the policies or procedures referred to in paragraph (a), or to make such variations in the matters mentioned in paragraph (b), as the Commissioner deems to be fit and proper, either generally, or in relation to any class of director or officer, and such

amendments and variations shall be binding on the institution and its directors and officers.

PART XII – MISCELLANEOUS

Power to make regulations or decisions and issue other acts

71. (1) The Commissioner may make regulations, notices and decisions, and issue guidelines, determinations, directions, orders or instructions as may be necessary or expedient for giving effect to the provisions of this Act, for carrying out or achieving the objects and purposes of this Act or any provisions thereof, for the further, better or more convenient implementation of the provisions of this Act.

(2) The Commissioner may, by written notice to a licensed institution or by regulations, specify general or specific prudential requirements in accordance with international best practices pertaining to the maintenance by licensed institutions of adequate capital and liquidity sufficient and effective risk controls and diversification of assets as to risk of loss; and

- (a) the maintenance of reserves for bad or doubtful debts in such amounts as the Commissioner deems necessary for the protection of depositors or clients;
- (b) the classification and reporting of overdrafts, loans, investments and other assets and contingencies which are past due, on which interest is not accruing, where the collection of principal or interest due is questionable or doubtful, or which otherwise exhibit significant risks of collection;
- (c) the writing off in whole or in part of loans, investments or other assets which are not collectable;
- (d) credit concentration, country and transfer risk exposures;
- (e) off balance sheet credit exposures;
- (f) funding activities and liquidity requirements;

- (g) electronic funds transfers and large payments;
- (h) the management of major types of risks, including credit, liquidity, market, operational, legal, foreign exchange, interest rate and country risks;
- (i) financial relationships with affiliates and related parties;
- (j) securities investment and trading activities; and
- (k) such other matters as may affect the safety and soundness of the licensed institution's activities.

(3) The Commissioner may, by notice published in the Gazette, specify requirements governing the reporting to the Commissioner by licensed institutions of currency transactions by clients of such licensed institution, including requirements relating to cash transactions, large currency deposits, any other information relating to combating of money laundering and similar matters.

(4) The Commissioner may also make regulations in order to:

- (a) determine:
 - (i) how the requirements prescribed for licensed institutions by or pursuant to this Act shall apply to the different categories of such institutions, taking into account whether they are deposit taking institutions, non deposit taking institutions or other institutions under their respective licenses;
 - (ii) which financial institutions qualify as large or small financial cooperatives, depending on the number of members, the volume of deposits from members or the size of the assets;
- (b) define the extent to which the supervision of licensed institutions by or pursuant to this Act shall be performed over the different categories of such institutions, taking into account whether they are deposit taking institutions,

non-deposit taking institutions or other institutions under their respective licenses;

- (c) specify the situations in which licensed institutions, including those forming part of groups or financial conglomerates, as defined in regulations, shall be subject to supervision on a consolidated basis;
- (d) stipulate how the requirements established for individual licensed institutions by or pursuant to this Act apply to such institutions on such a consolidated basis; and
- (e) prescribe rules regarding transactions between licensed institutions and their affiliates.

(5) In the making of the regulations and doing of other acts referred to in this section, the Commissioner shall take into account the need to apply the requirements and to exercise supervision under and pursuant to this Act over deposit taking institutions in the first place, and then over non-deposit taking institutions and other institutions under their respective licenses, as the case may be.

Financial holidays

72. (1) The Commissioner may declare, by appropriate notices, any day to be a financial holiday on which no licensed institution may be open for business with the public.

(2) Except with the approval of the Commissioner, a licensed institution shall remain open for business with the public on such days, other than public holidays and financial holidays, and during such hours, as may be determined by the Commissioner.

(3) Any private obligation which can only be fulfilled at a licensed institution and which would fall due on any day on which such institution is not open for business under this section, shall be deemed to fall due on the next day on which the said institution is open for business.

Substitution for depositor's signature

73. In all transactions connected with the opening of, deposit into, or withdrawal from, a deposit account, whenever the depositor is unable to sign, his thumb impression affixed in the presence of an officer of the financial institution shall have the same legal effect as if it were the depositor's signature.

Immunity

74. (1) Neither the Commissioner nor any director, officer, employee or agent of the Commissioner's office shall be liable in damages in case any action is brought against him in connection with anything done or omitted in the discharge or purported discharge of his functions within the scope of their employment or engagement under or pursuant to this Act, unless it is shown that the act or omission was done in bad faith:

Provided that -

- (a) the Commissioner shall be liable before third parties for the acts and omissions done by any of such other persons in bad faith; and
- (b) the Commissioner may sue such persons, if their actions cause the Commissioner to be held liable and to pay any damages.

(2) The Commissioner shall indemnify any of such other persons referred to in subsection (1) against any legal costs incurred in the defence against legal action brought against him in connection with the discharge or purported discharge of his functions within the scope of their employment or engagement under this Act:

Provided that no such indemnification shall apply if such person has been convicted of a crime arising out of the activities that are covered by such legal action.

Reference to “this Act”

75. Reference to “this Act” shall include any regulations, determinations, directions, instructions or notices made under this Act.

Appeals

76. (1) A person aggrieved by a decision taken by the Commissioner under a provision of this Act may within 30 calendar days following the date of receipt of such decision, and in a prescribed manner and upon payment of prescribed fees appeal against such decision to the Tribunal established by subsection (2):

Provided that:

- (a) the Tribunal in determining its decision may examine whether the Commissioner acted unlawfully or whether the Commissioner acted in an arbitrary or capricious manner in light of the facts and the relevant Acts and regulations;
- (b) with respect to an appeal of a decision relating to dissolution, notwithstanding anything to the contrary contained in this Act or any other act, the Tribunal may after hearing the appeal award monetary damages to injured parties, but shall not enjoin, stay, suspend, vary or set aside the decisions of the Commissioner; and
- (c) with respect to an appeal of any other decision:
 - (i) the filing of an appeal shall not result in a suspension of the decision, except that the Tribunal in exceptional circumstances may suspend such decision where its immediate application would cause undue hardship or irreparable harm; and
 - (ii) the Tribunal may after hearing the appeal confirm or set aside the decision which is the subject of the appeal but shall not have the power to vary it.

(2) For the purposes of this Act there is hereby established a Tribunal which shall consist of 3 members -

- (a) the chairman who shall be a legal practitioner registered under the Legal Practitioners Act 1983 and who shall be appointed by the Minister acting on the advice of the

Law Society;

- (b) one member who shall be appointed by the Minister on account of his or her wide experience and knowledge of the financial industry; and
- (c) another member who shall be appointed by the Minister in consultation with the Lesotho Institute of Accountants who shall be a chartered accountant with not less than 10 years experience in the accounting profession.

(3) If, before or during the hearing of any appeal in terms of subsection (1), it transpires that any member of the Tribunal has any direct or indirect interest in the matter, such member shall recuse himself and the remaining members of the Tribunal shall hear and determine the appeal.

(4) Where a member has recused himself or herself, the Tribunal shall co-opt any other person who in its opinion has similar expertise with the approval of the Minister and the quorum of the Tribunal shall be 3 members.

(5) A member of the Tribunal shall hold office for a period of 5 years and may on the expiration of his term of office be eligible for reappointment.

(6) Any vacancy that occurs on the Tribunal shall be filled by the appointment of another person by the Minister consistent with the requirements of subsection (2), and such person so appointed shall hold office for the unexpired portion of the period of office of his predecessor.

(7) In the hearing of an appeal, both parties shall have the right to appear in person or be represented by a legal representative of their own choice.

(8) The Minister may make regulations with respect to appeals pertaining to -

- (a) the period within which and the manner in which such appeals are to be brought;
- (b) the fees payable by any party to the appeal;
- (c) the costs or expenses which the Tribunal directs to be paid; and

(d) any other matter connected with such appeals.

(9) An appeal under subsection (1) shall be heard on the date and at the place and time fixed by the Tribunal, which shall have in writing notified the appellant as well as the Commissioner thereof.

(10) The Tribunal may for the purposes of an appeal lodged with it -

(a) summon any person who, in its opinion, may be able to give material information concerning the subject of the appeal or who it believes has in his possession or custody or under his control any document which has any bearing upon the subject of the appeal, to appear before it at a time and place specified in the summons, to be interrogated or to produce that document, and retain for examination any document so produced; and

(b) administer an oath to or accept an affirmation from any person called as a witness at the appeal.

(11) The procedure at the hearing of an appeal shall be determined by the Tribunal.

(12) The decision of a majority of the members of the Tribunal shall be the decision of that Tribunal.

(13) The decision of the Tribunal shall be in writing, and a copy thereof shall be furnished to the appellant as well as to the Commissioner.

(14) If the Tribunal sets aside any decision by the Commissioner, the prescribed fees paid by the appellant in respect of the appeal in question shall be refunded to him.

(15) A member of the Tribunal shall in respect of his services as such a member be paid out of the Consolidated Revenue Account such remuneration, including reimbursement for transport, travelling and subsistence expenses incurred by him or her in the performance of his or her functions as such a member, as the Minister may, from time to time determine.

Transitional provisions

77. (1) Existing regulations shall, within a period not exceeding 6 months from the date of coming into operation of this Act, be updated.

(2) Existing financial institutions licensed under the Financial Institutions Act 1999 shall adjust their activities to the provisions of this Act not later than one year from the date of coming into operation of this Act as the Commissioner may, by regulations to be made within the same period referred to in subsection (1).

(3) Existing financial institutions which were not licensed under the Financial Institutions Act 1999 but that shall be licensed under or pursuant to the present set of amendments, shall apply to the Commissioner to obtain a license, not later than one year from the date of entry into force of such amendments, as the Commissioner may prescribe by regulation to be issued within the same period referred to in subsection (1). Entities that did not apply to obtain a license or are not granted a license by the Commissioner, as the case may be, shall cease in their banking or credit business, as the case may be, in accordance with the procedure established in the regulations.

(4) Notwithstanding sections 68 and 69 of the Co-operative Societies Act 2000, a large financial co-operative shall be subject to the provisions of this Act.

Repeal

78. The Financial Institutions Act of 1999 is repealed.

NOTE

1. Act No. 13 of 1978
2. Act No. 25 of 1967
3. Proclamation No. 51 of 1957
4. Act No. 23 of 1973

FIRST SCHEDULE
OFFENCES AND PENALTIES

First Column	Second Column	Third Column	Fourth Column	Fifth Column
No.	Provisions of this Act under	Term of imprisonment in years	Fines in Maloti	Daily Fines in Maloti
1. Licenses	section 5 (5)	10	500,000	-
2. Conditions	section 11 (6)	10	500,000	-
3. Licensing of agents if financial institutions	section 12 (6)	5	250,000	-
4. Licensing of ancillary financial services providers	section 13 (3)	5	250,000	-
5. Use of the word “bank” in title	section 15(4)	3	100,000	-
6. Capital shares and general conditions	section 19(10)	2	500,000	-
7. Investigations of unlawful business	section 20 (4) section 20 (5)	10 10	500,000 500,000	- -
8. Management and control of repayment of money and assets unlawfully obtained	section 21 (10)	10	500,000	-

9. Limitations on specified operations and activities	section 28 (19)	2	40,000	-
10. Secrecy	section 29 (3)	2	40,000	-
	29 (6)	2	40,000	-
11. Offences in relation to entries in books, documents etc.	section 31	2	40,000	-
12. General penalties	section 32(1)	-	500,000	5,000
13. Qualifications of director officers	section 44 (5)	2	40,000	-
14. Conflict of interest	section 46 (7)	2	40,000	-
15. False and misleading statements	section 47	3	100,000	-
16. Production of records and information for institutions	section 54 (2)	-	100,000	-
	section 54 (3)	-	100,000	-
17. Acceptance of deposits of funds by insolvents licensed institutions	section 58 (1)	-	100,000	-
	section 58 (2)	5	100,000	-
18. Failure to make a report or payment	section 68	-	100,000	-

SECOND SCHEDULE

MINIMUM CAPITAL (SECTION 9)

Type of Financial Institutions	Minimum Capital
I	Twenty Million Maloti
II	Ten Million Maloti
III	Five Million Maloti

THIRD SCHEDULE

TYPES OF FINANCIAL INSTITUTIONS AND THEIR ACTIVITIES

Type	Institution (type of)	Main Financial Services Provided Business Conducted
Type I	(1) Commercial Bank	<ul style="list-style-type: none"> (a) Acceptance of call, demand, savings and time deposits withdraw able by cheque of otherwise; (b) Provision of overdrafts and short term to medium loans; (c) Provision of foreign exchange facilities; (d) Acceptance and discounting of bills of exchange (e) Provision of financial and investment advice; (f) Participation in inter-bank clearing systems;

- (g) Provision of guarantees, bonds or other forms of collateral, and acceptance and place third party drafts and promissory notes connected with operations in which they take part.
- (2) Merchant/
Investment
Banks
- (a) Acceptance of corporate call and deposits;
 - (b) Provision of foreign exchange facilities;
 - (c) Facilitation of trade through the granting of acceptance facilities;
 - (d) Provision of corporate finance advisory services through:
 - (i) Shares issues;
 - (ii) Rights issues;
 - (iii) Mergers and acquisitions and corporate reconstruction;
 - (iv) Private placements, excluding underwriting arrangements;
 - (e) Issue of, debt obligations and certificates in such loans as they may grant or any;
 - (f) Other instrument trade in the domestic market or abroad according to the regulations the Central Bank may set forth;

-
- (g) Investment portfolio management, investment advisory services and nominee services;
 - (h) Arranging of finance, landing or participation in syndicated loans and acting as guarantors;
 - (i) Financing or landing in institutional markets.
- (3) Mortgage Banks
- (a) Receiving deposits of participation in mortgage loans and in special accounts;
 - (b) Granting of loans for the acquisition, construction, enlargement, repair, improvement and maintenance of urban or rural real estate, and for the substitution of mortgages taken out for that purpose;
 - (c) Giving guarantees, bonds or other forms of collateral connected with the operations in which they may take part;
 - (d) Obtaining of foreign loans and acting as intermediary in loans extended in local and foreign currency, having the previous authorization of the Central Bank for such loans exceeding a specified limit as prescribed by the Central Bank.

Type II	(1) Savings Banks	(a) Acceptance of savings and fixed deposits; (b) Investment in Government Securities and other securities as the Commissioner may determine by regulations.
	(2) Deposit-taking microfinance business	Carrying, conducting, engaging or transacting in microfinance business.
	(3) Large Financial Cooperatives	Accepting deposits from members and providing credit services on the pledge of savings.
Type III	(1) Credit Institutions	Acceptance of call and time deposits repayable after a fixed period or after notice and employment of such deposits wholly and partly by lending or any other means for the account and at the risk of the person accepting such deposits.
	(2) Acceptance House	Granting of acceptance facilities.
	(3) Discount Houses	Dealing mainly in short term assets such as treasury bills, bills of exchange and negotiable certificates of deposits.
	(4) Finance Houses	(a) Provision of hire-purchase facilities; (b) Provision of finance and operating leases/factoring facilities; (c) Provision of short and medium term loans.

Type IV	(1) Foreign Exchange Bureaux	Dealing with currency exchange.
	(2) Money Transfers	Provision of money transfer services.
	(3) Credit Guarantee Facility	Facilitation of access to bank finance through lending to small and medium manufacturing enterprises.
	(4) Credit Only Microfinance Institutions	Granting of uncollateralized credit services to unbanked communities.

GOVERNMENT NOTICE NO. 3 OF 2012

**Statement of Objects and Reasons of the
Financial Institutions Act, 2012**

The object is to repeal and replace the Finance Institutions Act, 1999 in order to provide for the authorisation, supervision and regulation of banking and non-banking financial institutions and ancillary financial service providers and for related matters.

The Bill grant the Commissioner of Financial Institutions enhanced investigatory powers against entities suspected to be conducting illegal banking or credit business without a valid licence to do so. This improvement will make it possible for the Commissioner to act swiftly and decisively against conduct treating the soundness of the domestic financial sector. It will also enhance the ability of the Commissioner to grant timely protection to depositors and customers against unlawful banking and credit business.

One of the most critical features of a sound financial system is the requirement for financial institutions to hold and maintain an adequate capital base. It is therefore crucial for financial institutions to maintain adequate capital. The proposed Bill will enable the Commissioner to fix such ratios and take corrective measures against non-compliance with capital adequacy requirements. The proposed law will also strengthen internal controls within licenced financial institutions. The Bill will *inter alia*, introduce revised criteria regarding the internal audit function. It will also set new standards of eligibility for directorships of licenced financial institutions. Directors will also assume increased responsibility over the affairs of their institutions.

