Statutory Instrument No. 73 of 1995

BANKING ACT, 1995
(Act No. 13 of 1995)

BANKING REGULATIONS, 1995

(Published on 20th October, 1995)

ARRANGEMENT OF REGULATIONS

IN EXERCISE of the powers conferred by section 50 of the Banking Act, 1995, the Minister of Finance and Development Planning hereby makes the following Regulations —

Citation

1. These Regulations may be cited as the Banking Regulations, 1995.

Interpretation

2. In these Regulations, unless the context otherwise requires —

"back-up capital" means any additional capital that a bank may be required to provide in case it is called upon by the Central Bank to increase the level of its capital during the course of business;

"exposure" means any facility granted by a bank whether drawn or undrawn, to a client or group of connected clients, on or off-balance sheet;

"related interests" means two or more persons whether natural or legal, with borrowings from the same bank, whether on a joint or separate basis, having, by way of example, a controlling interest, common ownership, common management, common directors, cross guarantees or direct financial interdependency which cannot be substituted in the short term;

"risk weighted assets" means the aggregated values of balance sheet assets and off-balance sheet assets following adjustments for relative risks associated with the exposures in accordance with the Bank of Botswana schedule of risk weights.

Applications for banking licences

3. (1) The following corporate documents and information shall be furnished in an application for a licence to transact banking business under the Act —

(*a*) the name, nationality and address of the applicant;

(*b*) the name and curriculum vitae of the initial directors and principal officers, with a clear indication of the particular responsibilities to be assumed by each officer;

(*c*) details of the shareholding of the applicant and prospects for local shareholding;

(*d*) a list of associate companies in or outside Botswana doing banking business or engaged in any financial undertaking such as insurance, brokerage, etc.;

(*e*) such audited accounting and financial data as may be required by the Central Bank including the balance sheet of the applicant as at date within 90 days prior to the date of application;

(*f*) the business plan of the applicant over a period of five years from the start of operations in Botswana including scale of envisaged operations, any specialized services and financial projections;

(*g*) the proposed principal place and other places of business of the applicant in Botswana, and a schedule of any proposed branch and agency network;

(*h*) the proposed initial capital of the applicant;

(*i*) any proposed back-up capital in case of need, and a declaration of its availability in Botswana;

(*j*). in the case of a foreign applicant, the name of any supervisory authority and the country of incorporation;

(*k*) in the case of an agent acting on behalf of a principal, a written authorization by the principal;

(*l*) any other information that the Central Bank may deem necessary to complete the assessment of the application.

(2) All applications for a banking licence should be made in duplicate in the form shown as Annexure 1 in the Schedule hereto.

(3) Every applicant for a licence shall pay to the Central Bank a non-refundable fee of P3 000 for the processing of the application, and after the grant of the licence an annual fee of P10 000.

Processing of applications

4. For the purposes of section 8(1) of the Act, in processing an application, the Central Bank shall require to be satisfied with regard to —

(*a*) the technical knowledge, integrity, experience, financial condition and history of the applicant;

(*b*) the adequacy of its capital;

(*c*) the character of its business, and the experience and qualifications of its management;

(*d*) the convenience and needs of the community and market to be served;

(*e*) the ability and willingness of the applicant to comply with any conditions the Central Bank may impose pursuant to the Act.

Appeals to the Minister

5. (1) Any appeal to the Minister against a refusal to grant a licence, the revocation of a licence, or against any condition subject to which a licence is issued, or the variation, addition, or cancellation of any such condition, shall be in writing in the form shown as Annexure 2 in the Schedule hereto, shall be accompanied by an appeal fee of P1 000, and shall —

(*a*) clearly state the reasons for the appeal or the precise elements of the grievance; and

(*b*) state the remedy sought.

(2) No appeal will be accepted or entertained if it is not received within six weeks following the date of communication of the rejection of the application for a licence, or the conditions appealed against.

(3) In the preparation and conduct of an appeal the assistance of counsel shall be permitted.

(4) The Minister shall meet, in person, or shall delegate a competent officer to meet, the aggrieved party at least once before reaching a decision on the appeal, and, in any event, after the appeal documentation has been reviewed by the Minister's office.

Surrender of licences

6. A bank wishing to surrender its licence in accordance with the provisions of section 11(2) of the Act shall apply therefor to the Central Bank, in writing and in the form shown as Annexure 3 in the Schedule hereto, stating in full its reasons for the request, and the Central Bank shall within 30 days of receipt of such application inform the applicant of its decision.

Capital requirements

7. (1) The percentage which a bank's unimpaired capital shall bear to its total assets, as contemplated in section 13 of the Act, shall be 8%:

Provided that —

(*a*) for the purposes of section 13, the term "assets" or "groups of assets and other such exposures" shall mean total risk weighted assets and other risk weighted exposures, as notified by the Bank of Botswana in a schedule of risk weights;

(*b*) such calculation shall be presented in the Bank of Botswana schedule of risk weights, which shall be filled in by the bank and returned to Bank of Botswana within 21 days of the end of each calendar month;

(*c*) for the purposes of such calculation, total risk weighted assets and other exposures shall mean a simple average of the risk weighted assets over a calendar quarter.

(2) For the purposes of section 13(3)(vi), the prescribed percentage shall be 50% of any surplus arising from the revaluation of bank premises or equity investment:

Provided that —

(*a*) where a revaluation is undertaken, all assets of a similar nature shall be revalued simultaneously and the net amount of any surplus shall be taken into account for the purpose of minimum capital determination;

(*b*) such revaluation shall be undertaken by a suitably qualified and independent person, approved by the Bank of Botswana;

(*c*) such revaluations shall be undertaken at specified regular intervals, not more than once every third financial year, and in accordance with a stated accounting policy and generally accepted accounting practice in Botswana;

(*d*) where equity investments are revalued, such investments shall be approved by the board of directors as being of a long term strategic nature, and the revaluation shall be determined with reference to, inter alia, prices quoted on a recognized stock exchange.

(3) The minimum required capital contemplated in section 13(9) of the Act shall be as follows —

(*a*) *Commercial Banks* — the greater of P5 000 000 or 8% of the risk weighted assets and other risk weighted exposures of the bank as prescribed in subregulation (1);

(*b*) *Credit Institutions* — the greater of P2 500 000 or 8% of the risk weighted assets and other risk weighted exposures of the bank as prescribed in subregulation (1);

(*c*) *Investment Banks* — the greater of P5 000 000 or 8% of the risk weighted assets and other risk weighted exposures of the bank as prescribed in subregulation (1);

(*d*) *Discount Houses*— the greater of P2 500 000 or 8% of the risk weighted assets and other risk weighted exposures of the bank as prescribed in subregulation (1).

Liquid assets

8. (1) For the purposes of section 16(1) of the Act, every bank shall report monthly to the Central Bank the liquid assets held by it during the previous month.

(2) Such reports will be made in the format specified by the Central Bank and will be submitted to that Bank within 21 calendar days of the end of each month.

Limitations on certain operations

9. (1) For the purposes of section 17(1) of the Act, the accommodation which requires prior sanction of the bank's board of directors shall be lendings in excess of 10% of unimpaired capital to a single borrower or related borrowers, except in the case of connected lending in the form of credit extension to the interests, direct or indirect, of a bank's own directors, where subregulation (3) applies.

(2) For the purposes of section 17(3) of the Act, the aggregate accommodation requiring the prior written approval of the Central Bank, shall be such accommodation in excess of 30% of unimpaired capital to any single borrower or any group of related interests, except in the case of connected lending in the form of a credit extension in the interest, direct or indirect, of a bank's director, in which event subregulation (3) shall apply.

(3) For the purposes of section 17(7) of the Act the prescribed maximum unsecured amount of aggregate loans, advances and other credit facilities made to bank's own directors and their related interests without the permission of the Central Bank shall be 10% of a bank's core capital:

Provided that:

(i) no bank may extend, or allow to be outstanding, to any of its directors or their related interests, facilities which in aggregate exceed the higher of P50 000 or 1% of the core capital, without the approval of the majority of its entire board of directors;

(ii) no bank may extend or permit to be outstanding, to any of its own directors or their related interests, facilities which in aggregate exceed 25% of the bank's unimpaired capital, even if such facilities are secured by tangible security acceptable to the Bank of Botswana.

SCHEDULE

ANNEXURE 1

APPLICATION FOR A LICENCE TO ESTABLISH A BANK

(To be submitted in duplicate)

The Governor of Bank of Botswana
Private Bag 00154, GABORONE

1. I, the undersigned, acting as principal/promotor/in the capacity as duly authorized agent on behalf of ....
("the principal"), hereby apply for a licence under of section 6 of the Banking Act, 1995) to establish a .... bank (specify class).

2. I submit with this application the documentation and a written statement containing the information prescribed by regulation 3 of the Banking Regulations, 1995.

....	....
Date	*Applicant*
Applicant's address..............................	Principal's address..............................
....	....
....	....

FOR OFFICIAL USE

principal/promotor/agent	1	
consent of principal	2	
proposed name	3	
parent bank and primary supervisory authority	4	
nature of business	5	
issued share capital	6	
details of anticipated shareholding	7	
prospective business plan	8	
proposed memorandum and articles	9	
details of management of affairs	10	
audited financial statements (if any)	11	
CV's of executives	12	
CV's of directors	13	
processing fee	14	
undertaking to provide back-up capital	15	

Application granted	
Application refused	
Application granted subject to the appended conditions	

....	....
Date	*Governor*

ANNEXURE 2

NOTICE OF APPEAL

The Minister of Finance and Development Planning
Private Bag 008
GABORONE

In terms of the provisions of section 7(1) of the Banking Act, 1995 and the Banking Regulations, 1995, notice is hereby given that —

(1) ....
Hereinafter referred to as the appellant (In the case of a company, or other institution,

represented herein by ....

and..in

their respective capacities as ....and

....of the appellant, duly authorized thereto by a resolution

of the board of directors (a copy of which is attached hereto as Annexure ....),

....

....
intends to appeal against the following decision of the Bank of Botswana:—

....

....

....

(2) the affidavit/s annexed hereto as Annexure.., will be used in support of the appeal;

(3) the following address shall serve as domicillium citandi et executandi in respect of the statement to be dispatched by the Minister or the Governor of Bank of Botswana, as the case may be.

Applicant's address...............................

....
on behalf of the appellant

....
on behalf of the appellant

....
Date

ANNEXURE 3

NOTICE OF INTENTION TO SURRENDER A BANKING LICENCE

The Governor of Bank of Botswana
Private Bag 00154
GABORONE

1. I, the undersigned, Chairman/Chief Executive of................................, duly empowered thereto, hereby wish to give notice of the intention to surrender a licence of the above-

   mentioned bank which has been operating as................................This is in compliance with section 11 of the Banking Act, 1995.

2. The surrender of the licence came about as per our board resolution number..........................

   dated..The reason(s) for surrendering the licence being...............

   ....

   ....

   ....

   ....

   ....

3. I submit with this notification, duly signed by me, the following annexures:—
   (i) schedule of deposits and other liabilities;
   (ii) schedule, certified by the bank's external auditors, confirming that the bank's assets exceed liabilities;
   (iii) a list of the current Board members and principal officers together with both their current and forwarding addresses.

4 I, ..., on behalf of the Board of Directors of the bank do hereby declare that all depositors' interests will be duly protected, and arrangements have been made, as stipulated hereunder (see annexure ....), to ensure that depositors' funds are fully repaid and/or safeguarded as indicated.

5. The process to wind up operations of the bank is expected to start from............................ to..............................as called for under section 11(2) of the Banking Act, 1995, which states that the surrending of the licence shall not take effect until not less than ninety days after the granting of the permission by the Central Bank.

....	....
Date	*Chairman/Chief Executive*

FOR OFFICIAL USE

SURRENDER OF LICENCE GRANTED ....

SURRENDER REFUSED ....

SURRENDER GRANTED SUBJECT TO THE APPENDED CONDITIONS.......................

....	....
Date	*Governor*

MADE this 29th day of September, 1995.

F.G. MOGAE,
Minister of Finance and Development Planning.