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LEGAL NOTICE NO. 5 OF 2023

Central Bank (Capital Markets) (Amendment) Regulations, 2023

In exercise of the powers conferred by Section 6(j) and Section 69 of the Central Bank Act of 2000¹, I,

MALUKE LETETE

Governor of the Central Bank, in consultation with the Minister responsible for finance make following regulations -

PART I - PREMINARY**Citation and Commencement**

1. These regulations may be cited as the Central Bank (Capital Markets) (Amendment) Regulations, 2023 and shall come into operation on the date of publication in the Gazette.

Interpretation

2. Regulation 4 of the Central Bank (Capital Markets) Regulations, 2014 (referred to in these regulations as the principal regulations) is amended by deleting the definition of 'market intermediary'.

Insertion of new regulations

3. The principal regulations are amended in regulation 15, in subregulation 2 by deleting subregulation (b) and substituting the following -

“Application for an exchange license

(b) be accompanied by proof of payment of an application fee as prescribed in Schedule I.”

Renewal of securities exchange license

4. The principal regulations are amended by inserting the following new regulation after regulation 18 -

“Renewal of securities exchange license

18A. An application for renewal of license issued in accordance with these Regulations shall -

- (a) be submitted 90 days before expiry;
- (b) be submitted in such form as shall be prescribed by the Registrar;
- (c) be accompanied by proof of payment of a renewal fee as prescribed in Schedule I; and
- (d) meet such conditions as may be prescribed by the Registrar.”

Stock Broker’s or Broker - Dealer’s or Dealer’s licence

5. Regulation 25 of the principal regulations is amended -

- (a) in subregulation (1) by deleting the word “not” after the word “person” in line one and inserting the word “not” after the word “shall.”
- (b) by inserting the following new subregulation (2) under regulation 25 and renumbering sequentially;

“An application for a licence as a stock broker, broker dealer or dealer shall be accompanied by the following:

- (a) an application letter;
- (b) proof of payment of an application fee as prescribed in Schedule I;
- (c) payment of annual licence fee as prescribed in Schedule I;
- (d) copies of business incorporation documents;

- (e) shareholding structure;
- (f) copy of professional indemnity insurance cover not less than one million Maloti;
- (g) business or client references from existing companies;
- (h) fitness and probity for chief executive officers or their equivalent as prescribed in Schedule IV;
- (i) bank confirmation of fifty thousand Maloti paid up capital; and
- (i) business plan detailing -
 - (i) office location,
 - (ii) names of principal officers, shareholders, and directors,
 - (iii) information about key personnel's experience in the related activity,
 - (iv) unaudited statements and financial projections,
 - (v) target markets; and
 - (vi) trading platform-IT systems or software."

Stock Broker's or Broker-Dealer's or Dealer's representative licence

6. Regulation 26 of the Principal Regulations is amended by inserting the following new subregulation (2) after regulation and renumbering sequentially;

“Stock Broker’s or Broker-Dealer’s Dealer’s representative license

An application for a licence as a representative of a dealer, broker, investment adviser and broker dealer shall be accompanied by the following;

- (a) an application letter;
- (b) proof of payment of an application fee as prescribed in Schedule I;
- (c) payment of an annual license fee as prescribed in Schedule I;
- (d) business or client references from existing companies; and
- (e) fitness and probity as prescribed in Schedule IV.”

Investment adviser’s license

7. The principal regulations are amended by deleting regulation 27 and substituting the following -

“Investment adviser’s licence

27. (1) A person shall not act as an investment adviser or hold himself out to be an investment adviser unless that person is the holder of an investment adviser’s license in one of the three categories outlined in Schedule II;

(2) An application for license as an Investment adviser shall be accompanied by information provided in Schedule IV;

(3) A person who contravenes subregulation (1) commits an offence and is liable on conviction to a fine not exceeding two hundred thousand maloti or to imprisonment for

a term not exceeding two years or to both fine and imprisonment.”

Appointment of principal officer, director or person in control function by stock brokers, broker dealers, dealers and investment advisors

8. The principal regulations are amended by inserting the following new regulation after regulation 29 -

“Appointment of principal officer, director or person in control function by stock brokers, broker dealers, dealers and investment advisors

29A. (1) Stock brokers, broker dealers, dealers and investment advisors shall -

- (a) maintain a principal office in Lesotho;
- (b) appoint a principal officer, director or person in control function based in Lesotho; and
- (c) notify the Registrar in writing of the location and address of its principal officer, director or person in control function in subregulation (1)(b).

(2) Stock brokers, broker dealers and investment advisors shall prior to appointment of a principal officer, director or person in control function, apply to the Registrar in writing for approval.

(3) The Registrar may refuse to grant an application, or withdraw any prior approval of the appointment of an officer granted under this regulation by giving reasons thereto;

(4) The stock broker, broker dealer, dealer or investment advisor shall appoint another officer or person in control function where the Registrar -

- (a) refuses an application for approval of the appointment of a principal officer, director or person in control function; or
- (b) withdraws an approval previously granted by it.

(5) The principal office under subregulation (1)(a) shall serve as address of service of official correspondence and legal process for, and oversight of, the Principal Officer's function under these regulations."

Application for renewal of a licence

9. The principal regulations are amended by deleting regulation 29 and substituting with the following -

"Application for renewal of a licence

29 (1) An application for renewal of a license for investment advisers shall be made in writing to the Registrar and accompanied by the following documents:

- (a) proof of payment of annual license fee as prescribed in Schedule I;
- (b) copies of business incorporation documents;
- (c) shareholding structure;
- (d) bank confirmation of M50,000.00 paid up capital;
- (e) copy of professional indemnity insurance cover not less than M1,000 000.00 for category one and two and M500 000.00 for category three individual advisers; and

- (f) fitness and probity as prescribed in Schedule IV.

(2) An application for renewal of a license for a stock broker, dealer or broker dealer shall be made in writing to the Registrar and accompanied by the following:

- (a) proof of payment of annual license fee as prescribed in Schedule I;
- (b) bank confirmation of M50,000.00 paid up capital;
- (c) copy of professional indemnity insurance cover not less than M1,000 000.00;
- (d) copies of business incorporation documents;
- (e) shareholding structure; and
- (f) fitness and probity for chief executive officers or their equivalent as prescribed in Schedule IV.

(3) An application for renewal of license of a representative of stock broker, investment adviser, dealer or broker dealer shall be made in writing to the Registrar and be accompanied by the following;

- (a) proof of payment of annual license fee as prescribed in schedule 1; and
- (b) fitness and probity as prescribed in Schedule IV.”

Grant of stock broker's, broker-dealer, dealer's license or investment adviser license

10. The principal regulation is amended in regulation 30 by deleting sub-regulation (3) and substituting the following new subregulation -

“Grant of stock broker's, broker-dealer, dealer's license or investment adviser licence

(3) Where an application is made for the grant or renewal of a stock broker's, broker-dealers, dealers or investment advisers license, the Registrar shall refuse the application if -”

Prospectus

11. Regulation 52 of the principal regulations is amended by -

(a) deleting subregulation (1) and substituting the following:

(1) Despite anything to the contrary contained in any law, and subject to subregulations (2) and (3), a person shall not issue or cause to be issued in Lesotho an advertisement offering securities to the public unless the issuer or offeror of such securities has submitted for clearance or approval to the Registrar, and the Registrar has approved, a prospectus which complies with the requirements of this part.”

(b) inserting as new subregulation after subregulation (2) and re-numbering sequentially:

“For the purpose of issuance of shares the approving authority shall remain with the Registrar of Companies, and the applicant shall consult with the Registrar of Capital Markets to ensure that the prospectus is inclusive of the Registrar of Capital Markets additional requirements.”

Contents of prospectus

12. Regulation 53 of the principal regulations is amended by deleting sub-regulation (1) and substituting the following new regulation -

“Contents of prospectus

(1) The Registrar shall not approve or clear a prospectus unless it satisfies the content of subregulation (2), (4) or (5), as the case may be.

(2) A prospectus for issuance shall contain -

- (a) full name and addresses of attorneys, investment advisers, bankers, auditors, underwriters and brokers;
- (b) rights of holders of securities;
- (c) statement of legal affairs including but not limited to legal risks exposure;
- (d) curriculum vitae of the directors of applicant issuer;
- (e) price information;
- (f) share capital information;
- (g) all risk factors;
- (h) purpose of proceeds of the issue;
- (i) size of the issue; and
- (j) material contracts as prescribed in Schedule V.

(3) The contents of prospectus in subregulation (2) above shall be supported by the following:

- (a) its financial track record including and if applicable, a financial track record of its subsidiaries for the preceding three financial years;
- (b) a copy of its incorporation documents;
- (c) where applicable, a copy of proposed underwriting agreements and contracts;
- (d) confirmation that:
 - (i) all applicable regulatory disclosures have been made to the Registrar, and
 - (ii) there are no material matters, other than those disclosed in the prospectus;
- (e) financial projections after the issue;
- (f) resolutions, authorizations and approvals related to the issuance; and
- (g) a valuation report by a licensed or authorized entity.

(4) A prospectus to offer shares shall be approved by the Registrar of Companies subject to clearance by the Registrar of Capital Markets if it contains content in subregulation (2).

(5) A prospectus for offer of debt shall, in addition to the content in subregulation (2), contain the following:

- (a) nature and type of instrument;
- (b) tenor of instrument;

- (c) interest rate;
- (d) frequency and dates of payments of interest;
- (e) date and time of placement; and
- (f) allocation methodology.

(6) In addition to supporting documents in subregulation (3), a prospectus for issuance of debt shall provide total indebtedness of the applicant issuer.

(7) The Registrar may request an offer to set up a sinking fund by which an issuer sets aside money over time to retire its indebtedness.

(8) An applicant shall pay to the Registrar, an offer fee of the lower of 0.1% of the offer size or M50,000.00.”

Insertion of new regulation

13. The principal regulations are amended by inserting the following new regulation 50 under Part IX and renumbering sequentially -

“Application procedure for offer of securities preliminary conference

50A. (1) An applicant shall request a preliminary conference with the Registrar for the purpose of declaring the intention to offer.

(2) The Registrar shall arrange and inform the applicant of the date, time and venue for the requested preliminary conference.

(3) At the conference, the Registrar shall provide the applicant with an overview of the relevant laws and regulations governing the intended transaction.

Submission of application documents

50B. (1) If in the opinion of the Registrar, the applicant satisfies the requirements of the regulations, the applicant shall be allowed to offer securities.

(2) The Registrar shall send a formal letter of acknowledgement or letter of deficiency within ten days of receipt of application documents.

(3) The letter of deficiency shall outline deficiencies in the documents and set the timelines within which same shall be rectified.

(4) The Registrar shall within ninety working days of receipt of application documents complete the application process provided that in the event of deficient application, the period will run from the date of rectification.

(5) Where the deficiencies are not rectified within the period prescribed in a letter of deficiency, the Registrar shall decline the application.

(6) The applicant shall be barred from submitting any further documents or a new application for a period of twelve months after unsuccessful application.”

Disclosure of obligation

14. The principal regulations are amended in regulation 55 by inserting the following new subregulation (4) after subregulation (3) and renumbering sequentially -

“Disclosure of obligation

(4) Notwithstanding the provisions of subregulation 55(3) an issuer who initially held shares privately and intends to list or publicly issue such shares shall be bound by the provisions of regulations 51, 52 and 53 of these regulations.”

Offences and Penalties

15. Regulation 66 is amended by inserting after, subregulation (b) the following new subregulation -

“Offences and Penalties.

- (c) notwithstanding subregulations (a) and (b) above, the Registrar may impose by written notice to any person subject to these regulations who contravenes any -
 - (i) provision of the regulations; or
 - (ii) 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 the regulations;

A penalty not exceeding M50,000.00, and in the case of a continuing offence, an additional daily penalty to be determined by the Registrar, and a total of which shall not exceed M100,000.00. In the case where the total daily penalty exceeds M100,000.00, the Registrar shall revoke or suspend the license in terms of Regulation 35.”

Combating money laundering and financing of terrorism.

16. The principal regulations are amended by inserting the following new regulation 72 under Part XIII -

“Combating money laundering and financing of terrorism.

72A. (1) The licensee shall establish procedures to

prevent money laundering and financing of terrorism in accordance with the relevant legislation, including -

- (a) performing the necessary know-your-customer due diligence on the unit holders, and fit and proper due diligence on customers, substantial shareholders and beneficiaries;
- (b) taking enhanced measures with respect to higher risk customers, shareholders, persons with principal interest and other beneficiaries;
- (c) monitoring complex, unusually large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose;
- (d) reporting suspicious transactions to the financial Intelligence Unit, for analysis and possible referral for investigation and prosecution;
- (e) developing internal programs, including training programs, procedures, controls and audit functions to combat money laundering; and
- (f) ensuring that its foreign branches observe appropriate anti-money laundering and combating of financing of terrorism requirements.

(2) The Registrar shall share information and cooperate with other supervisory bodies from domestic and foreign jurisdictions in an effort to prevent money laundering activities and to combat financing of terrorism”.

DATED:

**MALUKE LETETE
GOVERNER
CENTRAL BANK OF LESOTHO**

NOTE

1. Act No. 46 of 2014

SCHEDULE I

Licensing Fees

	Application Fee	Annual License Fee
Brokers/Broker Dealers/Dealers	M1,500	M5,000
Securities Exchange	M50,000	M5,000
Representatives	M1,500	M1,500
Category I Investment Advisors	M1,500	M5,000
Category II Investment Advisors	M1,500	M5,000
Category III Investment		
Advisors - Companies	M1,500	M5,000
Category I Investment		
Advisors - Individuals	M1,500	M1,500

SCHEDULE II

Categories of Investment Advisers

- Category one Advises companies or corporates in mergers, acquisitions, debt/equity issuance, listing and can advise institutional investors (trust, pension funds).
- Category two Advises on specific products of securities and cannot offer advice to the public in finance related matters except in specific products they are trained in.
- Category three Advises general public in personal finance or financial products.

SCHEDULE III

Fit and Proper Requirements

	Category 1	Category 2	Category 3	Stakeholders Dealers and Broker Dealers	Stakeholder Capital Market Intermediaries
Completed questionnaire for principal officers and directors (key personnel)	✓	✓	✓	✓	✓
Tax Clearance for all key personnel	✓	✓	✓	✓	✓
Certified statement of all assets and liabilities for all key personnel	✓	✓	✓	✓	x
Letters from financial institutions key personnel had dealings in the last two years	✓	✓	✓	✓	x
Certified copies of identity documents	✓	✓	✓	✓	✓
Certified Copies of	Degree in Finance	Diploma or	A diploma or	A degree in	Diploma or

Qualifications	or related field	certificate in Finance related fields	certificate in finance or related field	finance or related field or	certificate in business or related fields
Work Experience	Two year experience in the field of finance	Certificate of Proficiency in finance or specialized training or two-year experience in the specific product of interest.	Not required but the Registrar may examine the applicant.	Not required but the Registrar may examine the applicant	x
Evidence of prior training under supervision (3 Months)	x	x	x	x	✓

Certification of Proficiency issued by a recognized institution

The symbols, ✓ and x represent 'required' and 'not required' respectively

SCHEDULE IV

APPLICATION DOCUMENTS

Document type	Investment Advisors Categories		
	Category 1	Category 2	Category 3
Proof of payment of application fee	✓	✓	✓
Proof of payment of annual fees as prescribed in schedule 2	✓	✓	✓
Proof of active bank account	✓	✓	✓
Copies of incorporating document	✓	✓	✓
Shareholding structure	✓	✓	✓
Copy of professional indemnity insurance cover	Not less than M1 000 000.00	Not less than M1 000 000.00	Not less than M1 000 000.00 for companies Not less than M500 000.00 for individuals

Business or client references for existing companies	✓	✓	✓
Fitness and probity for chief executive officers or their equivalent as prescribed in schedule III	✓	✓	✓
Business plan outlining the following: Office location	✓	✓	✓
Names of principal officers, shareholders and directors	✓	✓	✓
Information about adviser's experience	✓	✓	✓
Unaudited statements and financial projections	✓	✓	✓
Target market	✓	✓	✓
Platform – IT systems and software	✓	✓	✓

The symbols, ✓ and ✗ represent 'required' and 'not required' respectively.

Schedule V

Definition of Material Contract

Material contract refers to any contract to which the issuer is a party, as to which the breach, non-performance, cancellation or failure to renew by any party thereto could reasonably be expected to have a substantial effect on the operations of the issuer. Material contracts include -

- (a) all material agreements, contracts, commitments or understandings between the Issuer and current clients;
- (b) any material licensing, franchise distribution, sales or agency contracts to which the Issuer is a party;
- (c) any contract purporting to limit or restrain the Issuer's business activities or ability to compete in any market;
- (d) any contract that gives third parties the right to consent to or approve, assign or cancel the contract;
- (e) any contract that gives third parties the right to receive payments upon any change of control of the Issuer or upon any merger;
- (f) forms of all material rental, warranty and service agreements of the Issuer;
- (g) all significant documents, including indemnity agreements, relating to any material acquisitions or dispositions by the Issuer;
- (h) all warranties, guarantees and other obligations given or incurred by the Issuer with respect to their respective products or services;
- (i) all agreements entered into by the Issuer with any competitor;
- (j) all material agreements between the Issuer and parent of the Issuer or any subsidiary of a parent of the Issuer; and
- (k) any other contracts which in the Issuer's view are material to its business and such other contracts as may be prescribed by the Regulator.

The dates of and parties to, all material contracts entered into within the two years immediately preceding the publication of the prospectus, together with a summary of the principal contents of each contract including particulars of any consideration passing to or from the issuer or any subsidiary shall be indicated in every prospectus.

