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FINANCIAL INSTITUTIONS (ANCILLARY FINANCIAL SERVICE PROVIDERS) (LICENSING REQUIREMENTS) REGULATIONS 2003

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LEGAL NOTICE NO. 199 OF 2003

**Financial Institutions (Ancillary Financial Service Providers) (Licensing Requirements) Regulations 2003**

In exercise of the powers conferred upon the Commissioner of Financial Institutions by section 12 of the Financial Institutions Act 1999<sup>1</sup>, the Commissioner makes the following Regulations:

**PART I  
PRELIMINARY**

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## **Citation and commencement**

1. These Regulations may be cited as the Financial Institutions (Ancillary Financial Service Providers) (Licensing Requirements) Regulations, 2003 and shall come into operations on the date of their publication in the Gazette.

## **Interpretation**

2. In these Regulations, unless the context otherwise requires -
- (a) “ancillary financial service provider” means a person who engages in providing auxiliary financial services, other than management of collective investment schemes, such as foreign exchange dealing services, electronic fund transfer services, money market dealing, money market brokage, private equity fund management, and any other similar auxiliary financial services;
  - (b) “applicant” means an applicant for provision of ancillary financial services;
  - (c) “the Act” means the Financial Institutions Act of 1999;
  - (d) all other words used have the same meaning ascribed to them under the Act.

## **Objectives**

3. These Regulations are meant to establish clear and objective criteria for the regulation and supervision of the persons or institutions licensed to provide ancillary financial services.

## **Application**

4. These Regulations shall apply to a person or a licensed institution applying for, or licensed to, engage in the provision of ancillary financial services in Lesotho, in accordance with the provisions of section 12 of the Act and these Regulations.

## PART II REGULATORY REQUIREMENTS

### Ownership structure

5. (1) There shall be sufficient transparency in the ownership structure of the proposed ancillary financial service provider to enable the Commissioner to evaluate its principal, direct and indirect shareholders and its corporate affiliations.

(2) A review shall be done of the controlling shareholders' past banking and non-banking business ventures and their integrity and standing in the business community, as well as the financial strength of all principal shareholders and their ability to provide further financial support should it be needed.

(3) Any change regarding the information referred to under sub-regulation (1) which occurs during the processing of the application for provision of ancillary financial services shall be duly communicated to the Commissioner.

(4) Subject to the provisions of section 15 of the Act, any material change regarding the information referred to under sub-regulation (1) shall be deemed as a new application for provision of ancillary financial services.

### Directors and officers

6. (1) An applicant shall, in the case where -

- (a) an applicant is an individual, the applicant's senior management staff; and
- (b) an applicant is a company, partnership, syndicate, association or body of persons, corporate or incorporated, the applicant's directors and senior management staff, prove to the satisfaction of the Commissioner that the applicant meets the fit and proper test based on the information provided in subregulation (2).

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(2) An applicant shall submit the following information to the Commissioner -

- (a) regarding each of the directors or senior officers -
  - (i) personal history;
  - (ii) educational qualifications;
  - (iii) business or employment status;
  - (iv) experience in auxiliary financial services applied for;
  - (v) integrity and standing in the business community; and
  - (vi) any other information that the Commissioner may request;
- (b) regarding each of the controlling shareholders -
  - (i) personal history;
  - (ii) educational qualifications;
  - (iii) business or employment status;
  - (iv) experience auxiliary financial services applied for;
  - (v) past banking and non-banking business ventures;
  - (vi) integrity and standing in the business community;
  - (vii) financial strength and ability to provide further financial support should it be needed; and

- (viii) any other information that the Commissioner may request.

(3) Subject to the provisions of Part VII of the Act, the qualifications of the directors or senior officers shall be at a level which enables them to conduct business competently and competitively with the existing licensed institutions.

### **Capital Adequacy**

7. (1) The applicant's capital shall be adequate to support the projected volume and type of services planned in a competitive environment.

(2) The minimum amount of initial paid-up or assigned capital shall be M250,000 to be invested by an applicant or such required amount which the Commissioner may prescribe.

(3) The Commissioner shall not issue a license to an applicant for provision of ancillary financial services unless the applicant fulfils the minimum paid-up or assigned capital prescribed under subregulation (2), and the applicant shall, at all times, maintain a minimum unimpaired capital fund.

### **Overall viability**

8. (1) In order for the Commissioner to approve the license of an applicant, the applicant shall develop and submit to the Commissioner a business plan which is sufficiently robust to demonstrate that the business will succeed in the market.

(2) The applicant shall, in developing the business plan, take into account the following factors -

- (a) projected activities;
- (b) existing and potential competitors in the sector;
- (c) anticipated problems and their possible remedies; and
- (d) any other element that may affect the growth and projected performance of an ancillary financial service



provider.

- (3) The business plan shall -
  - (a) provide detailed financial projections which demonstrate medium and long term viability;
  - (b) state sufficient information on the financial resources of the founders to support the ancillary financial service provider through its *de novo* phase; and
  - (c) describe how the institution is to be organised and controlled internally and include internal policies and procedures.

### **Effects on competition, community and the economy**

9. (1) An applicant shall conduct a market survey to prove the value and competitive strength of the proposed provision of ancillary financial services.

(2) The Commissioner shall assess the effects that the proposed ancillary financial service provider may have on competition, the community and the economy.

(3) The Commissioner may, if satisfied in making the assessment under sub-regulation (2) through a carefully conceived plan and strategy, give favourable consideration to an application for provision of ancillary financial services which establishes a role for the proposed institution in meeting identified needs for a particular area or sector of the economy to be served by it.

### **Supervision**

10. (1) The Commissioner shall, if necessary, invoke the provisions of Part VIII of the Act for the purposes of obtaining and assessing financial and supervisory information of an ancillary financial service provider.

(2) The applicant shall make sure that there are no factors which may inhibit effective supervision such as inadequate or non-availability of information and lack of transparency.

(3) With specific reference to proposed foreign ancillary financial service provider, a level of co-operation between the Commissioner and the home country supervisor shall be established to permit the conduct of consolidated supervision and the observance of international supervision standards.

### **PART III LICENSING PROCEDURES**

#### **Preliminary conference**

11. (1) For the purposes of licensing procedures in this Part, all licensing applications shall be directed to the Supervision Department of the Central Bank of Lesotho hereinafter referred to as “the Supervision Department”.

(2) As a first step of initiating the licensing process, the applicant shall request a preliminary conference with the Supervision Department for purposes of declaring the intention to provide ancillary financial services.

(3) The Supervision Department shall arrange the date, time and venue for the requested preliminary conference.

(4) At the conference, the Supervision Department shall -

- (a) provide the applicant with an overview of the relevant provisions of the Act and its Regulations governing the provision of ancillary financial services concerned; and
- (b) explain the criteria that are used in evaluating the application for provision of ancillary financial services concerned.

#### **Application documents**

12. (1) If, in the opinion of the Supervision Department, the applicant reasonably establishes capacity and seriousness of intent to provide ancillary financial service, the Supervision Department shall provide the applicant with -

- (a) an Application Form as set out in Schedule I;

- (b) an Information Sheet as set out in Schedule II; and
- (c) a Personal Declaration Sheet as set out in Schedule III, of these Regulations.

(2) The Supervision Department shall, during the preliminary conference, provide the explanations or clarifications regarding completion of the Forms referred to under sub-regulation (1) and any other supporting documents that the Supervision Department may request from the applicant.

(3) The applicant shall, on completion of the Forms, submit the forms to the Supervision Department.

(4) Submission of the completed forms or any other requirements referred to under sub-regulation (1) that have false or misleading information shall constitute refusal to issue a license by the Commissioner in accordance with section 15 of the Act.

### **Supporting documents**

13. (1) Where the Supervision Department requests supporting documents or any other requirements from the applicant, such documents or requirements shall not be of a date not earlier than 90 days prior to the filing of an application for provision of ancillary financial services.

(2) The provisions of sub-regulation (1) shall not apply to the audited financial statements which shall be for 2 most recent annual or interim audits.

(3) Submission of supporting documents or any other requirements referred to under sub-regulation (1) that are false or misleading shall constitute -

- (a) in a case where the Commissioner has not yet issued the applicant with a license, refusal to issue a license;
- (b) in a case where the Commissioner has issued the applicant with a license, revocation of a license, in accordance with section 15 of the Act.

**Acknowledgement**

14. (1) The Supervision Department shall, within 10 days of receipt of a completed application form from the applicant, send the applicant a letter of -

- (a) acknowledgement that shall serve as a notice that the Supervision Department found the documents submitted to be complete, and that the Supervision Department is going to commence process of evaluating the application; or
- (b) deficiency that shall outline deficiencies in the application and provide a time frame within which rectification of the deficiencies is to be submitted.

(2) The Supervision Department shall not proceed with the evaluation of the application unless the deficiencies are rectified within 10 days.

**Processing of application**

15. The Supervision Department shall, within 30 days after receipt of the completed and acceptable application for provision of ancillary financial services, process the application in accordance with the provisions of regulation 13.

**Notice of compliance**

16. If the evaluation of the application establishes that the applicant is likely to be granted a license as requested, a notice shall be sent to the applicant to comply with the required paid or assigned capital.

**Issuance or refusal of license**

17. (1) The Commissioner shall, upon determination that the applicant fully satisfies the licensing criteria and other requirements, issue the applicant with a license in accordance with section 12 of the Act 1999.

(2) The Commissioner may impose such terms and conditions as the Commissioner may deem fit on the license issued under sub-regulation (1).

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(3) If the Commissioner determines that the applicant does not fully satisfy the licensing criteria and other requirements, the Commissioner shall, in writing, inform the applicant of his refusal to issue a license, and refund the registration fee and license fee paid by the applicant.

### **Validity of license**

18. (1) The license issued under regulation 17 shall remain valid for a period of 1 year unless is revoked by the Commissioner.

(2) A licensed ancillary financial service provider shall file an application for renewal of the license 3 months before the expiry of the valid license.

(3) The Commissioner may, upon renewal of a license and after giving a reasonable notice to the licensed ancillary financial service provider, amend the terms and conditions of such a license.

### **License fee**

19. (1) The Commissioner shall prescribe the license fee for provision of ancillary financial services by Notice published in the Gazette.

(2) The Commissioner shall not issue a license to an applicant for provision of ancillary financial services unless the applicant has paid the prescribed license fee.

(3) The Commissioner may, from time to time, review the license fee and prescribe new license fee as he deems fit.

### **Revocation of license**

20. Section 15 of the Act relating to revocation of a license shall apply to a license granted under these Regulations.

**PART IV  
MISCELLANEOUS**

**Commencement of operations**

21. (1) A licensed ancillary financial service provider shall -
- (a) within 6 months after issuance of license, commence its operations; and
  - (b) at least 30 days prior to the commencement date of its operations, notify the Commissioner of such commencement, otherwise the license shall be deemed invalid.
- (2) A licensed ancillary financial service provider shall conspicuously display a copy of the license in each of the approved places of business.

**Notice of appointments**

22. A licensed ancillary financial service provider shall -
- (a) notify the Commissioner of the appointment of any of its directors, branch managers and officers;
  - (b) submit to the Commissioner Personal Declaration Sheet for any of its directors, branch managers and officers as set out in Schedule III of these Regulations;
  - (c) notify the Commissioner of any material change in the information previously submitted in the Personal Declaration Sheet of any of its directors, branch managers and officers under paragraph (b),

within 30 days of the date of such appointment or change in the information.

**Information Sheet**

23. (1) A licensed ancillary financial service provider shall -
- (a) within 30 days from the commencement date of its operations, submit to the Commissioner a new Information Sheet as set out in Schedule II;

- (b) within 15 days of the occurrence of any material change in the information previously provided under paragraph (a), notify the Commissioner of such change; not effect any major changes or additions to the line of business or principal activities conducted without prior approval of the Commissioner.

(2) A licensed ancillary financial service provider shall, after commencement of its operations, immediately comply with the reporting requirements in accordance with the provisions of the Act.

### **Place of business**

24. Section 17 of the Act relating to the place of business shall apply to a place of business of a licensed ancillary financial service provider.

### **Offences and penalties**

25. Part V of the Act dealing with offences and penalties shall apply to these Regulations.

**E. M. MATEKANE**  
**GOVERNOR, CENTRAL BANK OF LESOTHO**

### **NOTE**

1. Act No. 6 of 1999

### **SCHEDULE I**

**APPLICATION FOR A LICENCE TO PROVIDE  
ANCILLARY FINANCIAL SERVICES  
(Regulation 12(1)(a))**

The Governor  
Central Bank of Lesotho  
P.O. Box 1184  
Maseru 100  
LESOTHO

1. I, the undersigned, acting as principal or duly authorised agent on behalf of or as chairman or chief executive officer of

being duly empowered, hereby apply for a license to provide ancillary financial services.

2. Principal Business Activities

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3. The following documents are being submitted to comply with the initial requirements for evaluation. Where a document is not applicable, this is so stated -

(1) Information Sheet (Schedule II)

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(2) Personal Declaration Sheet (Schedule III)

Name	Position
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

(3) Proposed Capital Structure

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(4) Economic justification and outline of short, medium, and long term business plans with details on -

- (a) financial, commercial, and other business establishments within the proposed area of operation or target markets;



- 
- (b) deposits or other fund gathering sources as well as lending and investment potentials; and
    - (c) financial services to be offered by the applicant.
  - (5) Financial projections (balance sheets, income statements, and cash flow statements) for at least a three-year period, including details of estimated organisation expenses. Assumption used and other bases for projections are indicated.
  - (6) Schematic presentation, with regard to the group of companies of which applicant is a member, reflecting all interests held in and by each member company including the nature of business of each of these entities.
  - (7) List of existing shareholdings of the applicant and its controlling shareholders, directors, officers, and officials in other licensed ancillary financial services provider.
  - (8) Certified true copies of audited financial statements or annual reports for the past two years prepared in accordance with generally accepted accounting principles.
  - (9) Authenticated copies of the memorandum and articles of association or, in case of a foreign ancillary financial service provider, such similar documents regulating its affairs.
  - (10) If the applicant is a foreign ancillary financial service provider, a statement from the supervisory authorities of the home country declaring that -
    - (a) it has given its prior approval for the establishment of a subsidiary, branch or any other office in Lesotho;
    - (b) it shall exercise comprehensive supervision over the parent institution on a consolidated basis; and
    - (c) the applicant's chairman, directors, principal officers and management as a whole are fit and proper persons.

- (11) Latest tax compliance certificate or certified true copy of corporation tax returns.
- (12) Individual credit references for the applicant and each of its principal shareholder, director, officer, and official from at least two banks or financial institutions with whom such persons have had financial dealings within the past two years.
- (13) Certified true copy of the board resolution of the Head Office or Parent Company authorising the establishment of a branch or subsidiary.
- (14) Certified true copy of the board resolution authorising the acquisition of a specified number of shares in applicant institution (if major shareholder is a corporation or company).
- (15) Any query, clarification or additional requirement regarding this application may be directed to the following officers authorised to liaise with the Central Bank.

Name: \_\_\_\_\_ Telephone No.: \_\_\_\_\_

Name: \_\_\_\_\_ Telephone No.: \_\_\_\_\_

4. Certification and Undertaking

I, the undersigned, \_\_\_\_\_  
hereby certify that all information contained in and accompanying this application is complete and accurate to the best of my knowledge and belief.

I also undertake to forthwith notify the Central Bank of Lesotho of any material change in the particulars of this application.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Position)

\_\_\_\_\_  
(Date)

Sworn to at Maseru, Lesotho.

this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Before Me,

COMMISSIONER OF OATHS

FOR CENTRAL BANK OF LESOTHO USE

Received by: \_\_\_\_\_ Date: \_\_\_\_\_

Application Documents checked for completeness by:

Letter of Deficiency or Acknowledgement sent on:

Action Taken

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Evaluating Officer

Director  
Supervision Department

**SCHEDULE II**

**INFORMATION SHEET**

**(Regulations 12(1)(b) and 23(1)(a))**

1. Name: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Principal Business Activities: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Head of Main Office: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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(1) Address:

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(2) Telephone No.

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(3) Telefax No.:

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4. Branches:

Address

Date Approved or Date Opened

<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

5. Subsidiaries & Affiliates:

Name & Type of business

Amount of  
Shares Held

% of Shares  
Held to Total

<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

6. Management:

(a) Board of Directors:

Name

Designation

Present Term  
From – To

No. of Years as  
Board Member

<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>

(b) Board Committee(s):

Name & Purpose of Committee(s):	Name of Members
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(c) Officers:

Name	Position	No. of Years as Officer
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(d) Ownership Profile:

	Name	Country of Citizenship	Residence	Paid-up Capital Amt.	%.
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____
5.	_____	_____	_____	_____	_____
6.	_____	_____	_____	_____	_____
7.	_____	_____	_____	_____	_____
8.	_____	_____	_____	_____	_____
9.	_____	_____	_____	_____	_____
10.	_____	_____	_____	_____	_____

Other Shareholders owing less than 5% (number)	_____	_____
TOTAL	_____	_____
	_____	100%

7. Organisation Profile:

- (1) Organisation Chart – Annex a chart indicating major departments or divisions with names and position titles of officers heading each department or division.
- (2) Functions – Annex a list of functions or responsibilities for each department or division listed in organisation chart indicating number of personnel or staff for each.
- (3) Qualifications of its principal shareholders and directors. Annex Personal Declaration Sheet of each principal shareholder, director and officer.
- (4) Powers and purposes. Annex the latest copies of memorandum and articles of association if not previously submitted to the Central Bank.

8. Shareholdings in Other Financial Institutions:

Name of Financial Institution	Shares Owned		% of Capital
	Amount	Number	
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

9. Certification and Undertaking

I, \_\_\_\_\_, certify that all information contained in and accompanying this form is complete and accurate to the best of my knowledge and belief.

I also undertake to forthwith notify the Central Bank of Lesotho within a period of fifteen days of any material change to this Information Sheet.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Position)

\_\_\_\_\_  
(Date)

Sworn to at Maseru, Lesotho.

this \_\_\_\_\_ day of, \_\_\_\_\_

Before Me

A COMMISSIONER OF OATHS

SCHEDULE III

PERSONAL DECLARATION SHEET  
(Regulations 12(1)(c) and 22(b))

1. Name and Capacity of person making this declaration:

(a) Name: \_\_\_\_\_

(b) Position or Capacity: \_\_\_\_\_

2. Date and place of birth:

\_\_\_\_\_  
\_\_\_\_\_

3. (1) Citizen of: \_\_\_\_\_ (Country)      (b) Resident of: \_\_\_\_\_ (Country)

(2) Since \_\_\_\_\_ (Year)      Since \_\_\_\_\_ (Year)

4. Addresses:

(1) Present Business Address  
(Lesotho, since \_\_\_\_\_ )      (Outside Lesotho since \_\_\_\_\_ )  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) Present Residential Address:  
(Lesotho, since \_\_\_\_\_ )      (Outside Lesotho, since \_\_\_\_\_ )



_____	_____
_____	_____
_____	_____

- (3) Last two addresses in Lesotho, if any, during the past 10 years:  
 (Since \_\_\_\_\_ ) (Since \_\_\_\_\_ )

_____	_____
_____	_____
_____	_____

5. Professional Qualifications:

Particulars	Year Obtained
(1) Highest Academic Degree	
_____	_____
_____	_____
_____	_____
2) Special Awards or Honours	
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
(3) Training Courses or Seminars	
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
(4) Membership in Professional Organisations	
_____	_____
_____	_____
_____	_____
_____	_____



## 8. Family Group

Business Affiliation  
 (State Name of Business and Nature  
 of Affiliation i.e. Director, Officer,  
 Shareholder with % holdings  
 specified)

Name

(1) Spouse:

\_\_\_\_\_

(2) Children:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(3) Parents:

\_\_\_\_\_  
 \_\_\_\_\_

(4) Brothers or Sisters:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## 9. Record of court cases or any investigation by governmental professional or any regulatory body (including pending cases or ongoing investigations):

Name of Court or Investigative Body	Full Particulars	Status
_____	_____	_____
_____	_____	_____
_____	_____	_____

10. Documentary Requirements-

- (a) Certified statement of assets and liabilities;
- (b) Latest tax compliance certificate or certified true copy of income tax returns;
- (c) Two letters of character reference certified and duly notarised from individuals other than relatives who have personally known the undersigned for at least ten years;
- (d) Two letters, duly certified and notarised, from financial institutions with whom the undersigned has had dealings for the last two years on the performance of past and present accounts such as unauthorised overdraft on deposit accounts, past-due or delinquent accounts; and
- (e) Police Clearance.

11. Certification and Undertaking

I, \_\_\_\_\_ certify that all the above information contained in and accompanying this form is complete and accurate to the best of my knowledge and belief and that I do not possess any of the disqualification provided under section 43(1) of the Financial Institutions Act.

I also undertake to notify the Central Bank of Lesotho within period of fifteen days, of any material change to this Personal Declaration Sheet.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Position)

\_\_\_\_\_  
(Date)

Sworn to at Maseru, Lesotho

this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Before Me,

**COMMISSIONER OF OATHS**