STATUTORY INSTRUMENTS
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STATUTORY INSTRUMENTS SUPPLEMENT

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STATUTORY INSTRUMENTS

2005 No. 42.

THE FINANCIAL INSTITUTIONS (CAPITAL ADEQUACY REQUIREMENTS) REGULATIONS, 2005.

ARRANGEMENT OF REGULATIONS.

Regulation

SCHEDULE—QUARTERLY COMPUTATION OF CAPITAL ADEQUACY

FORM B S 100A

STATUTORY INSTRUMENTS

2005 No. 42.

The Financial Institutions (Capital Adequacy Requirements) Regulations, 2005.

(Under section 131(1) of the Financial Institutions Act, 2004 Act No. 2 of 2004)

IN EXERCISE of the powers conferred on the Central Bank by section 131(1) of the Financial Institutions Act, 2004, these Regulations are made this 16th day of February, 2005.

PART I—PRELIMINARY

1. These Regulations may be cited as the Financial Institutions (Capital Adequacy Requirements) Regulations, 2005. Title

2. These Regulations apply to all financial institutions in Uganda. Application

3. In these Regulations, unless the context otherwise requires— Interpretation

"Act" means the Financial Institutions Act, 2004;

"capital adequacy" means maintaining the minimum capital and on-going capital requirements prescribed by section 27 of the Act;

"capital deficiency" means failure to meet all the capital requirements prescribed by the Act;

"capital requirement basis" means the total upon which core and supplementary capital is measured to determine the capital requirement calculation for capital adequacy and consists of risk-adjusted assets and contingent claims based on a risk weighting of the assets and off-balance sheet items as reported on the periodic returns submitted by a financial institution;

"contingent claims" has the same meaning as "off balance sheet items" as defined in the Act;

"core capital" means permanent shareholders' equity in the form of issued and fully paid- up shares plus all disclosed reserves, less goodwill and any intangible assets;

"hybrid capital instruments" includes debt instruments that are essentially permanent in nature and have close similarities to equity such as irredeemable cumulative preference shares, perpetual debt instruments and mandatory convertible debt instruments;

"revaluation reserve" means the increase in book value of a fixed asset based on an independent and professional appraisal as to the market value of that asset;

"subordinated term debts" include non-permanent or limited life debt instruments with an original maturity of at least five years and which are subordinated in right of repayment of principal and interest to all depositors and other creditors of the financial institution such as redeemable preference shares;

"supplementary capital" means general provisions which are held against the future and current unidentified losses that are freely available to meet the losses which subsequently materialize, revaluation reserves on banking premises, and any other form of capital as may be determined from time to time by the Central Bank;

"significantly undercapitalised financial institution" means a financial institution which does not comply with any of the following—

(a) hold the minimum capital funds, unimpaired by losses, of at least fifty percent of the requirements prescribed by section 26 of the Act;

(b) hold core capital of at least fifty percent of the requirement prescribed by section 27 of the Act;

(c) hold total capital of at least fifty percent of the requirement prescribed in section 27 of the Act;

"under-capitalised financial institution" means a financial institution which does not fully comply with any, or all of the capital requirements prescribed in sections 26 and 27 of the Act.

Objectives

4. The objectives of these Regulations are—

(a) to ensure strict adherence to the capital requirements prescribed by the Act.

(b) to help ensure that financial institutions hold and maintain a level of capital which is adequate to protect their depositors and creditors against the risk of loss that may arise out of their business activities;

(c) to ensure that financial institutions maintain capital standards recognised internationally as being prudent;

(d) to help promote and maintain public confidence in the Ugandan financial sector.

Rationale

5. The rationale of these Regulations is derived from the following—

(a) a key purpose of capital in a financial institution is to provide a stable resource to absorb any losses incurred by it, and thus protect its depositors and potential depositors from the risk of loss;

(*b*) financial institutions need to maintain a level of capital commensurate with their risk activities in order to minimise the incidence of failure, provide adequate protection to their depositors and thus promote public confidence in the financial system;

(*c*) as a regulatory and supervisory authority, the Central Bank has a duty to ensure that financial institutions, at all times, satisfy the minimum and ongoing capital requirements prescribed by the Act.

(*d*) as financial institutions expand their business internationally, it is of importance to demonstrate that financial institutions in Uganda maintain a level of capital that conforms to international standards.

PART II—REGULATORY REQUIREMENTS.

Minimum paid-up capital requirements for financial institutions

6. (1) The minimum capital funds unimpaired by losses of a licensed bank shall, at any one time, not be less than Uganda shillings four billion.

(2) The minimum capital funds unimpaired by losses of a licensed non-bank financial institution shall at any one time not be less than Uganda shillings one billion.

Minimum on-going capital requirements for financial institutions

7. (1) A financial institution shall at all times maintain a core capital of not less than 8% and a total capital of not less than 12% of the total risk adjusted assets plus risk adjusted off balance sheet items as set out in the Quarterly Computation for Capital Adequacy in the Schedule 1.

(2) The core capital of a financial institution shall at all times be equivalent to at least the minimum capital funds set out in regulation 6 and shall be reduced by goodwill and similar intangible assets, investments in unconsolidated financial subsidiaries and future income tax benefits.

(3) In meeting the core capital requirements, a financial institution may include 50% of their year-to-date net profits.

(4) In meeting the total capital requirement, a financial institution wishing to include elements of supplementary capital, which in the aggregate should not exceed 100% of core capital, must apply to the Central Bank for inclusion of any revaluation reserves on fixed assets, general provisions for losses, hybrid capital instruments and subordinated term debts.

(5) In considering an application submitted under subregulation (4), the Central Bank shall take into account the following—

(a) with regard to revaluation reserves on fixed assets, the independence of the source of the revaluation, the reasonableness of the revaluation amount and if the revaluation reserves have been either excessive in total or in frequency;

(b) with regard to general provisions for losses, the unencumbered nature of the provision and, that such general provisions are created against the possibility of losses not yet identified and are subject to a limit of 1.25% of the weighted risk assets;

(c) with regard to hybrid capital instruments, that they are unsecured, subordinated and fully paid up, they are not redeemable at the initiative of the holder or without the prior consent of the Central Bank, they are able to participate in losses without the financial institution being obliged to cease trading and they allow interest payments to be deferred where profitability does not support payment; and

(d) with regard to subordinated term debt, that they are unsecured, subordinated and fully paid up, they have a minimum original fixed term of over five years which shall be subject to cumulative discount

factor of 20% per year during the last five years to maturity, they are not normally available to participate in the losses of a financial institution on a going concern basis, and they are subject to a maximum aggregate of 50% of core capital.

(6) The Central Bank may prescribe higher on-going capital requirements for a financial institution if the supervisory review process reveals existing risks in the financial institution warranting the increase.

Computation of capital adequacy

8. (1) A financial institution shall at all times maintain adequate records, including daily balance sheets and periodic statements of income and expense to enable proper computation of its capital adequacy.

(2) Each financial institution shall submit on a quarterly basis to the Central Bank, a form titled "Quarterly Computation of Capital Adequacy" as set out in Form B S 100A in the Schedule, to be prepared at the close of business at the end of the months of March, June, September, and December and submitted along with Form BS 100 on the same date.

(3) The Central Bank may use its powers of inspection under section 79 of the Act to verify the accuracy of the form under subregulation (2) and may direct a financial institution to adjust or make corrections on the form submitted, based on the findings of the inspection.

(4) The Central Bank may, at any time and at its discretion, call upon the external auditors of a financial institution appointed under section 62 of the Act, to verify the accuracy of any quarterly data reported on Form BS 100A in subregulation (2).

(5) In determining whether a financial institution is in compliance with the capital adequacy requirements, the Central Bank shall have regard to whether the institution has made adequate provisions for losses in accordance with prudential requirements and followed international accounting standards with regard to income recognition, specifically accrual of interest.

(6) Where a financial institution enters into a transaction that it is prohibited from entering into by section 34 of the Act, the Central Bank shall deduct the outstanding amount of any loan or sum granted or extended to the insider when computing the on-going capital requirements of the institution.

Restrictions on dividends and capital reductions

9. (1) A financial institution shall not, at any time pay or declare any dividend, make any transfer from profits or capital or make any other distributions other than to a reserve account, if the dividend, payment transfer or distribution is likely to result in the financial institution not meeting its capital requirements.

(2) A financial institution shall ensure that it meets all capital requirements prior to the actual payment of dividends.

PART III—PROMPT MANDATORY CORRECTIVE ACTIONS AND MEASURES

Prompt mandatory corrective actions

10. (1) Where the Central Bank determines that a financial institution which complies with all the capital requirements has incurred or is likely to incur large losses within any financial year, it shall take the prescribed corrective actions prescribed in section 85 of the Act.

(2) Where the Central Bank determines that a financial institution is undercapitalised, it shall take the prescribed corrective actions set out in section 86 of the Act.

(3) Where the Central Bank determines that a financial institution is significantly undercapitalised, it shall take any or all the corrective actions provided for in section 87 of the Act.

Penalty

11. The Central Bank shall, pursuant to section 32(3) of the Act, direct a financial institution which paid any dividend, made any transfer from profits or capital or made any other distributions other than to a reserve account that resulted in non-compliance by the financial institution, or while it was non-compliant with capital requirements, to recall all the dividends, payments or distributions made or make good their full value and in addition, pay a civil penalty equivalent to twice the value of dividends, payments or distribution of payments made.

Administrative sanctions

12. In addition to the corrective actions available to it as prescribed in sections 85, 86 and 87 of the Act, the Central Bank may impose any or all of the following administrative sanctions with regard to a financial institution that has a capital deficiency—

(a) suspension of expansion into new banking and financial activities;

(b) suspension of access to new credit facilities of the Central Bank;

(c) suspension of acquisition of fixed assets;

(d) suspension of opening letters of credit or issuance of guarantees;

(e) suspension of acceptance of new accounts; and

(f) suspension or restriction of lending and investment operations.

SCHEDULE

REGULATION 8(2)

FORM BS 100A

Note: This form is primarily based on the 1988 Basel Capital Accord which has been simplified and modified to suit local conditions.

(1) QUARTERLY COMPUTATION OF CAPITAL ADEQUACY

Quarter Ending ____________________

Name of Financial Institution ____________________

I CAPITAL ACCOUNTS (SHS '000s)

1.0 Core Capital (Tier 1)

1.1 Permanent Shareholders' Equity (issued and fully paid-up common shares and irredeemable, non-cumulative preference shares)

____

1.2 Share premium

____

1.3 Prior years' retained profits

____

1.4 Net after-tax profits current year-to-date (50% only)

____

1.5 General reserves (permanent, unencumbered and able to absorb losses)

____

1.6 Less deductions:

(a) goodwill and other intangible assets

____

(b) current year's losses

____

(c) investments in unconsolidated financial subsidiaries

____

(d) deficiencies in provisions for losses

____

(e) prohibited loans to insiders

____

(f) other deductions determined by Central Bank

____

1.7 Total Core Capital (Tier 1)

____

2.0 Supplementary Capital (Tier 2)

2.1 Revaluation reserves on fixed assets

____

2.2 Unencumbered general provisions for losses

____

(not to exceed 1.25 % of the Capital Requirement Basis)

2.3 Hybrid Capital Instruments and others

2.4 Subordinated Term Debt (not to exceed 50% of core capital, subject to discount factor)

2.4 Total Supplementary Capital (not to exceed

____

100% of core capital)

3.0 Total Capital

3.2 Total Capital (Core + Supplementary)

____

II CAPITAL REQUIREMENT BASIS

No.	Assets	Amount per BS 100	Risk Weight	Required Capital
1.	Notes, coins & other cash assets		0%	Nil
2.	Balances with BOU		0%	Nil
3	Due from commercial banks in Uganda		20%	
4	Due from banks outside Uganda with long-term ratings as follows—			
	(1) Rated AAA to AA (-)		20%	
	(2) Rated A (+) to A (-)		50%	
	(3) Rated A (-) and non-rated		100%	
5	Uganda Government securities		0%	Nil
6	Bank of Uganda loan scheme		0%	Nil
7	Loans and advances (net of those secured by cash and Government of Uganda/BOU securities amounting to ______)		100%	
8	Investments		100%	
9	Bank premises and other fixed assets (net of depreciation)		100%	
10	Items in transit, own offices		100%	
11	All other assets (to be reduced by deduction made for goodwill, intangible assets, investments in unconsolidated subsidiaries and future income tax benefits)		100%	
12	Total Risk-weighted Assets			
	Contingent claims		**Conversion Factor**[1]	
13	Contingent claims secured by cash collateral		0%	
14	Direct credit substitutes (guarantees and acceptances)		100%	
15	Transaction related (performance bonds & standbys)		50%	
16	Documentary credits (trade related and self liquidating)		20%	
17	Other commitments (unused formal facilities)		50%	
18	Total Risk-weighted Contingent Claims			
	Capital Requirement Basis (Item 12 plus Item 18)			

[1] The credit conversion factor shall be multiplied by the weights applicable to the category of counter party, i.e. Government—0%, Multilateral Banks—20% and Private Sector—100%.

III CAPITAL REQUIREMENT CALCULATIONS

		Required	Available[2]	Deficiency[3]
1	**Minimum paid-up capital requirement**			
	1.1 Banks 1.2 Non-bank financial institutions			
2	Ongoing Capital Requirement			
	2.1 Core capital 2.2 Total capital			

The amount shown on this form has been shown to be accurate as at the reporting date.

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CHIEF EXECUTIVE OFFICER

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CHIEF ACCOUNTANT

E. TUMUSIIME-MUTEBILE,
Governor, Bank Of Uganda.

[2] Available minimum paid up capital should be net of any impairment such as losses, current or accumulated

[3] Deficiency is the difference between required capital and available capital