



# SWAZILAND GOVERNMENT GAZETTE EXTRAORDINARY

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PUBLISHED BY AUTHORITY

LEGAL NOTICE NO. 157 OF 2001

THE FINANCIAL INSTITUTIONS (CONSOLIDATION) ORDER, 1975  
(King's-Order-in-Council No. 23 of 1975)

THE LENDING LIMIT, AGGREGATION AND ATTRIBUTION REGULATIONS, 2001  
(Under Section 62)

In exercise of the powers conferred by Section 62 of the Financial Institutions (Consolidation) Order 1975, the Minister, after consultation with the Central Bank, hereby makes the following Notice:-

*Citation and Commencement*

1. These Regulations may be cited as the Lending Limit, Aggregation and Attribution Regulations, 2001, and shall come into force on such date as the Minister may, by Notice in the gazette, appoint.

*Interpretation*

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

**“affiliated”** means any person who is controlled, directly or indirectly, by another person and includes the following-

- (a) in the case of an individual, an affiliate includes-

- (i) any member of the individual's immediate family;
- (ii) any other person who is controlled, directly or indirectly, by the individual regardless whether alone or with the individual's affiliates; or
- (iii) any affiliates of the individual's affiliates;

- (b) in the case of a company or other body corporate, an affiliate includes-

- (i) any subsidiary;
- (ii) its holding company;
- (iii) any subsidiary of its holding company; or
- (iv) any person who owns or controls, directly or indirectly, the company or body corporate regardless whether alone or with associates;

**“bankers' acceptance”** means drafts or bills of exchange drawn upon a financial institution and having a term not more than six (6) months, exclusive of days of grace and which-

- (a) arise out of transactions involving the importation or exportation of goods; or
- (b) arise out of transactions involving the domestic shipment of goods or financing of operations;  
and

- (c) are secured at the time of acceptance by documentation conveying or securing title over readily marketable commodities with a current market value equal to at least 115% of the amount of the draft or bill of exchange;

**“borrower”** means a person who is named as a borrower, obligor, or debtor in a loan, or any other person, including but not limited to a drawer, endoser, or guarantor who is considered to be a borrower as a result of a direct benefit of the loan, a common enterprise existing between borrowers, or the same primary sources of repayment on loans to separate borrowers;

**“close of business”** means the time at which a financial institution closes its accounting records for the business day;

**“common control”** means where-

- (a) one or more persons acting together directly or indirectly own, or have the power or ability, to vote twenty percent (20%) or more of the voting securities or voting interests of another person;
- (b) one or more persons acting together control, in any manner, the election of a majority of the directors, trustees, or others exercising similar functions over another person; or
- (c) any other circumstances exist which indicate that one or more persons acting together exercise a controlling influence, directly or indirectly, over the management or policies of another person;

**“common enterprise”** means where separate loans are made to separate persons who-

- (a) are related by common control;
- (b) are engaged in inter-dependent businesses;
- (c) have a substantial financial inter-dependence between the persons; or
- (d) are otherwise affiliated;

**“corporate group”** means a corporation and all its subsidiaries; a corporation is a subsidiary of any person which owns or controls, directly or indirectly, more than 50% of the voting stock of the corporation;

**“direct benefit”** means if the proceeds, or assets purchased with the proceeds, of a loan to a borrower are transferred in any manner to or for the benefit of another person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services;

**“large credit exposure”** means any loans to a single borrower or group of related borrowers which, in aggregate, equals or exceeds ten percent (10%) of a financial institutions unimpaired paid-up or assigned capital and unimpaired balance in the reserve account;

**“lending limit”** means the maximum amount of loans a financial institution can advance or commit to a single borrower or related group of borrowers at any one time, which is twenty-five percent (25%) of the unimpaired paid-up or assigned capital and unimpaired balance in the reserve account of a financial institution;

**“loan”** means-

- (a) any direct or indirect advance of funds by a financial institution to a person that are conditioned on the obligation of the person to repay the money or that are repayable from specific property pledged by or on behalf of the person; or
- (b) a contractual obligation of a financial institution to advance money to or on behalf of a person;

and includes any advance or credit facility or financial guarantee or any other liability of a person to a financial institution but does not include accrued and unpaid interest or discounted interest on an existing loan;

**“person”** means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, company, corporation, sovereign government or agency, or local government authorities, or any similar entity or organization;

**“readily marketable commodities”** means agricultural or mining commodities such as coffee, tea, sugar, mineral ores, etc. which are traded on established international markets and for which there are recognized daily price quotations;

**“substantial financial inter-dependence”** means where fifty percent (50%) or more of one person’s gross receipts or gross expenditures, on an annual basis, are derived from transactions with the other person;

**“unimpaired paid-up or assigned capital and unimpaired balance in the reserve account”** means the lesser of -

- (a) the aggregate balances in the Issued Share Capital, Share Premium, and Statutory Reserve accounts; or
- (b) the net balance of equity capital.

#### *Lending Limitations*

3. (1) A financial institution shall not, directly or indirectly -

- (a) grant to any person or permit to be outstanding any loan;
- (b) give any financial guarantee; or
- (c) incur any other liability on behalf of that person;

such that when aggregated, the total value of such loans, financial guarantees or other liabilities on behalf of that person is at anytime more than twenty-five percent (25%) of the unimpaired paid up or assigned capital and unimpaired balance in the reserve account of such financial institution.

(2) A financial institution shall not permit the aggregate of large credit exposures outstanding at any one time to exceed eight hundred percent (800%) of the unimpaired paid up or assigned capital and unimpaired balance in the reserve account of the financial institution.

#### *Exceptions*

4. (1) The limitations set forth in Regulation 3(1) shall not apply to subregulations (2), (3), (4), (5) and (6) of this Regulation.

(2) Banker's acceptances issued by another financial institution shall not at anytime exceed more than two hundred percent (200%) of the unimpaired paid-up or assigned capital and unimpaired balance of the reserve account of the purchasing financial institution.

(3) Loans secured by readily marketable commodities shall be limited to an additional fifty percent (50%) of the financial institution's unimpaired paid-up or assigned capital and unimpaired balance of the reserve account.

(4) Loans which are fully secured at all times by notes, bonds, treasury bills or other similar certificates of indebtedness issued by the Government of Swaziland, or which the Government of Swaziland has unconditionally guaranteed in writing as to the payment of both principal and interest, or portions thereof, shall be exempt from the lending limit.

(5) Loans which are fully secured at all times by a segregated deposit account in the lending financial institution, or portions thereof, shall be exempt from the lending limit, if -

- (a) the lending financial institution has obtained and maintains on file a document signed by the borrower giving the financial institution the legal right to offset the deposit against the loan; or
- (b) the deposit is in a different currency from the loan, then the deposit must be revalued on a regular basis but not less frequently than the last business day of each calendar month using applicable foreign exchange rates:

Provided that if the value of the deposit falls such that the balance of the loan, after deducting the value of the deposit, exceeds the lending limit of the financial institution, then the financial institution must within five (5) business days make reasonable efforts to cause the balance of the loan, after deducting the value of the deposit, to be reduced to a level at or below the lending limit of the financial institution.

(6) Loans which are fully secured at all times by notes, bonds, treasury bills or other similar certificates of indebtedness issued by such foreign governments, or portions thereof, as may be approved by the Central Bank of Swaziland, or which such foreign governments have unconditionally guaranteed in writing as to the payment of both principal and interest shall be exempt from lending limit.

#### *Aggregation and Attribution*

5. (1) For the purpose of determining when to aggregate and attribute the loans of one borrower to another person, to determine compliance with the financial institution's lending limit, the provisions of sub regulations (2), (3), (4), (5) and (6) shall apply.

(2) The loans of one borrower will be attributed to another person, and each person will be considered a borrower when -

- (a) the proceeds of the loan are to be used for the direct benefit of the other person, or to the extent the proceeds of the loan are to be used for the direct benefit of the other person;
- (b) a common enterprise is deemed to exist; or
- (c) the primary source of repayment is the same for each loan for each person, provided that an employer will not be considered a primary source of repayment solely because of wages and salaries paid to an employee.

(3) Loans to a corporate group will be aggregated where there exists a direct benefit or common enterprise, or where the expected source of repayment on the loans for each person and its subsidiary are the same.

(4) Loans to a partnership, joint venture, or association will be attributed to each member of the partnership, joint venture, or association, unless by the terms of the written partnership, joint venture, or associate agreement the partners or members are not legally liable for the debts or actions of the partnership, joint venture, or association, and provided the partners or members have otherwise not agreed to guarantee or be personally liable on the loan.

(5) Loans to a member of a partnership, joint venture, or association will be attributed to the partnership, joint venture, or association whenever a direct benefit or common enterprise exists, or where the expected source of repayment on the loans to the person and the partnership, joint venture or association are the same.

(6) The derivative obligation of the guarantor of a loan will not be aggregated with direct loans to the guarantor if the lending financial institution is relying primarily on the creditworthiness of the primary obligor provided the proceeds of the loan were used for the direct benefit of the guarantor or a common enterprise has not been found to exist between the borrower and the guarantor.

Provided that the reliance of the lending financial institution on the primary obligor for repayment of the loan shall be evidenced by a written certification by an officer of the lending financial institution that the lending financial institution, on reasonably indisputable facts as reflected by a written analysis of the primary obligor's financial statement dated not more than sixteen (16) months prior to the date of the loan, is relying primarily on the responsibility and financial condition of the primary obligor for repayment of the loan and not on the guarantee.

Provided further that in the event a loan which is of sufficient credit quality at its inception experiences subsequent deterioration to the point that the primary obligor is no longer performing in accordance with the terms of the initial loan agreement, such event will not result in the loan being attributed to the guarantor by virtue of the primary obligor's non performance, except that, the total amount of such deteriorated loans guaranteed by such guarantor must be aggregated with direct loans of the guarantor to determine whether the guarantor may obtain additional loans from the financial institution.

#### *Loan Participations*

6. For the purpose of determining compliance with the lending limit, the total loans to a borrower may be reduced by that portion sold as a participation by a financial institution on a non recourse basis provided the participation agreement results in the pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders:

Provided that where the participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be considered to exist only if, in the event of default or a comparable event provided in the agreement, the participants share in all subsequent repayments and collections in proportion to their actual percentage participation at the time of the occurrence of the event:

Provided further that if the originating financial institution funds the entire loan, the participants must be contractually obliged to remit their portion to the financial institution before the close of business on the next business day of the originating financial institution or its portion funded by the originating financial institution will be considered a loan by the originating financial institution to the borrower:

Provided further that in the case of a participation sold in a existing loan, the amount of the participation may not be subtracted from the outstanding loans of the originating financial institution until the proceeds of the sale are in the possession of the originating financial institution.

#### *Application*

7. (1) These Regulations apply to loans made on or after the date of publication of these Regulations.

(2) Loans to a borrower made prior to the date of publication of these Regulations which would exceed the lending limit of a financial institution as a result of the requirements of these Regulations will not be cited in violation of these Regulations but will be cited as non conforming loans.

(3) A financial institution may renew, extend the maturity of, or restructure an existing non conforming loan without violating its lending limit or these Regulations provided the financial institution makes a reasonable documented effort to bring the loan into conformance with the lending limit and the provisions of these Regulations, unless-

- (a) additional funds are advanced by the financial institution to the borrower;
- (b) a new borrower replaces the original borrower;
- (c) the Central Bank of Swaziland determines that the renewal, extension or restructuring of the loan is designed to evade the financial institution's lending limit; or
- (d) the renewal or extension of the maturity of the loan exceeds the lesser of the original terms of the loan or one year.

#### *Failure to Comply*

8. If a financial institution fails to comply with the limitations outlined in these Regulations which failure results, or threatens to result, in an unsafe or unsound operating condition, as determined by the Central Bank of Swaziland, the Central Bank of Swaziland may pursue any remedial measures at its disposal in accordance with the provisions of the Financial Institutions (Consolidation) Order, 1975.

M. D. FAKUDZE  
*Principal Secretary*

MBABANE  
10 October, 2001

## LEGAL NOTICE NO. 158 OF 2001

THE FINANCIAL INSTITUTIONS (CONSOLIDATION) ORDER, 1975  
(King's-Order-in-Council No. 23 of 1975)THE LIMITATIONS ON TRANSACTIONS WITH INSIDERS NOTICE, 2001  
(Under Section 62)

In exercise of the powers conferred by Section 62 of the Financial Institutions (Consolidation) Order 1975, the Minister, after consultation with the Central Bank, hereby makes the following Notice:-

*Citation and Commencement*

1. This Notice may be cited as the Limitations on Transactions with Insiders Regulations, 2001, and shall come into force on the date of publication in the Gazette.

*Interpretation*

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

**“company”** means any corporation, partnership, business trust, association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or any other form of business entity not specifically listed herein;

**“control or controlled”** means where -

- (a) one or more persons acting together directly or indirectly own, or have the power or ability, to vote twenty percent (20%) or more of the voting securities or voting interests of another person;
- (b) one or more persons acting together control, in any manner, the election of a majority of the directors, trustees, or others exercising similar functions over another person; or
- (c) any other circumstances exist which indicate that one or more persons acting together exercise a controlling influence, directly or indirectly, over the management or policies of another person;

**“director”** means any person serving as a member of the board of directors or governing body of a-

- (a) financial institution, whether or not being compensated;
- (b) holding company of which the financial institution is a subsidiary; or
- (c) subsidiary of the financial institution or the holding company of the financial institution;

**“equity capital”** means the aggregate sum of balances reported in the various capital accounts which represent permanent funds freely available to absorb unexpected losses;

**“holding company”** means any company which has control over another company or financial institution;

**“immediate family”** means the parents, spouse(s) and children of an individual;



**“insider”** means any officer, director, or principal shareholder, or immediate family member thereof, of a financial institution, the holding company of that financial institution, or any subsidiary of the financial institution or the holding company of that financial institution;

**“issued share capital”** means capital funds received from investors in exchange for common stock;

**“loan”** means-

- (a) any direct or indirect advance or commitment to advance funds by a financial institution to a person that are conditioned on the obligation of the person to repay the funds or that are repayable from specific property pledged by or on behalf of the person;
- (b) a contractual liability of a financial institution to advance funds to or on behalf of a person;
- (c) indebtedness evidenced by a lease financing transaction in which the financial institution is the lessor; or
- (d) an overdraft facility to be funded by the financial institution on behalf of a person;

but does not include accrued but uncollected interest or discounted interest;

**“officer”** means any person who participates or has authority to participate in policy making functions, whether or not-

- (a) the officer has an official title;
- (b) the title designates the officer as an assistant;
- (c) the officer is serving without salary or compensation;

**“person”** means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, non profit making corporation, sovereign government or agency, local authority, or any similar entity or organization;

**“principal shareholder”** means any person that directly or indirectly, or acting through or in concert with one or more other persons, owns, controls, or has the power to vote more than twenty per cent (20%) of the total outstanding shares of stock of a financial institution;

**“related interest”** means a company that is controlled by a person, or a person that benefits or is controlled by such a person;

**“share premium”** means excess capital funds paid by shareholders over and above the stated par value of common stock;

**“statutory reserve”** means the amount of retained earnings segregated and maintained separate and apart from prior and current year retained earnings as required pursuant to Section 18 of the Financial Institutions (Consolidation) Order, 1975;

**“subsidiary”** means any company which is controlled by another company or financial institution;

**“unimpaired paid-up or assigned capital and unimpaired balance in the reserve account”**  
means the lesser of -

- (a) the aggregate balances in the Issued Share Capital, Share Premium, and Statutory Reserve accounts; or
- (b) the net balance of equity capital.

*Limitations and General Requirements.*

3. (1) The total of all loans outstanding at any one time to an insider and his related interests when aggregated shall not exceed twenty-five percent (25%) of the financial institution's unimpaired paid-up or assigned capital and unimpaired balance in the reserve account:

Provided that, as required by Section 24 of the Financial Institutions (Consolidation) Order, 1975, the aggregate amount of unsecured loans outstanding at any one time to a director, his related interests, or any loan to any other person which a director acts as guarantor, shall not exceed fifty thousand Emalangeni (E50,000).

(2) All loans to insiders of the financial institution, or to any related interest of an insider, shall-

- (a) be made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable loans to other persons who are not insiders nor employed by the financial institution; and
- (b) not involve more than the normal risk of repayment or pose other unfavourable features.

(3) Where the aggregate of any new loan plus all other outstanding loans to an insider and his related interests exceed five percent (5%) of the unimpaired paid-up or assigned capital and unimpaired balance in the reserve account of the financial institution-

- (a) the terms, conditions, and quality of all outstanding loans to the insider and their related interests must first be acknowledged by a majority of the board of directors of the financial institution;
- (b) the terms, conditions, and quality of the new loan must be approved in advance by a majority of the board of directors of the financial institution; and
- (c) the insider must abstain from participating, either directly or indirectly, in the voting process.

(4) For purposes of sub-regulation (3) (c) “participating” includes partaking in any manner in the discussion, or any attempt to influence the voting, of any member of the board of directors regarding a loan to an insider, or to any related interest of that person shall constitute indirect participation in the voting process.

(5) The aggregate of all loans excluding loans made pursuant to a benefits or compensation package, outstanding at any one time to all insiders of the financial institution and to their related interests shall not exceed one hundred percent (100%) of the unimpaired paid-up or assigned capital and unimpaired balance in the reserve account of the financial institution.

(6) The aggregate of all loans and advances including loans made pursuant to a benefits or compensation package outstanding at any one time to all insiders and their related interests shall not exceed two hundred percent (200%) of the unimpaired paid-up or assigned capital and unimpaired balance in the reserve account of the financial institution.

*Exceptions.*

4. The requirements set forth in Regulation 3 (2) shall not apply to loans to officers of the financial institution, if such loans are part of that officer's benefits or compensation package.

Provided that, this exception shall apply only to loans-

- (a) made to purchase or improve the primary residence of an officer, to purchase a vehicle for the personal use of an officer or their immediate family, to pay for personal expenses, or for educational expenses;
- (b) which have been made in accordance with a written benefits or compensation policy approved by a majority of the board of directors of the financial institution and which is reasonably consistent with accepted industry standards for benefits or compensation packages of officers and employees as determined by the Central Bank of Swaziland.

*Reporting Requirements.*

5. (1) An officer shall-

- (a) within ten (10) calendar days after becoming indebted to any financial institution, other than the financial institution in which he or she is an officer, submit a written report of the indebtedness to the board of directors or governing body of the financial institution in which he or she is an officer setting out-
  - (i) the name of the financial institution to which the officer has become indebted;
  - (ii) the date, amount and security of the loan;
  - (iii) the use of the proceeds and the source of repayment for the loan; and
  - (iv) any other relevant information which the board of directors or governing body may require;
- (b) within forty-five (45) calendar days following the end of each calendar year, submit a written report to the board of directors or governing body of the financial institution in which he or she is an officer setting out-
  - (i) the names of all financial institutions to which the officer is indebted as at 31 December of the preceding year;
  - (ii) the original date and amount, the outstanding balance, the current repayment terms, and the security for each loan outstanding as at 31 December of the preceding year; and
  - (iii) any changes, modifications, or restructuring of the repayment terms of any loan during the preceding calendar year.

(2) An insider shall, within forty-five (45) calendar days following the end of each calendar year, submit a written report to the board of directors or governing body of the financial institution in which he or she is an insider detailing all his or her related interests as at 31 December of the preceding calendar year.

*Application.*

6. (1) These Regulations shall apply to loans made on or after the date of commencement.

(2) A loan made to an insider or a related interest of an insider prior to the date of commencement of these Regulations which is not in compliance with the requirements of these regulations shall not be cited in violation of these Regulations, but shall be cited as a "nonconforming loan".

(3) A financial institution shall not renew, extend the maturity of, or otherwise restructure a nonconforming loan without first complying with the requirements of these Regulations.

*Remedial Measures and Administrative Sanctions.*

7. (1) Where a financial institution fails to comply with the limitations outlined in these Regulations which failure results, or threatens to result, in an unsafe or unsound operating condition, as determined by the Central Bank of Swaziland, the Central Bank of Swaziland may pursue any remedial measures at its disposal in accordance with the provisions of the Financial Institutions (Consolidation) Order, 1975.

(2) In addition to the remedial measures in sub-regulation (1), the Central Bank of Swaziland may pursue any of the following administrative sanctions against the financial institution, its directors, or officers-

- (a) suspension of lending, investment, and credit granting operations;
- (b) prohibition from declaring or paying dividends, management fees, service fees or any other discretionary compensation, by whatever term, to the shareholders of the financial institution;
- (c) prohibition from declaring or paying bonuses, salary incentives, severance packages, management fees or other discretionary compensation to shareholders, directors or officers.
- (d) prohibition from accepting further deposits or other liabilities for borrowed money;
- (e) prohibition from establishing new branches or facilities;
- (f) prohibition from acquiring, through purchase or lease, additional fixed assets;
- (g) prohibition from engaging in new activities or from expanding existing activities;
- (h) prohibition from engaging in any further foreign exchange activities; or
- (i) suspension of access to Central Bank credit facilities.

M. D. FAKUDZE  
Principal Secretary

MBABANE  
10 October, 2001

## LEGAL NOTICE NO. 159 OF 2001

THE FINANCIAL INSTITUTIONS (CONSOLIDATION) ORDER, 1975  
(King's-Order-in-Council No. 23 of 1975)FOREIGN EXCHANGE EXPOSURE LIMITATIONS REGULATIONS, 2001  
(Under Section 62)

In exercise of the powers conferred by Section 62 of the Financial Institutions (Consolidation) Order 1975, the Minister, after consultation with the Central Bank, hereby makes the following Notice:-

*Citation and Commencement*

1. These Regulations may be cited as the Foreign Exchange Exposure Limitations Regulations, 2001 and shall come into force on the date of publication in the Gazette.

*Interpretation*

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

**"equity capital"** means the aggregate sum of balances reported in the various capital accounts which represent permanent funds freely available to absorb unexpected losses;

**"financial institution"** means any person licenced to carry on banking business, the operations of which include the business of receiving funds from the public through the acceptance of money, deposits of money payable upon demand or after Notice or any similar operation through the periodic sale or placement of bonds, certificates, notes or other securities and the use of such funds either in whole or in part for loans, advances, investments or any other operation authorized by law or customary banking practice, for the account and at the risk of the person doing such business;

**"foreign exchange exposure"** means the Emalangeni equivalent sum, currency by currency, of all foreign currency denominated assets and liabilities both on and off-balance sheet, but excludes foreign currency-denominated assets and liabilities where such foreign currency is maintained at a fixed exchange rate of one to one (1:1) with the Lilangeni;

**"intra day foreign exchange exposure"** means the foreign exchange exposure, either in a single currency or as a sum of all currencies, which a financial institution incurs between the opening of any business day and the close of business that same day;

**"issued share capital"** means capital funds received from investors in exchange for common stock;

**"long position"** means the excess of assets over liabilities denominated in a particular currency;

**"net open position"** means the absolute value of the difference between assets and liabilities denominated in a particular foreign currency;

**"open position"** means a situation where assets in a particular currency do not equal liabilities in that currency, including unhedged forward commitments to purchase or sell the currency;

**"overall foreign exchange exposure"** means the gross sum of all long and short positions in individual foreign currencies expressed in Emalangeni equivalent amounts using spot mid-rates and the shorthand method for measure;

**“share premium”** means excess capital funds paid by shareholders over and above the stated par value of common stock;

**“shorthand method”** means the method of measuring overall foreign exchange exposure by-

- (a) adding separately all short positions;
- (b) adding separately all long positions;
- (c) comparing the two totals; and
- (d) taking the larger of the two totals as the overall open position;

**“short position”** means the excess of liabilities over assets in a particular currency;

**“single currency foreign exchange exposure”** means the Emalangeni equivalent of the net open position of all assets and liabilities, both on and off-balance sheet, denominated in a foreign currency calculated using the spot mid-rate;

**“spot mid-rate”** means that rate, expressed as a factor of the domestic currency equivalent, at which a foreign currency can be readily converted to a domestic currency equivalent;

**“statutory reserve”** means the amount of retained earnings segregated and maintained separate and apart from prior and current year retained earnings as required pursuant to Section 18 of the Financial Institutions (Consolidation) Order, 1975;

**“unimpaired paid-up or assigned capital and unimpaired balance in the reserve account”** means the lesser of -

- (a) the aggregate balances in the Issued Share Capital, Share Premium, and Statutory Reserve accounts; or
- (b) the net balance of equity capital.

#### *Foreign Exchange Exposure Limitations*

3. (1) A financial institution shall not permit to be outstanding any single currency foreign exchange exposure which as of the close of any business day would exceed more than ten percent (10%) of the unimpaired paid-up or assigned capital and unimpaired balance in the reserve account of such financial institution.

(2) A financial institution shall not permit to be outstanding an overall foreign exchange exposure, irrespective of short or long positions, both on and off-balance sheet, as measured using spot mid-rates and the shorthand method, which as of the close of any business day would exceed more than twenty-five percent (25%) of the unimpaired paid-up or assigned capital and unimpaired balance in the reserve account of such financial institution;

(3) The single currency and overall foreign exchange exposure limits referred to in sub regulations (1) and (2) shall apply to the financial institution on a “global” basis.

(4) Notwithstanding sub-regulation (3), a financial institution may have different internal limits for its various branches; and compliance with the limits shall be measured on a global basis considering the financial institution as a single consolidated entity.

(5) Intra day foreign exchange exposures, both in single currencies and overall foreign exchange exposures, shall be monitored by the financial institution within prudent limits which shall be established by the Board of directors of the financial institution in a written policy covering foreign exchange operations, provided such intra day foreign exchange exposure limits shall not exceed one hundred percent (100%) of the financial institution's unimpaired paid-up or assigned capital and unimpaired balance in the reserve account.

*Responsibilities of the Board of Directors*

4. (1) The board of directors of the financial institution shall formulate and adopt a written policy for foreign exchange operations which shall be reviewed and approved by a majority of the board of directors on at least an annual basis, and which shall, at a minimum, address the following requirements-

(a) the assignment of specific responsibilities to a senior manager or officer, or alternatively a committee of senior managers comprising the lending, funds management, and foreign exchange activities of the financial institution for monitoring and managing foreign exchange operations, and ensuring compliance with the policy approved by the board and the requirements of these Regulations.

(b) the scope of authorized trading activities;

(c) levels of officer authority and responsibility;

(d) the total value of outstanding contracts, spot and forward at any one time; and

(e) credit approval procedures for delivery or settlement risk either in the form of settlement limits or through other specified management controls.

(2) The board of directors shall ensure that accounting systems and internal controls-

(a) provide accurate and current information on all foreign exchange activities and open positions at all times;

(b) minimize the possibility of unauthorized transactions and misappropriation of funds; and

(c) are sufficient to ensure compliance with the policy approved by the board and the requirements contained in these Regulations.

(3) The board of directors shall ensure that accounting systems and internal controls are adequate to provide for-

(a) immediate recording of all foreign exchange transactions on the books and records of the financial institution;

(b) a hold over register to record and identify trades made but not posted to the financial institution's ledgers at the end of any business day, the identification of such contracts as holdover items, and their inclusion in the end of day position reports to management;

(c) identification of the open position for each currency and overall position, updated immediately and permanently at least as of the end of each business day;

- (d) computation of the foreign exchange exposure relative to the financial institution's unimpaired paid-up or assigned capital and unimpaired balance in the reserve account for each open position and the overall position;
- (e) prompt confirmation, in writing, of all foreign exchange contracts, sent and received by personnel independent of the trading function;
- (f) revaluation of foreign currency denominated assets and liabilities at least as of the last business day of each calendar month using spot mid-rates;
- (g) clear and well defined separation of duties and responsibilities between the foreign exchange dealing, accounting, and internal supervision functions;
- (h) use of dated and sequentially numbered forms by foreign exchange traders to record each foreign exchange transactions;
- (i) formulation and adoption of a code of conduct for foreign exchange traders which provides standards covering-
  - (i) trading with entities affiliated with the financial institution or with directors or officers or their related interests;
  - (ii) personal business activities of the traders involving foreign exchange;
  - (iii) personal business relationships with other foreign exchange dealers, brokers, or traders; and
- (j) procedures to assure prompt identification and reporting of exceptions to board-approved limits.

#### *Computation and Reporting of Foreign Exchange Exposure*

5. (1) A financial institution engaged in foreign currency exchange activities shall calculate each of its single currency foreign exchange exposures and overall foreign exchange exposure as of the close of each business day.

(2) A financial institution engaged in foreign currency exchange activities shall submit to the Central Bank of Swaziland, in such format and in accordance with such instructions as may be prescribed from time to time by the Central Bank of Swaziland, reports showing the amounts of single currency and overall foreign exchange exposures, for each day of the preceding week.

(3) The reports referred to in subregulation (2) shall be submitted by the close of business on the first business day of each week.

#### *Record Keeping Requirements*

6. (1) A financial institution engaged in foreign currency exchange activities shall maintain records which will enable its treasury management department to know at all times its single currency and overall foreign exchange risk exposures.

(2) A financial institution shall maintain-

- (a) a daily record showing close of business foreign exchange exposures for both single currency and overall foreign exchange exposures; and
- (b) a reconciliation of opening to closing positions.



*Remedial Measures and Administrative Sanctions*

7. Where a financial institution -

- (a) fails to comply with the requirements of these Regulations and such failure results, or threatens to result, in an unsafe and unsound operating condition, as determined by the Central Bank of Swaziland; or
- (b) submits regulatory reports which are materially inaccurate;

the Central Bank of Swaziland may pursue any remedial or administrative measures at its disposal in accordance with the provisions of the Financial Institutions (Consolidation) Order, 1975.

M. D. FAKUDZE  
*Principal Secretary*

MBABANE  
10 October, 2001