

STATUTORY INSTRUMENTS SUPPLEMENT

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S T A T U T O R Y I N S T R U M E N T S

2010 No. 47.

**THE FINANCIAL INSTITUTIONS (FOREIGN EXCHANGE BUSINESS)
RULES, 2010**

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STATUTORY INSTRUMENTS

2010 No. 74.

The Financial Institutions (Foreign Exchange Business) Rules, 2010

(Under section 40 (1) of the Financial Institutions Act, 2004, Act No 2 of 2004)

In exercise of the powers conferred on the Central Bank by section 40 (1) of the Financial Institutions Act, 2004, these Rules are made this 16th day of September, 2010.

PART I—PRELIMINARY

1. Title and application

(1) These Rules may be cited as the Financial Institutions (Foreign Exchange Business) Rules, 2010.

(2) These Rules apply to all financial institutions authorised by the Central Bank to conduct foreign exchange business.

2. Interpretation

In these Rules, unless the context otherwise requires—

“authorised financial institution” means a financial institution authorised by the Central Bank to conduct foreign exchange business;

“core capital” means permanent shareholder equity in the form of issued and fully paid-up shares plus all disclosed reserves, less goodwill or any intangible assets;

“correspondent financial institution” means a foreign bank or other financial institution outside Uganda that holds deposits or performs correspondent banking or financial services for and on behalf of a financial institution in Uganda;

“foreign currency” means a currency other than legal tender of Uganda;

“foreign currency account” means an account denominated in foreign currency maintained with an authorised financial institution;

“foreign exchange” is synonymous with foreign currency and includes—

- (a) banknotes, coins or electronic units of payment in any currency other than the currency of Uganda which are legal tender outside of Uganda;
- (b) financial instruments denominated in foreign currency; and
- (c) any right to receive such banknotes or coins in respect of any balance at a financial institution located within or outside of Uganda;

“foreign exchange business” means a facility offered, business undertaken or transactions executed with any person involving a foreign currency inclusive of any account facility, credit extension, lending, issue of guarantee, counter-guarantee, purchase or sale by means of cash, cheque, draft, transfer or any other instrument denominated in a foreign currency;

“forward transaction, forward purchase, forward buy or forward sale” means transactions executed after more than two working days from the date the transaction is contracted or agreed;

“foreign currency assets” means to all assets denominated in foreign currency;

“foreign currency deposits” means deposit liabilities of customers of a financial institution;

“foreign currency liabilities” means all liabilities denominated in foreign currency;

“inter-bank foreign exchange market” means the market in which spot, forward, futures or other foreign exchange trading mechanisms operate;

“international rating agencies” means internationally recognised rating firms such as Standard and Poors and Moody's;

“long position or long open position or overbought position of a financial institution in a foreign currency” means the holding by the financial institution of foreign currency for its own account in excess of all its contractual spot, same day value and forward transaction commitments in a foreign currency;

“mid-rate” means the mid-point of the buying and selling of exchange rates in foreign currency prevailing as at the close of business;

“net open position of a financial institution in a foreign currency” means the sum of all its assets and liabilities inclusive of all its spot, same day value and forward transactions and its off-balance sheet commitments in that foreign currency;

“off-balance sheet items” includes all items not shown on the balance sheet but which constitute credit risk and such other risks as in guarantees, acceptances, performance bonds, letters of credit and other off-balance sheet items deemed to constitute risk as such by the Central Bank;

“same day transaction”, “same day purchase”, “same day but” or “same day sale” means a transaction having a same day value

“same day value” means a transaction to which it is referred is to be executed on the very day it is contracted or agreed;

“short position, short open position or oversold position of a financial institution in a foreign currency” means that the holding by the financial institution of that foreign currency for its own account is less than all its contractual spot, same day value and forward transaction commitments in that foreign currency;

“spot transaction”, “spot purchase”, “spot buy” or “spot sale” means a transaction having a spot value;

“spot value” means the transaction to which it is referred is to be executed within two working days from the date it is contracted or agreed;

“significantly under-capitalised” means a financial institution which does not hold minimum capital funds unimpaired by losses, core capital or total capital of at least fifty percent of the requirement under sections 26 and 27 of the Financial Institutions Act, 2004; and

“value date of a transaction” means the date on which it is to be executed.

3. Purpose of Rules

The purpose of these Rules is—

- (a) to minimise foreign exchange risk by preventing the taking of excessive foreign currency positions that may expose the financial institution to foreign exchange risks and potential for losses;
- (b) to enable financial institutions to play an active role in the development of foreign exchange market and instruments in the Ugandan economy;
- (c) to facilitate foreign exchange based lending while at the same time minimising credit and liquidity risks inherent in such type of lending;
- (d) to minimise risks arising from concentration of foreign exchange placements or deposits abroad;
- (e) to ensure that financial institutions have put in place adequate foreign exchange risk management systems, appropriate operational guidelines and internal controls intended to identify and control foreign exchange risks;
- (f) to limit foreign exchange exposures as a necessary and significant component of financial institutions' internal controls and overall foreign exchange risk management system;

- (g) to regulate financial institution lending in foreign currency to ensure that they are able to manage the additional foreign exchange and country risks inherent in those loans; and
- (h) to minimise risks that financial institutions are exposed to due to concentration risks inherent in excessive placements of foreign exchange with their correspondent banks.

PART II—REGULATORY REQUIREMENTS

4. Conduct of foreign exchange business

A financial institution shall not conduct foreign exchange business without authorisation from the Central Bank.

5. Compliance with capital requirements

A financial institution shall not conduct any new foreign exchange business if it is significantly undercapitalised.

6. Limit on foreign exchange open position

(1) The daily foreign exchange open position of authorised financial institutions shall lie within (+/-) 25 % of a financial institution's core capital as at the preceding quarter.

(2) The overall foreign exchange open position shall be calculated using the "shorthand" method which includes—

- (a) calculating all net position in each currency and converting the same into shillings equivalent at mid-rate;
- (b) arriving at the sum of all the net short positions;
- (c) arriving at the sum of all net long positions; and
- (d) taking the greater of the absolute value of both sums as the overall foreign exchange open position.

7. Restrictions on foreign exchange lending

The granting of loans and other credit accommodations denominated in foreign currency by a financial institution shall be subject to the following conditions-

- (a) lending in foreign currency shall have a maximum maturity of not more than one year unless the borrower has a clearly defined income stream in the currency being borrowed that matches the longer-term maturity of the loan;
- (b) lending in foreign currency shall not exceed 80% of a financial institution's total foreign currency deposits at all times; and
- (c) lending in foreign currency to a single borrower or insider shall be subject to the requirements of the Financial Institutions (Limits on Credit Concentration and Large Exposures) Regulations, 2005 and the Financial Institutions (Insider Lending Limits) Regulations, 2005 and shall be aggregated with exposures in local currency after converting the same into shillings at mid-rate in calculating compliance with the prudential limits.

8. Restrictions on foreign exchange deposits and placements with correspondent financial institutions

(1) An authorised financial institution shall not establish a new correspondent relationship with any bank or another financial institution abroad without the prior approval of the Central Bank.

(2) In granting its approval, the Central Bank shall among other things consider the credit risk rating of the correspondent financial institution by international rating agencies.

(3) An authorised financial institution may deposit or make a placement at any one time with a correspondent financial institution which has a minimum international rating of A and above up to a maximum of 50% of its total capital, except where the parent bank is rated A and above .

(4) An authorised financial institution may deposit or make a placement at any one time with its parent-bank, related bank or a correspondent financial institution that has a minimum international rating of B up to a maximum of 30% of its total capital.

(5) An authorised financial institution may deposit or make a placement at any one time with its parent-bank, a related bank or a correspondent financial institution that has an international rating of below B or is unrated up to a maximum of 20% of its total capital.

9. Reporting requirements

(1) An authorised financial institution shall submit to the Central Bank a report to monitor their compliance with the limit on foreign exchange open position titled "Daily Foreign Exchange Exposure Monitoring Return" set out in Schedule 1 to these Rules not later than 11.00 a.m. on the business day following the day to which the report pertains.

(2) An authorised financial institution shall submit to the Central Bank on a monthly basis a report to monitor their compliance with the restrictions on foreign exchange deposits and placements as set out in Schedule 2 to these Rules on the 15th day of the month to which the report pertains.

(3) An authorised financial institution shall submit to the Central Bank the following additional reports—

- (a) a daily report of its forex transactions;
- (b) a monthly report of its forex currency position; and
- (c) a schedule of its forex commitments.

PART III—OFFENCES, PENALTIES, REMEDIAL MEASURES AND ADMINISTRATIVE SANCTIONS

10. Offences

(1) A person who contravenes these Rules or any other law applicable to the conduct of foreign exchange business commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding two years or both.

(2) An authorised financial institution that conducts any new foreign exchange business while it is significantly under-capitalised commits an offence and shall be liable to a fine not exceeding two hundred and fifty currency points for each day on which the offence continues.

(3) An authorised financial institution whose overall foreign exchange open position exceeds the limit prescribed in these Rules shall pay to the Central Bank a civil penalty of one percent of the excess net open position per day on which the contravention continues.

(4) The non-compliant by a financial institution shall, before the penalty is applied, be given 12 hours within which to correct its position and to explain to the Central Bank the reasons that led to such non-compliance.

(5) An authorised financial institution that fails to submit the returns prescribed in these Rules in a timely and accurate manner shall pay to the Central Bank a civil penalty of fifty currency points for each day on which the contravention continues.

(6) An authorised financial institution which provides false information in the returns to the Central Bank commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty currency points for each day on which the return remains uncorrected.

11. Remedial measures and administrative sanctions

(1) When the Central Bank determines through an inspection that a financial institution is not in compliance with these Rules, it may impose any of its enforcement powers under section 82 of the Act.

(2) The Central Bank may impose any or all of the administrative sanctions with regards to a financial institution that is not in compliance with these Rules including—

- (a) suspension from participation in the inter-bank foreign exchange operations;

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- (b) suspension from accepting foreign exchange deposits;
 - (c) suspension of the privilege to issue letters of credit;
 - (d) suspension of authority to grant credit facilities in foreign exchange; or
 - (e) revocation of the licence to conduct foreign exchange business.

12. Suspension of foreign exchange business

The Central Bank may, in accordance with the provisions of section 43 of the Act, suspend a financial institution from conducting foreign exchange business if the financial institution is under any criminal investigation concerning its dealings in foreign exchange.

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SCHEDULE 1

DAILY FOREIGN CURRENCY EXPOSURE MONITORING RETURN

Rule 9(1)

AUTHORISED DEALER

Date:

(In Thousands)	SINGLE CURRENCY EXPOSURE								Overall Exposure
	US\$	UK	YEN	EURO	TShs	KShs	Rand	Others	
I FOREIGN EXCHANGE ASSETS (+)									
(a) Currency on hand									
(b) Due from banks abroad (Nostro)									
(c) Cheques and items in transit									
(d) Loans and advances									
(e) Accrued Interest receivable									
(f) Other assets									
II FOREIGN EXCHANGE LIABILITIES (-)									
(a) Due to banks abroad									
(b) Foreign currency deposits									
(c) Loans payable									
(d) Accrued interest payable									
(e) Other liabilities									
III OFF-BALANCE SHEET									
(a) Undelivered spot purchases (+)									
(b) Undelivered spot sales (-)									
(c) Forward purchase (+)									
(d) Forward sales (-)									
(e) Options, swaps, derivatives (+)/(-)									
(f) Contingent liabilities (-) (Note 1)									
(at 20% of recorded value)									
- Letters of credit									
- Guarantees									
- Performance Bonds									
Other commitments									

SCHEDULE 2

Rule 9(2)

FOREIGN EXCHANGE PLACEMENTS IN BANKS AND FINANCIAL INSTITUTIONS ABROAD

Deadline: Fifteenth day of the month following of reference month

Name of Bank / Financial Institution.....

For the month ending.....

NAME OF FOREIGN BANK/ FINANCIAL INSTITUTION		Rating	Rating Agency	Rating date	Amount		% of Total Capital
					Foreign Currency	Shillings Equivalent	
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
	Total Foreign Currency Deposits Placements						100%

* Use mid-rate at end of reference month

Name: _____

Signature: _____

Position: _____

Date: _____

Cross References

The Financial Institutions (Limits on Credit Concentration and Large Exposures) Regulations, 2005, S I No.44 of 2005

The Financial Institutions (Insider Lending Limits) Regulations, 2005, SI No. 45 of 2005

EMMANUEL TUMUSIIME-MUTEBILE,
Governor, Bank of Uganda.