

STATUTORY INSTRUMENTS

2005 No. 48.

THE FINANCIAL INSTITUTIONS (OWNERSHIP AND CONTROL) REGULATIONS, 2005.

ARRANGEMENT OF REGULATIONS

PART I—PRELIMINARY

Regulation

1. Title
2. Application
3. Interpretation.
4. Objectives
5. Rationale.

PART II—REGULATORY REQUIREMENTS

6. Restrictions on shareholding
7. Restriction on the right to control financial institutions
8. Prohibition of registration of shares in names of nominees
9. Registration of shares contrary to the Act.
10. Shareholder register.
11. Notification requirements.
12. Application procedure and requirements.
13. Processing applications.
14. Notice of decision.

PART III—REMEDIAL MEASURES AND ADMINISTRATIVE SANCTIONS

15. Powers of the central bank
 16. Remedial measures
- Regulation*
17. Administrative sanctions
 18. Transitional arrangements.

SCHEDULES

SCHEDULE 1—APPLICATION FOR PERMISSION TO ACQUIRE OR TRANSFER
SHARES IN A FINANCIAL INSTITUTION.

SCHEDULE 2 —SHAREHOLDERS LIST.

STATUTORY INSTRUMENTS

2005 No. 48.

The Financial Institutions (Ownership and Control) Regulations, 2005.

(Under section 131 (1) of the Financial Institutions Act, 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. Title

These Regulations may be cited as the Financial Institutions (Ownership and Control) Regulations, 2005.

2. Application

These Regulations apply to all financial institutions in Uganda.

3. Interpretation

In these Regulations, unless the context otherwise requires—

“Act” means the Financial Institutions Act, 2004.

4. Objectives

The objectives of these Regulations are—

- (a) to prevent dominant shareholders of financial institutions from exerting undue influence on the management of the institution that may impede the continuing fulfillment of the criteria for licensing;
- (b) to diversify ownership of share capital of financial institutions to allow a wider base for capitalization;
- (c) to help ensure that the interests of a financial institutions’ depositors will not otherwise be threatened by a change in the ownership of the financial institution;
- (d) to help ensure that an institution’s directors and shareholders are fit and proper persons to hold their particular positions; and
- (e) to create more transparency in the shareholding of financial institutions.

5. Rationale

The rationale for these Regulations is that—

- (a) without ownership restrictions, a majority shareholder may appoint the biggest number of directors and be in position to exercise undue influence over the policies and operations of the institution;

- (b) shareholding in a financial institution should be diversified among many individuals to ensure that there are as many interested parties as possible to allow a multiplicity of views, adequate debate and a system of checks and balances in the board of directors;
- (c) the shareholding structure of a financial institution can be a source of weakness in the corporate governance of the institution as shown in most bank failures;
- (d) diversifying ownership of a financial institution spreads the sources of capital for the institution in cases of future capital shortfalls; and
- (e) nominee shareholdings have a potential for the misuse of depositor's funds by unscrupulous owners, and it is therefore important to know the actual or intended beneficial shareholders of financial institutions.

PART II—REGULATORY REQUIREMENTS

6. Restrictions on shareholding

As prescribed by sections 18(1) and (2), 19 and 20 of the Act—

- (a) an individual or body corporate owned or controlled by one individual other than a reputable financial institution or a reputable public company approved by the Central Bank shall not directly or indirectly own or acquire more than 49 % of the shares of a financial institution;
- (b) a financial institution shall not allot, issue or register a transfer of 5 % or more of its shares to any person without the Central Bank's approval;
- (c) the Registrar of Companies shall not register any transfer of shares of a financial institution exceeding 5% of the total shares of a financial institution without receiving a notice of no objection from the Central Bank;
- (d) a person shall not acquire more than 5% of the total shares of a financial institution without the Central Bank's approval; and
- (e) a person who does not satisfy the criteria for the "fit and proper" test relating to substantial shareholders in accordance with the Third Schedule to the Act shall not acquire more than 5% or more of the total shares of a financial institution.

7. Restriction on the right to control financial institutions

(1) Pursuant to section 24 of the Act, no person other than a reputable financial institution or in exceptional cases, a reputable public company, shall exercise control over a financial institution.

(2) A person shall be deemed to exercise control over a financial institution where the institution is a subsidiary of the person (if it is a company), or if the person, by himself or herself or together with his or her associates, related persons or group of related persons—

(a) is entitled or has the power to determine the appointment of the majority of the directors of the financial institution, including—

(i) the power to appoint or remove, without the concurrence of any other person, all or the majority of such directors, or

(ii) the power to prevent any person from being appointed a director without his or her consent, and if a person's appointment as a director of the financial institution follows necessarily from his or her appointment as a director of the person first-mentioned in this subregulation, the first-mentioned appointment shall, for the purposes of this subregulation, be deemed to be an appointment by virtue of a power of a person first-mentioned; and

(iii) exercises directly or indirectly a controlling influence over the financial institution, its major policies or strategies singly or in concert with a related person or group of related persons.

8. Prohibition of registration of shares in names of nominees

Pursuant to section 21 of the Act, a financial institution or controlling company shall not, without the written approval of the Central Bank, allot, issue or transfer any of its shares or allow any of the institution's shares to remain registered in the name of a person other than the intended beneficial shareholder.

9. Registration of shares contrary to the Act

Pursuant to section 22 of the Act, no person shall either personally or by proxy, cast a vote attached to, or receive a dividend payable on any share in a financial institution allotted or issued to him or her or registered in his or her name, in contravention to the Act.

10. Shareholder register

(1) A financial institution shall maintain a register of the current beneficial holders of all of its shares, showing the shareholders names, addresses, nationality, number of shares held, percentage of shares held in total, class and type of shares held and the group to which the shareholders belong.

(2) A financial institution shall provide the Central Bank with a shareholders list as set out in the Schedule 2 as at the end of June and December of each year and not later than thirty days after the reference date.

(3) Any transfer of shares that is not recorded in the register shall be null and void.

11. Notification requirements

Any person who acquires a significant interest in the shares of a financial institution or ceases to be interested in shares so comprised, whether or not retaining an interest in other shares so comprised shall, within twenty one days after the acquisition or ceasure of holding, notify the financial institution of the interest so acquired or ceasing to be held.

12. Application procedure and requirements

(1) Pursuant to sections 18(3), 19(2)(a), 20, 21 and 24, respectively, of the Act, a financial institution or person that wishes to allot, issue, transfer or register the transfer of 5 % or more of any of its shares to another or acquire control of a financial institution, shall apply in writing, to the Executive Director, Bank Supervision, Bank of Uganda, in the manner prescribed in Schedule 1, explaining in detail, the nature of the intended allotment, issue or transfer of shares, and must have the information and supporting documents specified in sub-regulation (2).

(2) An application under subregulation (1) shall be accompanied by the following documents—

- (a) an Information Sheet for the applicant (if corporate) or a Personal Declaration Form (if an individual) and any of its principal shareholders and subsidiaries of affiliates in the form set out in the Financial Institutions (Licensing) Regulations, 2005;
- (b) if the application constitutes an acquisition of, or change in the control of the financial institution-
 - (i) a statement of the applicant's reason for the desire to acquire ownership of the shares in, or control of the financial institution concerned;
 - (ii) proof of the financial strength and ability of the applicant to provide additional capital if needed;
 - (iii) the ownership and operational structure of the financial institution after the allotment, issue or transfer of the relevant shares;
- (c) in case of applicant foreign financial institutions acquiring shares in the financial institution, clearance from the home country supervisor;
- (d) any other information, which the Central Bank may request the applicant to provide.

(3) The submission of any untrue or misleading information by the applicant shall render that person as not “fit and proper” and shall constitute sufficient ground for rejection of the application.

(4) Upon receipt of an application form together with the supporting documents in accordance with regulations 12 and 13, the Supervision Function of the Central Bank shall, within fourteen working days, send the applicant a formal letter of acknowledgement or a letter of deficiency, in accordance with subregulations (5) or (6), as the case may be.

(5) A letter of acknowledgement shall constitute official notice that the documents submitted were found to be complete and that the processing or evaluation may commence.

(6) A letter of deficiency shall outline deficiencies in the application, provide a deadline for rectification of the deficiencies and no further action shall be taken by the Central Bank unless the deficiencies are rectified within the period prescribed.

13. Processing applications

(1) The Central Bank shall, within three months after receipt of a complete application form, investigate and prepare a detailed report in respect of each application.

(2) The report shall indicate the decision of the Central Bank to—

- (a) grant the application, if it is satisfied that the application satisfies the requirements of the Act;
- (b) grant the application subject to the fulfillment of certain conditions that it may deem necessary; or
- (c) refuse to grant the application for reasons that shall be stated in the notice of decision or letter of refusal.

(3) In considering the application, the Central Bank shall have due regard to—

- (a) the public interest;
- (b) the interests of the financial institution concerned or its depositors;
- (c) the banking industry in general.

14. Notice of decision

(1) The Central Bank shall inform the applicant in writing, of its decision to grant or refuse to grant the application.

(2) A notice communicating the decision not to grant an application shall state the grounds upon which it is based.

PART III—REMEDIAL AND SANCTIONS MEASURES AND ADMINISTRATION

15. Powers of the central bank

If the Central Bank considers that the retention of a certain shareholding in a financial institution by a person is detrimental to the financial institution or its depositors, the Central Bank may—

- (a) order that person to reduce, within a period not exceeding three years, the shareholding in the financial institution to such percentage of the total nominal value of all the issued shares of the financial institution as the Central Bank shall determine, and the person so ordered shall within ninety days, after the order is given, present to the Central Bank their plan of action regarding the reduction of their shareholding;
- (b) consider the plan of action submitted under paragraph (a) and make further orders on it;
- (c) limit, with immediate effect, the voting rights that may be exercised by such shareholders or by virtue of their shareholding to such percentage of the voting rights attached to all the issued shares of the financial institution, as the Central Bank may, by notice determine.

16. Remedial measures

When the Central Bank determines that a financial institution is not in compliance with these Regulations, it may impose the penalties specified in section 25 of the Act.

17. Administrative sanctions

In addition to the remedial measures under regulation 16, the Central Bank may impose any or all of the following administrative sanctions, with regard to a financial institution or its shareholders that fail to comply with these Regulations—

- (a) suspension of access to new credit facilities of the Central Bank;
- (b) suspension or restriction of lending and investment operations;
- (c) suspension of opening letters of credit and or issuance of guarantees;
- (d) suspension of acceptance of new deposits;
- (e) suspension or removal from office of the erring director, officer or employee;
- (f) declaration of the relevant shareholders of the financial institution as not fit and proper persons for purposes of this Act.

18. Transitional arrangements

(1) Any person other than a reputable financial institution, or in exceptional cases, a reputable public company approved by the Central Bank who, at the commencement of these Regulations, holds more than 49% of the shares in a financial institution or controlling company shall—

- (a) within a period not exceeding seven years, reduce their shareholding in the financial institution or controlling company to 49% or less;
- (b) within six months after the commencement of these Regulations, present to the Central Bank, a credible plan of action regarding the reduction of their shareholding.

(2) The Central Bank shall, within forty five days after receipt of the action plan submitted under paragraph (b) of subregulation (1), consider the plan of action and either approve it, or make further orders on it, or reject the plan in writing, with reasons.

(3) Where any plan of action is rejected, the person concerned shall, within thirty days of notification, submit another plan.

(4) Where the Central Bank has not received a plan or is not satisfied with the plan of action submitted to it, and the person has failed, refused or neglected to provide an acceptable plan which satisfies the requirements of the Central Bank, then the Central Bank shall draw up a plan of action which shall be followed by that person or group of related persons.

(5) Any person who fails to comply with—

(a) a plan of action instituted by the Central Bank under subsection 10 of section 18 of the Act; or

(b) a statutory obligation under section 18 (6) (a) of the Act,

shall cease to be a fit and proper person for the purposes of the Act and shall not remain a substantial shareholder in a financial institution.

SCHEDULES

SCHEDULE 1

REGULATION 12

APPLICATION FOR PERMISSION TO ACQUIRE
OR TRANSFER SHARES IN CONTROL OF A FINANCIAL INSTITUTION

(To be submitted in duplicate)

EXECUTIVE DIRECTOR, SUPERVISION
Bank of Uganda

1. I, the undersigned, a natural person/the duly authorized representative of
(hereinafter referred to as the applicant), hereby apply in terms of the Financial Institutions Act, 2004 for the permission of the Central Bank for the acquisition by the applicant of shares in or control of

.....
a financial institution registered as such in terms of the said Act (hereinafter referred to as the COMPANY), of which shares—

- (a) the total nominal value,
- (b) the total nominal value, together with the total nominal value of such shares already held by the applicant, amounts to 5% or more of the nominal value of all the issued shares of the COMPANY.

2. The total number and nominal value of shares in the COMPANY currently and proposed to be held by the applicant are as follows:

No. of Shares	Nominal Value % of total shares
.....
.....

3. I submit, with this application the information prescribed by regulation 12 (2) of the Financial Institutions (Ownership and Control) Regulations, 2005.

4. **Certification and Undertaking**

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

I/We undertake to forthwith notify the Bank of Uganda of any material change(s) in the particulars of this application.

Sworn at..... this.....day of.....200.....

.....
Signature of Deponent.

The Deponent understands the contents of this Declaration.

Before me,

.....
COMMISSIONER FOR OATHS.

SCHEDULE 2

REGULATION 10 (2)

SHAREHOLDERS' LIST

As at end (June or December)

Name of Financial Institution.....

Due: 30 days from ref. date

Shareholders' Name	Class/Type of shares	No. of shares held	Nominal value	Amount of shareholding	% of
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*Note: Disclose and list related shareholders together

Total
shareholdings

Name Signature Position Date

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