



## **FINANCIAL RESOURCES REQUIREMENTS RULES FOR CUSTODIANS**

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## **PART 1: INTRODUCTION**

### **1.1 Application**

- (1) The Financial Resources Requirements Rules (FRRRs) for Custodians, 2022 replace the Capital Adequacy Requirements Guidelines (CAR) for Custodians, 2021.
- (2) The Non-Bank Financial Institutions Regulatory Authority (NBFIRA) may issue guidance regarding the standards of conduct and practice expected in relation to any aspect of the regulatory framework.

## **PART 2: FINANCIAL RESOURCES**

### **2.1 Financial Resources Requirements**

- (1) A Custodian which is not a bank licensed by Bank of Botswana, shall at all times, maintain-
  - (a) a net worth of a minimum of P10,000,000 or
  - (b) Liquid assets sufficient to cover at least 3 months of expenditure, whichever is greater based on the previous year's audited financial statements
- (2) The Custodian shall follow the framework for the calculations of financial resources requirements as may be prescribed by NBFIRA from time to time.

#### **Guidance Note**

The FRRRs recognize that there will be some instances where the Rules for Financial Resources Requirements and Liquidity Requirements will not take into account the nature and complexity of the NBFIs.

Such instances might be, for example, due to foreign exchange risk, risk of counterparty, default, off balance sheet assets and liabilities (including contingent liabilities or principal positions which the NBFIs has taken).

Accordingly, the Board and Management of the NBFIs should consider an appropriate additional provision above the required level in these Rules and evidence of that consideration.

A custodian which is a bank shall maintain those financial resources as are set out under the Banking Act or relevant law.

## **PART 3: INSURANCE ARRANGEMENTS**

### **3.1 Insurance Arrangements**

- (1) An NBFIs, acting as a Custodian must maintain insurance cover which is commensurate with the size and nature of the business. The cover must include professional indemnity insurance and insurance against employee dishonesty or fraud.

#### **Guidance Note**

The consideration, by the NBFIs of its insurance requirements, should be clearly documented, at local Board or Senior Management level, to demonstrate how the decision was made.

NBFIRA expects all NBFIs whether they are part of organisation with offices elsewhere, to consider the insurance requirements for entities in Botswana.

Where a local operation is part of a group and the local Board or Management do not consider available cover to the Botswana NBFIs, to be adequate, the NBFIRA expects the Board, or Management, to make arrangements to maintain appropriate cover. This may include purchasing a separate policy for the local operation.

NB: An insurance cover for a Botswana licensed NBFIs shall be placed with a Botswana based Insurers and Re-Insurers inline with the Insurance Industry Act.

**Guidance Note**

Insurance cover based on a prior year's audited financial statements does not need to be amended before the next annual renewal following the release of the following year's annual financial statements. However, the NBFi should consider whether to arrange additional cover if the audited financial statements show a material increase in income.

- (2) Where the NBFi also carries out activities not regulated by NBFIRA, must consider whether the minimum indemnity limit of its PII policy, and scope of the PII cover, are appropriate for its business, considering possible claims that may also arise from the unregulated business.

**3.2 Scope of Cover**

- (1) An NBFi shall maintain, at all times, cover for –
  - (a) negligence, errors, or omissions by the NBFi or its employees;
  - (b) any liability for the dishonest or fraudulent acts of employees which may fall on the NBFi;
  - (c) liabilities which the NBFi might incur, in any jurisdiction, in which it could reasonably foresee that it may be held liable for damages and costs;
  - (d) legal defense costs; and
  - (e) Any other operational risk that might be incurred by the NBFi

**PART 4: NOTIFICATIONS****4.1 Immediate Notification**

- (1) An NBFi shall notify NBFIRA, immediately, where –
  - (a) it is in breach of its financial resources requirements or liquidity requirements, including setting out, in writing, the steps that it is taking, or were taken, to remedy the breach;

- (b) it anticipates being in breach of its financial resources requirements or liquidity requirements, within thirty (days); including setting out, in writing, the steps that it proposes to take to avoid the breach;
- (c) its auditor intends to qualify the Financial Statements;
- (d) the liabilities of a subsidiary of the NBFi exceeds the subsidiary's assets; and
- (e) the liabilities of the parent company of the NBFi exceed the parent company's assets.
- (f) Remedial actions taken to address (d) and ( e ) above.

## **PART 5: GENERAL PROVISIONS**

- (1) The returns submitted by a custodian company shall be signed by the Managing Director and Head of Finance.
- (2) No custodian shall be allowed a shortfall in any capital funds, other than in specific temporary exceptions granted by NBFIRA due to unusual circumstances.
- (3) NBFIRA may require the Key Personnel to appear personally and produce the company's set of financial statements and answer questions, including questions relating to any actual or possible violation of these Rules.
- (4) NBFIRA may appoint an external auditor to verify capital/liquidity shortfalls when they are detected or suspected. In the event that such irregularities and/or capital shortfall, as the case maybe are confirmed by the auditor, the custodian shall bear all the costs associated with the verification exercise.
- (5) NBFIRA will have full discretion regarding the necessity and sufficiency of special adjustments in any particular case presented by the Custodian, taking into consideration all factors pertaining to the market with regard to the financial position or future contracts and the affairs as a whole, of the custodian involved.

(6) The Regulatory Authority may modify these or prescribe additional requirements as it may deem appropriate for the discharge of its mandate from time to time.

(7)

## **PART 6: TRANSITIONAL ARRANGEMENTS, REVOCATIONS, CITATIONS AND COMMENCEMENT**

### **6.1 Transitional Arrangements**

(1) The NBFIs shall comply with these Rules at their next insurance renewal, following the date on which the FRRRs for Custodians, 2023, come into effect.

### **6.2 Revocations**

#### **6.2.1 Revocation of the Capital Adequacy Requirements Guidelines for Custodians, 2021.**

(1) The Capital Adequacy Requirements Guidelines for Custodians, 2021 are revoked.

### **6.3 Citation and Commencement**

(1) These Rules may be cited as the Financial Resources Requirements Rules for Custodians, 2023.

(2) These rules come into force on 1<sup>st</sup> April 2023.

