

BANKIGA DHEXE EE
SOOMAALIYA



البنك المركزي

CENTRAL BANK OF SOMALIA

Licensing and Supervision Department

Qaybta Shati-siinta iyo Kormeerka

REGULATION ON TRANSACTIONS WITH RELATED PERSONS, 2016
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1. INTRODUCTION

1.1. Authority

This regulation is made by the Central Bank of Somalia (“Central Bank”) pursuant to its authority set forth in Sections 34 and 120 of the Financial Institutions Law, 2012 (“FIL”), for the purpose of implementing Sections 64 “Conflict of Interest,” 101 “Prohibition on Financial Exposures,” 103 “Prohibition on Insider Transactions,” and 104 “Prohibition on Gratuities and Similar Payments” of the FIL.

1.2. Applicability

This regulation applies on an individual and fully consolidated basis to all banks that are licensed by the Central Bank.

2. DEFINITIONS

2.1. Arm’s-length. Arm’s-length means transacting business with related persons at a distance on non-preferential terms, that is, on terms and conditions that are no more favorable than those which would be offered under prevailing conditions to members of the general public.

2.2. Capital

2.2.1. Core Capital. Core Capital includes permanent shareholders equity in the form of issued and fully paid up shares of common and preferred stock and their related premiums plus accumulated audited retained earnings, less goodwill, investments in the bank’s own shares or the shares of other financial institutions, and non-permissible exposures to related persons of the bank.

2.2.2. Total Capital. The sum of core capital and supplementary capital calculated in accordance with the Central Bank’s *Regulation on Capital Adequacy*.

2.3. Exposure Value. The Exposure Value = Accounting Value (net of specific provisions and value adjustments).

2.4. Financial Exposure. To calculate a bank’s financial exposure to a related person, add the *exposure values* of the bank’s exposures to the related person, groups in which the related person is a member, and related persons of the original related person. From that sum, deduct the amount by which the exposures are irrevocably secured by cash deposits placed with the bank.

- Credits, credit-equivalents, advances of funds, and credit participations;

- Credit substitutes (guarantees, acceptances, letters of credit, finance lease receivables, *et. al.*);
- Debt securities;
- Securitized assets and other transactions with recourse; and
- Off-balance sheet and contingent liabilities (commitments to advance credit).

2.5. Person. A *person* means an individual, personal representative, company, partnership, trust, fund, foundation, or enterprise, wherever located or incorporated.

2.6. Related Person

2.6.1. Related Person to an individual natural person

- A close relative by blood, adoption, or marriage including a parent, spouse, brother, sister, child, uncle, aunt, nephew, niece, and first cousin.
- A company, partnership, trust, fund, foundation, or enterprise:
 - In which the person is a director, officer, partner, founder, or manager;
 - Which is controlled by the person either directly or indirectly, individually or in concert with other persons; or
 - In the case of a bank, in which the person is a significant shareholder.
- Members of the board of directors, officers, partners, founders, managers and significant shareholders of the companies, partnerships, trusts, funds, foundations, and enterprises in which the person serves as director, officer, partner, founder, manager, controlling shareholder or, in the case of a bank, significant shareholder.
- Any entity that is accustomed to act in accordance with directions or instructions of the person.
- A person who has entered into an agreement or arrangement relating to the acquisition, holding, or disposal of, or the exercising of voting rights of shares representing a significant interest.
- One or more persons who are so interconnected that if one of them experiences financial difficulties, then another one or all them are likely to experience lack of liquidity.

2.6.2. Related Person to a bank, other company, partnership, trust, fund, foundation, or enterprise

- Members of the board of directors, officers, partners, founders and managers and their close relatives.
- Controlling shareholders and, in the case of a bank, significant shareholders; if natural persons, the close relatives of controlling and significant shareholders.
- Holding companies, subsidiaries, companies under common control, and other companies within the group structure; plus members of their boards of directors, officers, partners, founders, managers, and controlling and significant shareholders; plus the close relatives.
- Any entity that is accustomed to act in accordance with directions or instructions of the company, partnership, trust, fund, foundation, or enterprise.
- One or more entities who are so interconnected that if one of them experiences financial difficulties, then another one or all of them are likely to experience lack of liquidity.

2.7. Significant Interest. An ownership interest representing five percent (5%) or more of the capital or voting rights of a bank.

2.8. Significant Shareholder. A person who directly or indirectly, individually or together with related persons, holds five percent (5%) or more of the capital or voting rights of a bank.

3. REQUIREMENTS

3.1. Arm's-Length. Financial exposures and other transactions between a bank and its related persons and groups in which its related persons are members shall be entered into on an arm's-length basis.

3.2. Collateral. Financial exposures to a bank's related persons and groups in which its related persons are members shall at all times be secured by collateral having a properly verified market value of 120% or more of the corresponding exposure value.

4. LIMITATIONS

4.1. Aggregate Limit on Financial Exposures to Related Persons. The sum of a bank's financial exposures to a related person, groups in which the related person is a member, and related persons of the bank's related person shall not exceed 20% of the bank's Core Capital.

Exception. A credit or credit equivalent to an employee, senior officer, or executive director of the bank for the purpose of purchasing or constructing his/her primary residence shall not be subject to the Aggregate Limit; provided: (i) the credit is entered into in compliance with a written policy approved by the board of directors and carried out by its Remuneration Committee as part of a formal employee benefit scheme; and (ii) the amount of the credit does not exceed the limit of section 4.3 of this regulation.

4.2. Limit on financial exposures to non-executive (independent) directors. The sum of a bank's exposure values to any one of its non-executive directors, groups in which the non-executive director is a member, and related persons of the non-executive director shall not exceed 1% of the bank's core capital.

4.3. Limit on credits to bank employees and executive directors. A bank may grant credits or credit equivalents to its employees, senior officers, and executive directors for the purpose of purchasing or constructing their primary residence. The amount shall not exceed 300% of one-year's salary for the employee, senior officer, or executive director.

4.4. Deduction from Capital. Financial exposures that exceed the limitations of this regulation shall be deducted from capital when determining the bank's capital adequacy and brought into compliance or removed from the accounts of the bank as soon as practicable pursuant to a plan approved by the Central Bank.

5. PROHIBITED TRANSACTIONS

- 5.1. Approving a new financial exposure to a related person while any other financial exposure to the related person is non-performing or non-conforming to the limits and requirements of the FIL and this regulation.
- 5.2. Approving a financial exposure or engaging in other transactions that would not normally be entered into with a person who is not a related person of the bank.
- 5.3. Making exceptions to credit-granting standards, underwriting standards, collateral requirements, amortization schedules, collection efforts, policies of the bank, law, or regulation.
- 5.4. Granting preferential interest rates on credits, other financial exposures, and deposits, and/or waiving fees.
- 5.5. Providing other preferential treatment to a related person.
- 5.6. Covering trading losses.
- 5.7. Asking for or receiving any gift, commission, emolument, service, gratuity, money, property or thing of value for his/her own personal benefit or advantage or for that of any of any of his/her related persons for procuring or endeavoring to procure for any person any advance, loan, overdraft, financial guarantee or credit facility from the bank.

6. CORPORATE GOVERNANCE

6.1. Policy and Procedures

- 6.1.1. The board of directors of each bank shall adopt, and ensure that senior officers implement, a written policy that covers all transactions between the bank and its related persons including deposit-taking, financial exposures, and providing or receiving goods and services.
- 6.1.2. The board of directors shall review the policy on at least an annual basis.
- 6.1.3. To be considered adequate, the policy shall meet the following minimum standards:
 - Require that all transactions, including credits and other financial exposures, with related persons and groups to which a related person belongs, be available only on the same terms and conditions as those offered to members of the general public and in full compliance with the bank's written policies and procedures.

- Establish limits on the bank's financial exposures to related persons which do not exceed the limits of this regulation.
- Require that all transactions, including credits and other financial exposures, with related persons and groups to which a related person belongs, comply with all requirements and limitations of this regulation;
- Require that internal controls be established and maintained to ensure compliance with this regulation, the policy of the board of directors, and procedures of senior officers.
- Require that all transactions, including credits and other financial exposures, with related persons and groups to which a related person belongs be approved by the board of directors.
- Establish processes and procedures within the bank to collect and keep current the record of related persons and to regularly report transactions with related persons to senior officers and the board of directors for the purpose of monitoring compliance with regulation and policy.

6.2. Disclosure

- 6.2.1. A related person who seeks an interest, directly or indirectly, in any financial exposure or other transaction with the bank shall disclose in writing to the board of directors the nature and extent of his/her/its interest prior to the board's consideration of the financial exposure or other transaction.
- 6.2.2. A director or senior officer of a bank who has a direct or indirect interest in a financial exposure or other transaction with the bank, or who has a related person who has a direct or indirect interest in a financial exposure or other transaction with the bank shall:
- Fully disclose the identity of the related person and the nature of the interest at a meeting of the board of directors;
 - Abstain from participating in presentations, discussion or decision-making on the matter;
 - Recuse him-/herself from the meeting of the board of directors while the matter is under discussion or decision.

6.3. Decisions by the Board of Directors

- 6.3.1. All financial exposures to, and other transactions with, related persons of a bank (including groups in which a related person is a member) must be approved in advance by the board of directors at a meeting where a majority of the independent directors vote in favor of approving the financial exposure or transaction.

6.3.2. The official minutes of the board of directors shall document:

- The discussion and approval of the financial exposure or other transaction;
- The terms and conditions of the financial exposure or other transaction;
- The principal balance, payment status, and classification of all other credits and other financial exposures outstanding to the related person, and the total amount of all transactions currently entered into with the related person, as applicable; and
- The determination by the board of directors that the subject financial exposure or other transaction is being entered into on an arm's-length basis and meets the requirements of this regulation and the board-approved policy.

6.4. Recordkeeping, Internal Control and Reporting

6.4.1. Each bank shall have procedures in place to identify and document its related persons and their related persons.

6.4.2. Each bank shall maintain and regularly update records that identify all financial exposures and other transactions with related persons and groups to which a related person belongs.

6.4.3. Related persons who have an interest in a financial exposure or other transaction (either direct or indirect) with a bank shall be prohibited from involvement in the administration, assessment, decision-making, collection, or other follow-up on the financial exposure or other transaction.

6.4.4. Senior officers shall regularly review and submit reports to the board of directors showing all financial exposures and other transaction made during the current period to related persons including groups to which a related person belongs, the status of all outstanding financial exposures and other transactions with related persons, and the extent of compliance with the provisions of this regulation.

7. REPORTING TO THE CENTRAL BANK

On a quarterly basis, the bank shall submit reports to the Central Bank showing all financial exposures granted to related persons, including groups to which a related person belongs, during the period, the total financial exposures currently outstanding, and the extent of compliance with the limitations of this regulation.