

UNITED NATIONS
United Nations Transitional Administration
in East Timor

NATIONS UNIES
Administration Transitoire des Nations Unies
au Timor Oriental

UNTAET

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REGULATION NO. 2000/8
ON BANK LICENSING AND SUPERVISION

Section 2

Section 5

6.10 If the Central Payments Office determines, following an on-site examination of bank premises, that the conditions described in Section 6.8 have been satisfied, the Central Payments Office shall issue forthwith final approval for a license for the bank to commence those activities in which it is authorized to engage.

6.11 The Central Payments Office shall grant a license concerning one or more branch offices of a foreign bank only if:

- (a) the foreign bank is authorized to engage in the business of receiving money deposits or other repayable funds in the foreign country where its head office is located;
- (b) the competent authorities that supervise the financial activities at the head office of the foreign bank concerned have given their written consent to the granting of such license; and
- (c) the Central Payments Office determines that the bank is adequately supervised on a consolidated basis by its supervisory authorities.

Section 7 Scope of license and fees

7.1 A license shall be granted for an indefinite period of time, subject to Section 9, and shall not be transferable.

7.2 Subsequent to initial licensing, banks that believe that they would meet the conditions specified in Section 24 to engage in additional financial activities may apply, in writing, to the Central Payments Office to engage in such additional activities.

7.3 Within sixty (60) days from the date of receipt of an application under Section 7.2 that has been completed to the satisfaction of the Central Payments Office, the Central Payments Office shall authorize the applicant to engage in additional financial activities or shall deny the application and notify the applicant of its decision in writing.

7.4 The Central Payments Office may charge fees on account of the processing of an application for a license pursuant to Section 5 or an application to engage in additional financial activities pursuant to Section 7.2. Such fees shall not be refunded if an application is denied, a bank does not commence business or ceases operations, or the license is revoked pursuant to Section 9 of the present regulation.

7.5 The Central Payments Office may charge fees for the issuance and the possession of a license.

Section 8 Register of banks

8.1 The Central Payments Office shall keep a central register for inspection by the public. The register shall record for each licensed bank the name, the addresses of the head office and branch office, and current copies of the documents listed in Section 15 of the present regulation.

8.2 The Central Payments Office shall remove from the register documents concerning former banks whose licenses have been revoked. The Central Payments office shall maintain for inspection a list of such banks.

Section 9
Revocation of a license

9.1 The Central Payments Office may revoke the license of a bank in the following circumstances:

- (a) upon a request of the bank;
- (b) following an infraction, pursuant to Section 36 of the present regulation; or
- (c) on one or more of the following grounds:
 - i. the license was obtained on the basis of false information submitted by or concerning the applicant, including regarding the qualifications, experience or integrity of its proposed administrators and principal shareholders;
 - ii. the bank has not commenced operations within ninety (90) days after the receipt of the license, or such further period as may be determined by the Central Payments Office, or has ceased for more than eight months to engage in the business of receiving money deposits or other repayable funds;
 - iii. another bank that holds a significant interest in the bank has had its license revoked;
 - iv. a merger, amalgamation, or sale of substantially all the assets of the bank has occurred;
 - v. the owner or owners of the bank have decided to dissolve or to liquidate the bank, or the bank has ceased to exist as a legally or operationally independent entity; or
 - vi. the activities of the bank during its first three years of operation differ substantially from those presented in the application for a license and, in the opinion of the Central Payments Office, such deviation is not justified by changed economic circumstances.

9.2 When a bank requests that the Central Payments Office revoke its license, the Central Payments Office shall decide on the request within fifteen (15) days after its receipt.

9.3 The Central Payments Office shall revoke a license issued to a foreign bank concerning one or more branch offices if the foreign bank does not have the authority, or has lost the authority, to engage in the business of receiving money deposits or other repayable funds in the foreign country where its head office is located.

9.4 A decision by the Central Payments Office to revoke or not to revoke a license shall be communicated in writing to each bank or branch office concerned and shall give the grounds for the decision.

Section 10

Publication and effect of license revocation

10.1 The decision to revoke a license pursuant to Section 9 of the present regulation shall immediately be published in the Official Gazette and in one or more newspapers of general circulation wherever the offices of the bank concerned are located. The decision to revoke a license shall become effective on the date of such publication in the Official Gazette or on such later date as the decision shall specify.

10.2 Starting on the date that the revocation of a license pursuant to this Section enters into force, a receiver shall be appointed in accordance with Section 38 of the present regulation. During the winding up of its affairs, the bank shall otherwise continue to be subject to the provisions of the present regulation as if it were licensed.

Section 11

Organization and independence of banks

11.1 Banks shall be organized as limited liability companies under the Act on Limited Liability Companies, with shares registered in the name of the beneficial owner.

11.2 The provisions of the Act on Limited Liability Companies, including with respect to the organizational structure of banks and powers of the shareholders and officers, shall apply to banks to the extent not inconsistent with the present regulation and applicable law. In particular, the capital must be fully paid, in accordance with Section 6.8 (a) of the present regulation..

11.3 Each bank shall enjoy complete legal, operational, financial and administrative autonomy from any other person, including the Central Payments Office and any agency of the Transitional Administration, unless applicable law otherwise provides. This autonomy shall be respected and no person shall seek improperly to influence any administrator of a bank in the discharge of his or her duties or to interfere in the activities of any bank, except in the execution of a specific authority or duty under the law.

11.4 Each bank shall enjoy freedom of contract, including the right to own and dispose of movable property and, subject to applicable law, immovable property, and may be a party to legal proceedings.

Section 12

Capital requirements

The minimum amounts that banks must maintain as regulatory capital, and the minimum absolute amount of capital, shall be prescribed from time to time by instructions of the Central Payments Office.

Section 13

Restrictions on ownership and holdings

13.1 The prior written authorization of the Central Payments Office is required if the transfer, in one or more transactions, of an equity interest in a bank would result in a person or number of persons acting in concert becoming, directly or indirectly, a significant shareholder in such bank or owning more than twenty (20) percent but less than fifty (50) percent of any class of shares with voting rights of the bank. In the absence of a prior written authorization by the Central Payments Office, the transfer shall have no legal effect.

13.2 In addition to the authorization of any transfer under Section 13.1, the prior written authorization of the Central Payments Office is required if the transfer, in one or more transactions, of an equity interest in a bank would result in a person or number of persons acting in concert becoming, directly or indirectly, a significant shareholder in such bank or

14.3 Authorizations shall be granted, in the case of an amalgamation, only if the resulting bank shall have received a license.

Section 15
Charter and by-laws

15.1 Each bank shall have a charter that shall specify its corporate name and address; its purposes; the jurisdiction and authority of a single Governing Board; the amount of its capital;

supervisory authorities, and when the protection of the bank's own interest in legal proceedings requires disclosure.

Section 21

Prevention of money laundering

21.1 No bank shall conceal, convert, or transfer cash or other property, knowing that such property is derived from criminal activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such activity to evade the legal consequences of his action.

interest, if so disclosed, shall not disqualify the interested person for purposes of constituting a quorum.

22.5 For the purposes of Sections 22.1 and 22.3, an interest shall be material if it is material with reference to the wealth, business or family (any person who is related by marriage or to the second degree of consanguinity) interests of the person having the interest, and a person has a material interest in

- (a) any company if the person owns, directly or indirectly, a significant interest in the company, or is an administrator of the company; and
- (b) any partnership if the person is a partner.

22.6 Where an administrator fails to disclose a material conflict of interest in accordance with this Section:

- (a) a court of competent jurisdiction may, on the application of the bank, a bank shareholder, or the Central Payments Office, set aside the contract on such terms as it thinks fit; and
- (b) the Central Payments Office may, by written instruction, suspend the administrator from office for any period not exceeding one (1) year, or remove the administrator from office permanently.

22.7 Administrators and employees of banks have a fiduciary duty to the bank that they serve and to the bank's customers to place the interests of the bank and the interests of the customers of the bank before their own pecuniary interest.

22.8 Banks shall introduce suitable arrangements and procedures so that they and their administrators and employees are not placed in a situation where their duty to one customer conflicts with their duty to another, or where their own interest conflicts with their duty to a customer.

Section 23

- (f) providing services as a financial agent or consultant (not including services described in paragraphs 24.4 (a) and (b)); and
- (g) dealing in one or more currencies other than the currency in which the bank's balance sheet is denominated, including contracts for the future purchase or sale of foreign currencies.

24.4

- a. providing trust services, including, the investment and administration of funds received in trust and administration of securities;
- b. providing services as an investment portfolio manager or investment adviser;
- c. underwriting and distribution of debt and equity securities and dealing in equity securities; and
- d. such other financial activities related to securities transactions as the Central Payments Office shall determine by instruction.

24.5 No bank shall engage in financial activities that exceed those specifically authorized by its license.

Section 25

Prohibited anti-competitive transactions and practices

25.1 Banks shall refrain from entering into transactions or engaging in practices of any kind that would provide them, alone or together with others, a position of dominance on the money, capital or foreign exchange markets. Banks shall also refrain from engaging in manipulative devices or practices that could result in an unfair advantage for themselves or for third parties.

25.2 No bank shall require any person to contract to receive any financial service or any goods or other service from an affiliate as a condition of being permitted to contract with the bank to receive any financial service.

25.3 No bank shall purchase from an affiliate of the bank

- (a) assets of that affiliate; or
- (b) securities to be underwritten, placed or distributed by that affiliate or that have been so underwritten, placed or distributed within the past year.

25.4 No bank shall provide credit enhancement for, or extend credit to facilitate, the purchase of securities underwritten, placed or distributed by it or an affiliate of the bank.

Section 26
Prudential requirements

26.1 Banks shall observe the following maximum limits when prescribed by instruction of the Central Payments Office:

- (a) the maximum ratios and exposures to be maintained by a bank concerning its assets, risk-weighted assets, and off-balance sheet items and various categories of capital and reserves;
- (b) the maximum aggregate amount of credits, expressed as a percentage of its regulatory capital, that a bank shall be permitted to have committed or outstanding to or for the benefit of any single person or group of interrelated persons; and
- (c) the maximum aggregate amount of credits, expressed as a percentage of the aggregate amount of all its credits, that a bank shall be permitted to extend to or for the benefit of the ten persons (including groups of interrelated persons) with respect to whom the bank's exposure on account of credit transactions is the greatest.

26.2 Banks shall observe the following requirements when prescribed by instruction of the Central Payments Office:

- (a) requirements concerning the minimum aggregate amount of liquid resources or specific categories of such resources in relation to the value or change in value of assets (including guarantees and collateral received) or specific categories thereof, or in relation to the amount or change in amount of liabilities or specific categories of liabilities, provided, however, that banks shall be permitted to meet the requirements concerning liquid resources by maintaining with the Central Payments Office money deposits of an equivalent value;
- (b) requirements concerning the maximum aggregate amount of real estate investments, or specific categories thereof;
- (c) requirements concerning the classification and evaluation of assets and provisions to be made on the basis of such classification and evaluation against substandard and non-performing loans, and the time when earnings on non-performing loans may no longer be accounted for as income except as received in cash; and
- (d) prohibitions, restrictions or conditions concerning:
 - i. the types or forms of credits and investments made;
 - ii. matching as to maturity and interest rate in respect of assets and liabilities (contingent or otherwise); and
 - iii. unhedged positions in foreign currencies, precious metals or precious stones, exceeding a specified size.

26.3 No bank shall make a capital distribution if, in the opinion of the Central Payments Office, after making the distribution, the bank would have less than the minimum regulatory capital.

26.4 No bank may engage directly in industry, commerce, or services other than financial activities.

26.5 No bank shall extend credit secured by its own equity securities or by equity securities of a bank organized in East Timor.

26.6 No bank shall purchase its own equity securities without prior authorization from the Central Payments Office which will be refused if, in the opinion of the Central Payments Office, the bank has less than the minimum regulatory capital.

Section 27

Section 28
Notification of terms and conditions

Each bank shall regularly notify its customers of the precise nature of the business of the bank, and of terms and conditions associated with the deposits made and credits received by them, including the compound annual rate of interest, in accordance with instructions issued by the Central Payments Office.

Section 29
Transactions with related persons

29.1 Banks shall not enter into a transaction with or for the benefit of a person who is related to the bank, if such transaction would be entered into on less favorable terms and conditions, or not at all, with or for the benefit of persons who are not so related to the bank.

29.2 For the purposes of Section 29.1, persons who are related to a bank shall include without limitation:

- (a) any administrator of the bank;
- (b) any principal shareholder of the bank;
- (c) any person who is related to such administrator or principal shareholder by marriage, consanguinity to the second degree, or business interest;
- (d) any legal person that has a significant interest in a juridical person in which the bank has a significant interest.

29.3 Notwithstanding the foregoing, no bank shall extend credit to or for the benefit of a person so related to the bank if as a result thereof the aggregate amount outstanding on all credits extended by the bank to persons so related to the bank would exceed an amount in relation to the bank's regulatory capital as prescribed by instruction by the Central Payments Office.

29.4 Credit extended by any bank to any related bank or financial institution shall be subject to such additional conditions or restrictions as shall be prescribed by instruction of the Central Payments Office.

29.5 For the purposes of Section 29.4, a related bank or financial institution shall include without limitation:

- (a) any private or governmental person or institution, or any number of such persons or institutions acting in concert, that has a direct or indirect significant interest in the bank extending the credit; and
- (b) any juridical person or undertaking in which the bank holds a significant interest.

Section 30
Credit to Employees of Banks

A bank shall not provide financial assistance to any of its employees or for

Section 31
Accounts and Financial Statements

31.1 Banks shall maintain at all times accounts and records and prepare annual financial statements adequate to reflect their operations and financial condition in accordance with consistently maintained international accounting standards.

31.2 Accounts and financial statements shall be in such form and detail and in accordance with such accounting standards as shall be prescribed by instruction of the Central Payments Office respecting the preparation and presentation of the accounts of the bank.

31.3 The accounts, records and financial statements of a bank shall also reflect the operations and financial condition of its subsidiaries and branch offices, both on an individual and on a consolidated basis.

Section 32
Audit

32.1 Each bank shall appoint, upon the recommendation of its Audit Committee, an independent external auditor approved by the Central Payments Office who shall:

- (a) assist it in maintaining proper accounts and records, including in the manner that may be prescribed by the Central Payments Office in accordance with Section 31;
- (b) prepare an annual report together with an audit opinion as to whether the financial statements present a full and fair view of the financial condition of the bank in accordance with the provisions of the present regulation;
- (c) review the adequacy of internal audit and control practices and procedures and make recommendations for remediation; and
- (d) inform the Central Payments Office in regard to any bank or any of its subsidiaries about:
 - i.

Section 33

Publication of balance sheet, auditor's opinion and annual report

Each bank shall:

- (a) within thirty days of each calendar quarter, publish in a national newspaper a fair and true summary of its quarterly balance sheet as at the end of the previous calendar quarter;
- (b) within four months of the end of its financial year, publish in a national newspaper a fair and true summary of its balance sheet;
- (c) within four months of the end of its financial year, publish its auditor's opinion for the preceding financial year;
- (d) publish its annual report; and
- (e) provide copies of its annual report to the public on request without charge.

Section 34

Branches of foreign banks

Branch offices of foreign banks shall publish balance sheets and income statements on

35.4 Each bank and each of its subsidiaries shall admit and cooperate fully with the inspectors of the Central Payments Office and the auditors appointed by the Central Payments Office. No one shall attempt to harass, intimidate, or exert undue influence on an inspector of the Central Payments Office or the auditors appointed by it.

35.5 Each affiliate of a bank and providers of professional or operations services to banks shall provide information to the Central Payments Office as the Central Payments Office may reasonably request concerning the bank's operations and relations with such persons.

Section 36

Infractions, penalties and remedial measures

36.1 The remedial measures and penalties provided for infractions described in this Section shall be determined in particular cases by the Central Payments Office.

36.5 The Central Payments Office shall, notwithstanding any other provision of law, be empowered to liquidate the business of a person who violates any of the provisions of Section 2 of the present regulation.

36.6 The measures and penalties provided in this Section shall not preclude application of other civil penalties or criminal penalties as provided in other applicable law.

36.7 Any fines imposed in accordance with paragraph 36.3 (d) or proceeds in accordance with Section 36.5 shall be paid to the East Timor budget.

Section 37

Suspension and removal of persons related to a bank

37.1 The measures described in Section 37.2 may be taken by Central Payments Office if it determines that any administrator, employee or holder of a significant interest in a bank:

- (a) has willfully or repeatedly committed any violation of the present regulation or any instruction of the Central Payments Office issued pursuant thereto that has resulted in a material loss to the bank or financial gain to such person; or
- (b) has persisted in willful violations described in paragraph (a) following a written warning from the Central Payments Office.

37.2 The Central Payments Office may issue a written order containing any or all of the following provisions:

- (a) requiring the dismissal of the person from his position in the bank;
- (b) prohibiting such person from participating in any manner in the conduct of the affairs of the bank;
- (c) prohibiting the person from direct or indirect exercise of voting rights attached to shares of the bank;
- (d) requiring the person to dispose of all or any part of his direct or indirect ownership interest in the bank;
- (e) requiring the person to reimburse the bank for losses caused by violations described in Section 37.1.

37.3 If any person described in Section 37.1 is officially charged with any criminal offence, the Central Payments Office may issue a written order temporarily suspending such person from his position in the bank, and, if applicable, suspending the exercise of voting rights of shares in the bank by such person, pending the determination of the criminal case. A dismissal of the criminal case or decision of not guilty on the merits shall not preclude the Central Payments Office from taking any enforcement action with respect to a person authorized by the present regulation.

37.4 No person may hold any position in, or participate in any manner in the conduct of, any affiliate of a bank that is engaged in financial services, without the prior written approval of the Central Payments Office, if he or she is subject to an order of the Central Payments Office suspending or removing him from a position in a bank, prohibiting the exercise of his voting rights in shares of a bank, or requiring him to dispose of his ownership interest in a bank.

37.5 In the event that any person does not divest voting shares of a bank pursuant to an order issued under this Section within the prescribed period of time, the Central Payments Office may order that the shares held by such person be transferred to a trustee for sale at auction and the net proceeds, less expenses of sale, will be remitted to the person.

Section 38

Bases for initiation of receivership due to insolvency

38.1 If the Central Payments Office determines that:

- (a) a bank is insolvent; or
- (b) a bank must reasonably be expected to become insolvent within the next ninety days;

the Central Payments Office must revoke the license of that bank; and forthwith take possession and control of that bank through a receiver appointed by the Central Payments Office. This proceeding shall be known as Receivership.

38.2 For the purposes of the present regulation,

- (a) a bank shall be deemed to be insolvent if
 - i. a bank is not paying its obligations in full as they fall due;
 - ii. the value of the liabilities of the bank exceeds the value of the assets of the bank; or
 - iii. a bank has regulatory capital less than one-quarter of the required minimum regulatory capital;
- (b) the value of a bank's assets, liabilities and regulatory capital shall be determined in accordance with valuation standards and procedures prescribed

38.4 The compensation of the receiver and experts that he engages, reimbursement of their expenses and expenses of the Central Payments Office in execution of Sections 36-38 with respect to a bank shall be paid from the assets of the bank.

38.5 Payments to the receiver shall be made on a current basis if in the judgment of the receiver there are sufficient liquid assets; provided, however, that the receiver and his agents shall not receive in any calendar month a larger pro rata share in payment of their claims for fees and expenses than depositors described in Section 42.1(b) of the present regulation receive in payment of their claims.

38.6 Any moneys owing to the receiver at the end of the term of receivership shall be paid from the proceeds from the sales of the bank's assets with the priority described in Section 42 of the present regulation.

Section 39

Subject to the primary objective of maximum satisfaction of the bank's liabilities to creditors, the receiver shall expedite the sale of the bank or its assets and payments to creditors.

40.2 A receiver may:

- (a) continue any operations other than the taking of deposits and extending credit to other than existing customers in relation to outstanding assets;
- (b) discontinue any operations;
- (c) borrow money on an unsecured basis; if not possible, on the security of the assets of the bank;
- (d) stop or limit the payment of any obligation;
- (e) employ or dismiss any administrator, employee or professional advisor; and
- (f) execute any instrument in the name of the bank, initiate or defend and conduct in its name any action or legal proceeding.

40.3 The receiver shall have unrestricted access to and control over the offices, books of account and other records, and other assets of the bank for which he has been appointed and its subsidiaries.

40.4 Any person who willfully interferes with a receiver's access to and control over the offices, books of account and other records, and other assets of a bank for which he has been appointed shall be imprisoned for a period of not less than one year nor more than five years or fined in an amount not less than US\$ 1000 per day nor more than US\$ 5000 per day for each day that the infraction continues, or both.

40.5 At the request of a receiver, a Law Enforcement Officer shall assist the receiver to gain access to bank premises or control over bank records and other assets by use of force, without the need for an order of a court of law.

40.6 The Central Payments Office shall approve or deny a merger of the bank with another bank, or sale of substantially all the bank's assets to any one bank, based upon section 14 of the present regulation.

40.7 The receiver shall have the same rights and privileges and be subject to the same duties, penalties, conditions, and limitations as apply to administrators or employees of a bank licensed under the present regulation.

40.8 The powers of the administrators of the bank shall be suspended during a receivership; provided, however, that administrators may be instructed by the receiver to exercise specified functions for the bank; further provided, that such persons are subject to dismissal by the receiver from their positions at the bank and shall thereupon cease to receive compensation from the bank.

40.9 Forthwith upon his appointment, the receiver shall secure the assets of the bank to seek to prevent their dissipation by theft or other improper action, by taking actions including, but not limited to, canceling authorizations of persons to engage the financial responsibility of

the bank and issuing new authorizations, as appropriate, to a limited number of trustworthy employees, and notifying appropriate third parties.

40.10 Forthwith upon his appointment, the receiver shall establish a new balance sheet for the bank, based on his determination of liquidation values of the bank's assets with a corresponding reduction in the value of the bank's liabilities in the reverse order of priority in payment of distributions in a liquidation of a bank's assets described in Section 42. Liabilities shall be deemed due and payable and interest shall cease to accrue as of the date of the appointment of the receiver. Unmatured liabilities shall be discounted to present value at the rate of interest determined by the Central Payments Office.

40.11 Within one month of taking possession of a bank, the receiver shall make an inventory of the assets and property of the bank and transmit a copy thereof to the Central Payments Office, which shall make a copy available for examination by the public.

40.12 After fifteen days from the date of his appointment, the receiver may make available for withdrawal by depositors or payment to other creditors such amounts as in his opinion may appropriately be used for that purpose; provided, however, that all depositors or other creditors who are similarly situated shall be treated in the same manner; and further provided, that before a general distribution of payments to creditors of the bank or the assumption of the bank's liabilities by another bank, creditors other than those described in Section 42.1(b) shall receive no more than fifty percent of the amount of their allowed claims as determined by the receiver.

40.13 When a receiver has taken possession of a bank:

- (a) any term, statutory, contractual or otherwise, on the expiration of which a claim or right of the bank would expire or be extinguished, shall be extended by six months from the date of such expiration or extinction;
- (b) any attachment or security interest (except one existing six months prior to the effective date of the receivership) shall be vacated, and no attachment or security interest, except one created by the receiver in the application this Section shall attach to any of the assets or property of the bank so long as such receivership continues;
- (c) shareholders' rights shall be extinguished except for the right to receive dividends, if any, under Section 42.4 of the present regulation and the right to receive any net payment received from the sale of the bank or substantially all its assets if the receiver determines that the bank had positive net worth at the time of sale; and
- (d) the receiver may issue new shares in the bank, sell the assets of the bank or arrange for the assumption of liabilities of the bank on terms he considers fair.

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40.15 Any assets of the bank that have not been sold at the end of the term of the receivership may be abandoned by the receiver or given to a charitable institution that promotes public health or education that wishes to accept them. Creditors of the bank shall have no claim against any such assets.

40.16 The receiver shall report each month to the Central Payments Office on the progress of the receivership, including the most recent financial statements of the bank, statements of sources and uses of funds, information concerning the prospects for the sale of the bank or its assets, and projections of payment of the bank's liabilities.

Section 41
Avoidance of Pre-receivership Transfers

41.1 The receiver may bring an action in a court of competent jurisdiction to set aside a transaction based on a forged or fraudulent document that the bank has executed to the detriment of creditors within five years of the appointment of the receiver.

41.2 The receiver may bring an action in court to set aside actions affecting the assets of the bank or to recover from third parties the transfers by the bank, as follows:

- (a) Gratuitous transfers to, or to persons related to, administrators and principal shareholders of the bank made within five years prior to the effective date of the receivership;
- (b) Gratuitous transfers to third parties made within three years prior to the effective date of the receivership;
- (c) Transactions in which the consideration given by the bank considerably exceeded the value given by the bank within three years prior to the

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for the property and knew that the initial transfer could be set aside under the present regulation.

41.7 The receiver may order that notice of the filing of an action to set aside a transfer be recorded in the public records for real estate ownership and any other rights in property and a

Section 43
Final Reporting to the Central Payments Office

43.1 Once the proceeds for the sale of assets of a bank have been distributed pursuant to Section 42, the receiver shall provide a report to the Central Payments Office that includes income and expense and sources and uses of funds statements during the period of receivership.

43.2 Upon approval by the Central Payments Office of the report by a receiver described in Section 43.1, the Central Payments Office and the receiver shall be relieved of any further responsibility in connection with the receivership of a bank.

Section 44
Miscellaneous Receivership Provisions

44.1 Professional employees appointed to represent or assist a receiver or the Central Payments Office in connection with a receivership shall not be paid amounts greater than are payable to employees or agents of banks for similar services, except that the Central Payments Office may authorize payment at higher rates, if the Central Payments Office determines that paying such higher rates is necessary in order to recruit and retain necessary personnel.

44.2 The Central Payments Office shall have authority to indemnify a receiver and his agents for their actions on such terms as the Central Payments Office deems proper.

44.3 All claims arising out of or in connection with the insolvency of a bank or a bank in receivership against a bank receiver or the Central Payments Office in relation to a bank licensed under the present regulation shall be finally settled in accordance with the provisions of the present regulation. No appeals from the acts of a receiver or the Central Payments Office may be taken except that the bank's shareholders holding not less than ten percent of any class of shares with the right to vote may appeal to a court of competent jurisdiction against the appointment of a receiver for a bank.

44.4 Court proceedings arising out of or in connection with a bank insolvency or a bank in receivership against a bank administrator, receiver or the Central Payments Office in relation to a bank licensed under the present regulation shall be brought before a court of competent jurisdiction.

44.5 If the owners of a bank wish to voluntarily liquidate the bank under the Limited Liability Companies Act or otherwise, they shall submit a request for approval of the liquidation to the Central Payments Office accompanied by such information as the Central Payments Office may prescribe by instruction. The Central Payments Office shall make due inquiry into the affairs of the bank and may approve the voluntary liquidation under other applicable law or determine that the present regulation applies and appoint a receiver pursuant to Section 38.

Section 45
Licenses of existing banks

45.1 Persons conducting the business of a bank in East Timor on the date on which the present regulation enters into force that wish to operate as a bank in East Timor must submit an application in accordance with Section 6 within thirty (30) days of the effective date of the present regulation.

45.2 Persons described in Section 45.1 that have not submitted an application by such date or whose application has been denied pursuant to the provisions of Section 6 of the present regulation shall cease to conduct the business of a bank or wind up their affairs, in accordance with applicable laws or regulations other than the present regulation, thirty (30) days after the date on which the present regulation enters into force, if they have not submitted an application, or on the date of notification of denial of their license application.

45.3 The Central Payments Office may appoint a receiver to liquidate the business of persons that must wind their affairs in accordance with the provisions of Section 45.2.

45.4 Within the time period specified by the Central Payments Office by instruction or order to a bank that its organization, administration, financial condition, or operations do not conform in one or more material respects with the requirements of the present regulation or with any instruction or order issued by the Central Payments Office pursuant thereto, such bank or their owners or administrators shall conform to the requirements of the present regulation. Such time period shall not be later than 31 December 2000.

Section 46
Regulatory and supervisory powers of the Central Payments Office

The Central Payments Office shall be empowered to issue such instructions and guidelines, to visit such offices of banks, to examine such accounts, books, documents and other records, and to take such other action as the Central Payments Office shall deem necessary or advisable to give effect to the provisions of the present regulation.

Section 47
Regulations of the Central Payments Office; Fees

47.1 Instructions issued by the Central Payments Office shall be published in the Official Gazette and shall take effect on the date of such publication or on such later date as such instruction shall specify.

47.2 The Central Payments Office shall charge fees to banks for its bank supervisory and regulatory services that shall defray its direct and indirect costs incurred in providing such services. Fees shall be assessed against banks in relation to the amount of their assets or to extraordinary expenses incurred by the Central Payments Office or its agents in relation to a bank. Banks shall pay fees within ten days of presentation of a statement by the Central Payments Office.

- (f) “capital distribution” means a distribution of cash or other property by a bank to its owners made on account of that ownership, but not including
- i. any dividend consisting only of shares of the institution or rights to purchase such shares or
 - ii. any amount paid on deposits of a cooperative bank that the Central Payments Office determines is not a distribution for purposes of Section 26.3;
- (g) “credit” means any direct or indirect commitment to disburse a sum of money in exchange for a right to repayment of the amount disbursed and outstanding and to payment of interest or other charges on such amount, any extension of the due date of a debt, any debt payment guarantee issued, and any commitment to acquire a right to payment of a sum of money; the term “credit” shall not include bank deposits and the purchase of debt securities in the secondary market;
- (h) “credit documentation” means, with respect to an agreement entered into by a bank with any other person for the provision of credit:
- i. financial statements of the borrower as of not more than 180 days from the date of credit application and of any guarantor of the borrower's indebtedness;
 - ii. a description of any collateral over which the lender has any mortgage or charge as security for the due payment of the indebtedness to it an

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whether or not evidenced by any entry in a record of the person receiving the sum, or by any receipt, certificate, note or other document;

- (k) “equity interest” means any ownership right or voting right with respect to a juridical person or undertaking;
- (l) “financial activity” means any of the activities that are listed in Section 24 of the present regulation;
- (m) “financial institution” means a juridical person that is not a bank that is engaged in one or more of the following activities: extending credit; underwriting, dealing in, broking, or distributing securities; acting as investment company manager or investment advisor;
- (n) “guidelines” means non-obligatory recommendations or policy statements issued by the Central Payments Office for the information of banks and other parties concerned with Central Payment Office's operations;
- (o) “instruction” means a general obligatory determination issued by the Central Payments Office in implementation of the present regulation, or, of an instruction or guideline issued in accordance with the present regulation, directed to one or more types of banks or other persons or entities;
- (p) “license” means an authorization issued by the Central Payments Office granting the right to engage in financial activities specified by that license;
- (q) “person” includes an individual and a juridical person (a company, partnership, association, and group of persons acting together with a common purpose, whether or not organized as a formal business entity);
- (r) “principal shareholder” means a person that owns directly or indirectly ten percent or more of any class of shares with voting rights of a bank;
- (s) “regulatory capital” means capital defined by the Central Payments Office from time to time for regulatory purposes, which may differ from the definition of capital in paragraph (e);
- (t) “remedial action” means measures to correct the infractions described in Section 36.2 which may include: the establishment of a plan to increase regulatory capital; the establishment of new committees of the bank to oversee credit administration, asset and liability management, or internal audit and controls; replacement of the chief executive officer or heads of departments; or establishing and enforcing improved internal controls;
- (u) “significant interest” means a direct or indirect holding of an interest in a juridical person or undertaking that represents the equivalent of twenty percent or more of the equity or of any class of shares with voting rights, or that makes it possible to exercise a significant influence over the management or policies of capi1 Tca

class of shares with voting shares; or a significant interest that permits such other person or group of persons to exercise effective control over the management or policies of the subsidiary;

- (w) “trustee” means a person who undertakes an action for the benefit of another and who must exercise the highest degree of care under the law in that undertaking; and
- (x) “voting shares” means common shares in the capital of the issuer and any other shares of any designation or description that carry the right to vote on any general resolution at a general or special meeting of the issuer.

Section 50

Repeal of Existing Laws and Regulations

All existing laws, regulations, decrees, and orders contrary to the provisions of the present regulation are hereby repealed or suspended with respect to banks and their shareholders, administrators, employees, agents and affiliated entities, to the extent necessary to give effect to the present regulation.

Section 51

Entry into Force

The present regulation 6D -0.104 Tcsen .56 480Bree20.792 TDr3u5oar1ratoresent regulation.