GUIDELINES ON SIGNIFICANT SHAREHOLDING IN BANKS

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1. AUTHORITY, PURPOSE AND SCOPE

(a) Authority

1.1 The Guidelines are issued by the Bank of Botswana (Bank) pursuant to its authority set forth in Section 4(2) of the Bank of Botswana Act (CAP. 55:01).

(b) Purpose

1.2 The purpose of these Guidelines is to provide guidance for the implementation of the provisions of Sections 9(6), (7) and (9) and 29(2) of the Banking Act (CAP. 46:04) (hereinafter referred to as the "Act").

(c) Scope

1.3 These Guidelines apply to banks licensed by the Bank under the Act, to statutory banks and other financial institutions established under separate Acts of Parliament, but falling under the purview of the Bank's supervision in terms of Section 53(2) of the Act and/or their respective statutes.

2. DEFINITIONS

(a) **Act -** The Banking Act (CAP. 46:04).

(b) **Acting in concert -** Two or more persons (either physical or juridical, including a bank) acting together to achieve the same goal.

(c) **bank** - A company which is licensed by the Bank, pursuant to the Act, to conduct banking business in Botswana.

(d) **The Bank** - The Bank of Botswana established under the Bank of Botswana Act (CAP. 55:01).

(e) **Juridical Person** - A company, partnership, association or group of persons acting in concert, whether or not organised as a formal business entity.

(f) **Person** - Either a physical person (an individual) or a juridical person.

(g) **Related Person -** Includes all of the following without limitations: (1) Significant shareholders; (2) Member of the Board of Directors or Audit Committee; (3) Senior management officials; (4) Any person who is related to such significant shareholder, member of the Board of Directors or Audit Committee, Principal Officer or Senior Management Official by family or business interest; (5) Subsidiary of the bank; (6) Company or undertaking in which at least a 5 percent interest is held by the bank: (7) Parent company of the bank; (8) Company that is under common control with the bank; and (9) A company that holds at least a 5 percent interest of another company in which the bank holds at least a 5 percent interest.

(h) **Shareholding -** Any ownership right or voting right with respect to a juridical person, including a bank, whether held directly or indirectly.

(i) **Significant shareholding** - A person (physical or juridical) holding, directly or indirectly: (1) 5 percent or more of the equity or voting rights of a bank; or (2) an equity or other interest in a bank that enables the holder to exercise significant influence over its management or activity.

(j) **Subsidiary -** A juridical person in which another person, or group of persons acting in concert, holds the equivalent of 50 percent or more of any class of shares with voting rights; or a shareholding that permits such other person or group of persons to exercise effective strategic control over the management or policies of the entity.

3. REQUIREMENTS FOR TRANSFER OF SHAREHOLDING IN BANKS

(a) Acquisitions requiring the prior written authorisation of the Bank

3.1 Any person who proposes to hold, directly or indirectly, a significant shareholding in a bank shall receive the prior written authorisation of the Bank.

(i) Acquisitions

3.2 Any person, who already holds a significant shareholding in a bank pursuant to Section 3 of the Act or Section 3.1 of this Guideline, shall provide written notice to the Bank prior to increasing the shareholding to each of the following levels:

- 20 percent;
- 33 percent;
- 50 percent; and
- above 50 percent prior authorisation by the Bank is required.

(ii) Disposals

3.3 Any person who proposes to dispose of, directly or indirectly, a significant shareholding in a bank shall provide written notice to the Bank prior to reducing the shareholding below each of the following levels:

- 50 percent such that the bank would cease to be a subsidiary;
- 33 percent;
- 20 percent; and
- 10 percent.

(b) Application and Notice Requirements

3.4 Requests for the prior written authorisation of the Bank pursuant to Section 3.1 of this Guideline and notices to the Bank of a proposed acquisition and/or disposal pursuant to

Sections 3.2 and 3.3 of this Guideline, respectively, shall be made in writing in such form as shall be determined by the Bank.

3.5 The Bank may require any other information from applicants, notice providers and third parties that it deems necessary to complete its assessment.

3.6 The Bank may waive, by notice in writing and for good cause shown, certain requirements for information from a person who has previously received the prior written authorisation of the Bank for a significant shareholding in a bank.

(c) **Action by the Bank**

(i) Time-frames

3.7 With regard to Section 3.1 of the Guideline, within ninety (90) days of receipt of a complete written application for authorisation to acquire a significant shareholding in a bank, including any relevant information or documents that may have been requested from the applicant and/or third parties, the Bank will either grant, or refuse to grant, written authorisation for the proposed acquisition.

3.8 With regard to Section 3.2 and 3.3 of the Guideline, within sixty (60) days of receipt of a written notice of a proposed acquisition and/or transfer of an equity interest in a bank, including any relevant information or documents that may have been requested from the notice-provider and from any third parties, the Bank will either object in writing to the proposed transfer, or it will provide written notice of its intent not to object to the proposed transfer.

(ii) Decision Factors

3.9 The decision of the Bank whether to authorise the acquisition of a significant shareholding in a bank or to object to a notice to transfer shareholding shall be based on the following;.

(a) The proposed significant shareholder is suitable so as not to influence the principal officer or the board of directors of a bank to carry on banking business in a manner detrimental to the interests of depositors;.

(b) The technical knowledge, integrity, experience, financial condition, and history of the proposed significant shareholder are satisfactory;.

(c) The capital structure of the bank is adequate in relation to the nature and scale of the proposed banking business subsequent to the proposed acquisition;.

(d) The proposed significant shareholder is satisfactory regarding the character of its business, the experience and qualifications of its management and the adequacy of its capital or net worth;.

(e) Any proposed new directors or senior management officials are fit and proper persons;.

(f) The convenience [and] needs of the community and market will remain satisfactorily served by the bank subsequent to the proposed acquisition; and.

(g) The proposed significant shareholder has not contravened any provision of the Act.

4. RESTRICTIONS

4.1 A person shall have one year from the date of either the Bank's written authorisation or notice of no-objection pursuant to Section 3.7, to complete the subject transfer of shareholding in a bank.

4.2 The significant shareholder shall comply with all representations made in the application or notice to the Bank and with all conditions imposed by the Bank.

4.3 In case a person does not receive the prior written authorisation of the Bank to acquire a significant shareholding in a bank pursuant to Section 3.1 or does not provide the proper advance notice to the Bank to increase shareholding to any of the thresholds designated in Section 3.2, the transfer(s) of shareholding in a bank shall have no legal effect.

4.4 The Bank may prohibit a significant shareholder in a bank from acquiring additional shares in that bank, if any information comes to its attention which would serve as a basis for the Bank to deny an application or to object to a notice of a proposed transfer of shareholding.

5. REPORTING

5.1 Each bank shall report annually to the Bank the names of all significant shareholders in the bank (including the identities of beneficial owners of shares held by custodians), the number and type of shares held and the number of shares held as a percentage of total shares outstanding.

6. ANNEXES

Annex 1

(a) Application for the prior authorisation of the Bank to hold, directly or indirectly, a significant shareholding in a bank

Form of Application

The original and two complete official copies of the application and all required information must be submitted to the Bank in writing and in English. If two or more persons are acting in concert to acquire a significant shareholding in a bank, then each person or group of persons must submit an application. The application must be signed by the proposed significant shareholder, if a physical person, or by at least two authorised officers, if a juridical person.

Information Required

The following is a list of information which must be submitted to the Bank as part of the application.

1. Name of bank.

2. Date of the proposed acquisition.

3. Name, address and telephone number of the proposed significant shareholder.

   Physical persons:

   (i) country identification or passport number

   (ii) current employment and position held

   Juridical persons:

   (i) legal status

(ii) names of persons owning ten percent (10%) or more, or who are otherwise in control.

All persons (juridical and physical):

(i) Names, addresses, amount and percentage of shareholding of companies, firms and other business concerns in which they have an interest as principal shareholders, directors, partners, proprietors or guarantors, as the case may be.

(ii) Financial statements of the business concerns for three years immediately preceding the date of application, audited if available.

(iii) The nature of participation in the management of the business concerns.

(iv) Bankers' credit reports in respect of the business concerns.

(v) Curriculum vitae or business profile.

(vi) History of ownership of at least ten percent (10%) or more of the stock, or a previous position as director, principal officer, or senior management official in any bank located anywhere in the world.

(vii) Details of pending litigation, if any.

(viii) Details of previous or pending insolvency or bankruptcy proceedings, if any.

4. State the number of shares of the bank authorised; number of shares currently outstanding; and number of shares projected to be outstanding subsequent to the proposed acquisition.

5. State the number and type of shares now held by the proposed significant shareholder; number and type of shares to be acquired; and number and type of shares proposed to be held following consummation of the proposed acquisition. Present each number as a percentage of the total shares outstanding of the bank. Indicate whether, and how many, shares will be issued by the bank.

6. State the purchase price per share, and the total purchase price. Provide the current book value per share and the current market value per share. Indicate the source and date of the market value information.

7. Identify each transferor of shares proposed to be acquired. State the total number of shares currently held by each, the total number of shares to be transferred and the total number of shares to be held by each following consummation of the proposed acquisition. Present each number as a percentage of the total shares of the bank.

8. Describe the proposed acquisition in detail and provide copies of all agreements and documents related to the acquisition, including all invitations or tender offers to shareholders.

9. Provide complete information on the source of funds to be used for the acquisition. Indicate the amount of funds required and the specific source(s) of funds.

10. If assets will be sold, provide complete information on the proposed sale, including copies of pertinent documents.

11. If funds will be borrowed, provide complete information on the loan including identification of the lender(s), amount to be borrowed, amount of the loan as a percentage of the total purchase price, collateral to be pledged and all terms of the transaction. Specifically, identify how the loan will be repaid. If dividends, salary or any other income from the bank are anticipated to be used to service the debt, provide complete details.

12. Identify all persons who would become "related persons" of the bank as a result of the proposed acquisition.

13. Describe the reason(s) for the proposed acquisition. Describe general plans for the future operation of the bank. Provide specific and complete information regarding the intention of the person (or persons acting in concert) making the acquisition to introduce significant changes in the bank, such as:

    (i) sale of assets;
    (ii) merger with another bank or acquisition by other persons;
    (iii) material changes to the banking business and activities of the bank;
    (iv) changes in the board of directors or senior management of the bank; and
    (v) changes in the corporate structure of the bank.

14. If the acquisition will result in holding an interest in the bank of less than 50 percent and if no material changes are planned, then a copy of the bank's existing business plan should be submitted accompanied by a signed statement that the proposed significant shareholder has studied the existing business plan and organisational structure and that no material changes are anticipated following the acquisition.

15. If the acquisition will result in holding an interest of at least 50 percent or if material changes in the bank's activity, management or structure are planned, then submit a five-year business plan which provides a clear understanding of the future financial activities of the bank. The business plan should contain the following information:

    (a) Narrative

15.1 The business plan should contain a narrative section in which the following essential elements are thoroughly addressed:

Introduction

15.2 State the key strategic goals of the bank. Provide a basic statement on the nature and scale of the proposed banking business, development plans for the business and arrangements for the management of the business. Describe the geographical area(s) and clientele to be served by the bank and the types of products and services to be offered.

Assumptions

15.3 Discuss all assumptions used in the preparation of the business plan and financial projections such as economic conditions in Botswana, expectations of market changes, level of competition, growth forecasts, interest rates on earning assets and interest-bearing liabilities. Provide support for the business plan's financial projections for asset and liability growth, profitability, maintenance of adequate capital and dividends.

Corporate Governance

15.4 Describe all anticipated changes to the structure of the organisation, board of directors and senior management of the bank. Address corporate governance issues relating to the board of directors, permanent committees (such as the audit committee), senior management officials, operational and administrative divisions and their sub-divisions and functions, lines of authority and reporting relationships, staff projections, and recruitment and training.

Financial Activities

15.5 Discuss the types and scale of deposit-taking and other financial activities envisaged based upon the proposed significant shareholder's plans for the operation of the bank. This presentation should be supported by information which clearly shows the capability to undertake those activities in terms of board oversight, management, expertise, systems support, organisation and staff. Specifically address changes to:

- The types of loans to be offered, targeted economic sectors, and plans for diversification;
- Planned deposit and borrowing activity;
- Method for pricing loans and deposits;
- Proposed off-balance sheet activities; and
- Correspondent and agency arrangements.

Risk Management

15.6 Describe the risk management processes: risk identification, measurement, monitoring and control. Describe plans for controlling the following risks, as they relate to the proposed changes in the bank's operations by the proposed significant shareholder:

- Liquidity, interest rate, and maturity risk (asset and liability management);
- Credit risk;
- Operational risk;
- Market risk; and
- All other risks to which the bank will be exposed when engaged in the banking activities envisaged by this business plan.

With regard to credit risk, specifically address proposed changes to:

- Credit policies (which must include limitations on loans to "related persons);
- Plans to minimise concentration risk through diversification and limitations on exposures to individual and groups of related borrowers; and
- Asset quality considerations such as underwriting, loan classification system, and provisioning for bad and doubtful loans.

Infrastructure and Internal Control

15.7 Provide information on the suitability of the premises. Address plans for future expansion, including branch offices. Describe any changes planned to the operations systems, including corporate policies and procedures, accounting standards, record-keeping, reporting (including to management, board of directors, shareholders, and the Bank), computerisation (including hardware, software, and maintenance), risk measurement and controls, internal controls, and internal and external audit. Provide evidence that systems will be capable of producing all required reports to the Bank in an accurate and timely fashion.

Business Plan Monitoring

15.8 Discuss the methods that the board of directors will use to regularly monitor performance under the business plan.

Financial projections

15.9 Based upon the preceding narrative section, submit a statement of financial position and statement of income for each of the first five years following the proposed acquisition.

Other

15.10 Discuss plans for any transactions with "related persons". Indicate any plans to change the bank's external auditor.

15.11 Prior to completing its assessment of an application, the Bank may, by notice in writing, require additional information or documents.

Annex 2

(b) **Notice of intent to transfer shareholding in a bank**

Form of Notice

The original and two complete official copies of the notice and all required information must be submitted to the Bank in writing and in English. The notice must be signed by the significant shareholder, if a physical person, or by at least two authorised officers, if a legal person.

Information Required

The following is a list of information which must be submitted to the Bank as part of the notice.

1. Name of bank.
2. Type of equity transfer.
3. Date of the proposed equity transfer.

For disposal of shareholding:

1. Name, address and telephone number of the significant shareholder.

2. As a result of the proposed equity transfer, my shareholding in the bank will be reduced below the following level (check one):

   (i) 50 percent such that the bank would cease to be a subsidiary □
   (ii) 33 percent □
   (iii) 20 percent □
   (iv) 10 percent □

3. State the number of shares of the bank authorised and number of shares currently outstanding.

4. State the number and type of shares now held by the significant shareholder; number and type of shares to be disposed; and number and type of shares to be held following the disposition. Present each number as a percentage of the total shares outstanding at the bank.

5. State the sale price per share and the total sale price. Provide the current book value per share and the current market value per share. Indicate the source and date of the market value information.

6. Identify each proposed acquirer. State the total number of shares to be transferred to each person and as a percentage of the total shares of the bank.

7. Describe the proposed transfer in detail and provide copies of all agreements and documents related to the transfer of shares.

For acquisitions of shareholding:

1. Name, address and telephone number of the significant shareholder.

2. As a result of the proposed equity transfer, my shareholding in the bank will increase to, or exceed, the following level (check one):

   (a) 20 percent □
   (b) 33 percent □
   (c) 50 percent such that the bank would become a subsidiary □

3. State the number of authorised shares of the bank and the number of shares currently outstanding.

4. State the number and type of shares now held; number and type of shares to be acquired; and number and type of shares to be held following the acquisition. Present each number as a percentage of the total shares outstanding of the bank. Indicate whether, and how many, shares will be issued by the bank.

5. State the purchase price per share and the total purchase price. Provide the current book value per share and the current market value per share. Indicate the source and date of the market value information.

6. Identify each transferor of shares proposed to be acquired. State the total number of shares to be acquired from each person, and as a percentage of the total shares of the bank.

7. Describe the proposed acquisition in detail and provide copies of all agreements and documents related to the acquisition, including all invitations or tender offers to shareholders.

8. Submit signed financial statements for the past three years, audited if available.

9. Provide complete information on the source of funds to be used for the acquisition. Indicate the amount of funds required and the specific source(s) of funds.

10. If assets will be sold, provide complete information on the proposed sale, including copies of pertinent documents.

11. If funds will be borrowed, provide complete information on the loan including identification of the lender(s), amount to be borrowed, amount of the loan as a percentage of the total purchase price, collateral to be pledged, and all terms of the transaction. Specifically identify how the loan will be repaid. If dividends, salary or any other income from the bank are anticipated to be used to service the debt, provide complete details.

12. Identify all persons who would become "related persons" of the bank as a result of the proposed acquisition.

13. Describe the reason(s) for the proposed acquisition. If the acquisition will result in holding an interest in the bank of less than 50 percent and if no material changes to the operation, board of directors, senior management, or structure of

the bank are planned, so state. Otherwise, describe general plans for the future operation of the bank. Provide specific and complete information regarding the intention of the person (or persons acting in concert) making the acquisition to introduce significant changes in the bank, such as:

(i) sale of assets;
(ii) merger with another bank or acquisition by other persons;
(iii) material changes to the activities of the bank;
(iv) changes in the board of directors or senior management of the bank; and
(v) changes in the corporate structure of the bank.

14. If the acquisition will result in holding an interest in the bank of at least 50 percent or if material changes in the bank's activity, board of directors, senior management, or structure are planned, then submit a five-year business plan which provides a clear understanding of the future financial activity of the bank. The business plan should contain the following information.

(a) Narrative

15. The business plan should contain a narrative section in which the following essential elements are thoroughly addressed.

Introduction

16. State the key strategic goals of the bank. Provide a basic statement on the nature and scale of the proposed banking business, development plans for the business, and arrangements for the management of the business. Describe the geographical area(s) and clientele to be served by the bank and the types of products and services to be offered.

Assumptions

17. Discuss all assumptions used in the preparation of the business plan and financial projections such as economic conditions in Botswana, expectations of market changes, level of competition, growth forecasts, interest rates on earning assets and interest-bearing liabilities. Provide support for the business plan's financial projections for asset and liability growth, profitability, maintenance of adequate capital, and dividends.

Corporate Governance

18. Describe all anticipated changes to the structure of the organisation, board of directors and senior management of the bank. Address the board of directors, permanent committees (such as the audit committee), senior management officials, operational and administrative divisions and their sub-divisions and functions, lines of authority and reporting relationships, staff projections, and recruitment and training.

Financial Activities

19. Discuss the types and scale of deposit-taking and other financial activities envisaged based upon the proposed significant shareholder's plans for the operation of the bank. This presentation should be supported by information which clearly shows the capability to undertake those activities in terms of board oversight, management, expertise, systems support, organization and staff. Specifically address changes to:

    (i) The types of loans to be offered, targeted economic sectors, and plans for diversification;

    (ii) Planned deposit and borrowing activity;

    (iii) Method for pricing loans and deposits;

(iv) Proposed off-balance sheet activities; and

(v) Correspondent and agency arrangements.

Risk Management

20. Describe the risk management processes: risk identification, measurement, monitoring and control. Describe plans for controlling the following risks, and specifically address the changes proposed in the bank's operations by the proposed significant shareholder:

(i) Liquidity, interest rate, and maturity risk (asset and liability management);

(ii) Credit risk;

(iii) Operational risk;

(iv) Market risk; and

(v) All other risks to which the bank will be exposed when engaged in the banking activities envisaged by this business plan.

With regard to credit risk, specifically address proposed changes to:

(i) Credit policies (which must include limitations on loans to "related persons");

(ii) Plans to minimise concentration risk through diversification and limitations on exposures to individual and groups of related borrowers; and

(iii) Asset quality considerations such as underwriting, loan classification system, and provisioning for bad and doubtful loans.

Infrastructure and Internal Control

21. Provide information on the suitability of the premises. Address plans for future expansion, including branch offices. Describe any changes planned to the operations systems, including corporate policies and procedures, accounting standards, record-keeping, reporting (including to management, board of directors, shareholders, and the Bank), computerisation (including hardware, software, and maintenance), risk measurement and controls, internal controls, and internal and external audit. Provide evidence that systems will be capable of producing all required reports to the Bank in an accurate and timely fashion.

Business Plan Monitoring

22. Discuss the methods that the board of directors will use to regularly monitor performance under the business plan.

(b) Financial projections

23. Based upon the preceding narrative section, submit a statement of financial position and statement of income for each of the first five years following the proposed acquisition.

Other

24. Discuss plans for any transactions with “related persons.” Indicate any plans to change the bank’s external auditor.

25. Prior to making a determination on whether to object to a proposed transfer, the Bank may, by notice in writing, require additional information or documents

Issued this …………………………………...… day of …………..………..……….…, 2008

DIRECTOR
BANKING SUPERVISION DEPARTMENT