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EXTRAORDINARY

The Government of the Republic of Liberia announces that the Central Bank of Liberia (CBL), pursuant to its mandate under the Central Bank of Liberia Act of 1999 and its authority under the Financial Institutions Act of 1999, and specifically consistent with Section 55 of the said Central Bank of Liberia Act of 1999 and Section 39 of the Financial Institutions Act of 1999, has issued on January 4, 2018, its Prudential Regulation No. CBL/RSD/007/2017 revising Prudential Regulations No. CBL/SD/003/2000 herein under:

**PRUDENTIAL REGULATIONS NO. CBL/RSD/007/2017
CONCERNING RELATED PERSONS TRANSACTIONS**

BY ORDER OF THE PRESIDENT

MINISTER OF FOREIGN AFFAIRS

**MINISTRY OF FOREIGN AFFAIRS
MONROVIA, LIBERIA
January 4, 2018**

PRUDENTIAL REGULATIONS NO. CBL/RSD/007/2017
PRUDENTIAL REGULATIONS FOR RELATED PERSONS TRANSACTIONS

1.0 INTRODUCTION

The Central Bank of Liberia (CBL), in keeping with Sections 20 (2) (b, c,d,e, & h) and Section 29 of the new Financial Institutions Act (FIA) of 1999, hereby issues these regulations, replacing Prudential Regulations No. CBL/SD/003/2000 Concerning Related Persons Transactions. The standards set herein are minimum requirements and licensed financial institutions are required to adopt more stringent standards applicable to their specific circumstances.

Part I – PRELIMINARY

2.0 TITLE

These regulations shall be cited as "**Prudential Regulations No. CBL/RSD/007/2017 Concerning Related Persons Transactions.**"

3.0 APPLICABILITY

Where banks are unsure of exemptions under this regulation, or in cases of doubt, the Central Bank of Liberia should be contacted for clarification.

These Regulations shall apply to all licensed banks operating in Liberia.

4.0 INTERPRETATIONS/DEFINITIONS

- 1) "Affiliate" in respect of any financial institution, means any entity, corporate or unincorporated, where 5% or more of any class of its voting shares or other voting participation is directly or indirectly owned or controlled by that financial institution, or is held by it with power to vote.
- 2) "Arm's length" - Literally at a distance, transacting business with a related person on the same terms as available to members of the general public, rather than on familiar, friendly or preferential terms.
- 3) "Director" means any person who is a member of the board of directors, regardless of whatever name he may be called, carrying out or empowered to carry out substantially the same functions in relation to the strategic direction of the bank as those carried out

by a member of the board of directors of a corporation organized under the Associations Law of Liberia, Title 5 of the Liberian Code of Laws Revised.

- 4) "Employee" means salaried staff of the institution and includes executive directors of the institution.
- 5) "Group of Inter-related Persons" - Two or more persons holding exposures from a bank, whether on a joint or separate basis, who are mutually associated and have at least one of the following: (1) a controlling interest; (2) common ownership or control; (3) common management; (4) common directors; (5) cross guarantees; or (6) direct financial interdependence which cannot be substituted in the short-term.
- 6) "Management Service Agreement" is a contract between the parent/shareholder and a subsidiary bank whereby the parent/shareholder undertakes to offer several form of services that will benefit the subsidiary.
- 7) "Non-preferential" when used in reference to a financial transaction, means upon terms not more favorable than those which would be offered under prevailing conditions to unrelated persons;
- 8) "Person" means and includes any company, partnership, association or body of persons, corporate or unincorporated.
- 9) "Principal shareholder" means any shareholder of a bank or other person owning five (5%) percent of any class of shares of a bank in Liberia.
- 10) "Related interest" means interests of affiliates, associates and their related persons and the business interests of any of them.
- 11) "Related persons" to a bank are:-
 - [i] any officer or director of bank or any person who alone or together with one or more others has the authority to enter into commitments for the account of the bank;
 - [ii] any principal shareholder of the bank;
 - [iii] any person who is related to such officer, director or principal shareholder by marriage, consanguinity to the second degree, or business interest.

- [iv] a corporate parent or organization owning a majority of shares or otherwise controlling the policies of a Liberian bank;
 - [v] any affiliate, subsidiary or associated company evolving through stock-ownership, a common parent or head office relationship;
 - [vi] any interest of any director or executive officer (an interest in any incorporated or unincorporated company, partnership, business venture or similar association in which the director or officer, alone or with family members, owns 5% or more or is otherwise in a position to exercise control);
 - [vii) any group of inter-related persons.
- 12) "Shared Resources" are resources such as IT infrastructure, premises that are used jointly by parent/shareholder and subsidiary.

5.0 OBJECTIVES

The objectives of these Regulations are:-

- a) to promote arm's length relationships in dealings between bank financial institutions and their affiliates or associates, directors, officers, shareholders and their related interests; and
- (b) to ensure transparency and disclosures in banks' transactions with related persons.

PART II – REGULATORY REQUIREMENTS

6.0 COVERED TRANSACTIONS

- 6.1 Transactions subject to these regulations cover all transactions where related persons or group of inter-related persons receives from the bank a benefit, directly or indirectly, in the form of credit facilities, payments, or services. These include, but are not limited to:
- a) Loans and advances & other credit facilities to, or for the benefit of a related person. This would include on-balance sheet and off-balance sheet credit exposures and claims.
 - b) Transactions for which fees and expenses are paid by the bank for:-

- [i] management services (including personnel and training arrangements)
 - [ii] loan/credit review
 - [iii] audit services
 - [iv] data processing and other Information Technology services
 - [v] insurance
 - [vii] confirming/advising letters of credit
- c) construction contracts
 - d) sale of property/lease agreements
 - e) derivative transactions
 - f) sales/exchanges of assets

7.0 EXEMPTIONS

7.1 The following transactions are specifically exempted from these regulations:-

- 1) Payments to directors for Board and Committee meeting/sitting;
- 2) Salaries and standard benefits provided to executive officers under terms of their employment;
- 3) Loans to executive directors, bank officers and employees which are provided under the bank's scheme of service. The bank shall obtain written prior approval of the CBL where the limit on advances established by the provisions of Section 10.1 (2) below is exceeded;
- 4) Business travel expense reimbursements to directors or executive officers, provided that such are justifiable and supported by detailed claims and explanations signed by the director or officer;
- 5) Loans to public sector corporations, both incorporated as private and public companies, where the banks' directors, whether executive or nonexecutive, sit on the boards of these companies. This exemption applies only to those corporations in which the Government of Liberia and related agencies have a direct shareholding interest of 100 per cent.

In other cases not specified, banks shall submit specific applications to the Central Bank for exemption and such application shall be considered on the merits of each case. Where banks are unsure of exemptions under this regulation, or in cases of doubt, the Central Bank of Liberia should be contacted for clarification.

8.0 POLICIES & PROCEDURES

8.1 Banks should have written policies covering all transactions, including deposit-taking, credit-granting and payment of fees, involving its related persons. Processes should be established in each bank to ensure that an independent function such as internal control or risk management monitors compliance with the policy and reports to the board.

A policy shall, at a minimum:

- (i) prohibit a bank from providing favorable treatment to related persons and require that all such transactions be on an arm's-length basis. Prohibited favorable treatment includes, but is not limited to:
 - reduction of credit-granting standards, collateral requirements, collection efforts or any other policies of a bank;
 - providing preferential rates on deposits or credits;
 - covering trading losses; and
 - waiving fees.
- (ii) impose strict and binding limits on exposures to related persons
that does not exceed the limitations as set out in these Regulations.
- (iii) prohibit related persons who have an interest in credit accommodation transactions with a bank from being involved in the administration, assessment or decision-making process relating to such transactions.
- (iv) requires that transactions with related persons, including all deviations from a board approved policy, be reported to the board of directors on a regular basis.

9.0 OVERSIGHT BY BOARD OF DIRECTORS

- 9.1 The Board of Directors is responsible to establish a clear written policy on credit transactions and management of credit exposures with related persons as prescribed in 8.0 above.
- 9.2 The policy must be periodically reviewed and any changes should be approved by the Board of Directors.

- 9.3 The Board of Directors must ensure that a proper mechanism is in place to implement policies and procedures relating to the control and management of exposures and risk of malpractices associated with related person transactions.
- 9.4 Credit transactions and credit exposures with related persons must be regularly reviewed, and monitored by the Board of Directors. The Board, may delegate this function to a credit review committee.
- 9.5 To facilitate the Board in carrying out its functions, management or the credit review committee must submit regular reports to the Board on:
 - (i) credit transactions with related persons;
 - (ii) the status and aggregate credit exposures to each related person; and
 - (iii) material concentrations
- 9.6 The board should oblige management to present to it performance reports on all related person transactions on a quarterly basis.
- 9.7 The board shall ensure that a director or officer of a bank who is a party to, or has an interest in any credit accommodation or other transactions with a bank shall:
 - i) recuse himself/herself from any meeting at which the credit accommodation or other transaction is discussed.
 - ii) refrain from voting on any matter related to the credit accommodation or other transaction, provided that such interest, if so disclosed, shall not disqualify a director from constituting a quorum.

10.0 CREDIT TRANSACTIONS WITH RELATED PERSONS

- 10.1 Due care should be taken in entering into credit transactions with related persons. Banks shall not grant credit facilities to related persons except the following conditions are met:
 - i) The creditworthiness of the related person is not less than what is normally required of other persons;

- ii) All credit transactions must be extended on an arm's length basis.
- iii) The terms and conditions of the credit transactions must be appropriate, based on sound credit risk management practices which serve to safeguard the interests of various stakeholders and in particular, depositors.
- iv) Credit transactions with related persons are subjected to rigorous credit reviews and the overall exposure remains within acceptable levels.
- v) A bank financial institution shall not purchase a non-performing or low quality asset from any of its affiliates and associates, or non-performing assets of any of its related persons.
- vi) except for the exemptions in these regulations, before a credit is extended to a related person, the transaction should be approved by all members of the Board, and such approval should be duly documented.

11.1 RESTRICTIONS ON LENDING TO DIRECTORS

Consistent with the provisions of Section 20 (c) and (d) of the FIA, no licensed bank shall, directly or indirectly, except with the approval of the Central Bank on such terms and conditions as the Central Bank may prescribe:

- 1) grant or permit to be outstanding unsecured advances unless such have been unanimously approved by all of the members of its board and the institution has notified the Central Bank in advance:
 - i) to the members of its board, whether such advances are obtained by them jointly or severally;
 - ii) to any person in whom it or any one or more of the members of its board has any interest as a director, partner, manager, agent or member or otherwise.
- 2) grant or permit to be outstanding secured or unsecured advances or credit to the members of its board of directors unless such advance or credit are, in addition to the securities that may be required, guaranteed by all members of the board, jointly and severally; provided that the aggregate amount of such advances

and credit made to all members of the board shall at no time exceed thirty (30%) percent of the net worth of the bank.

11.2 RESTRICTION ON LENDING TO OFFICERS & EMPLOYEES

As required by the provisions of Section 20(2)(e) of the FIA, no licensed bank shall, directly, or indirectly, except with the approval of the Central Bank of Liberia on such terms and conditions as the Central Bank may prescribe, grant or permit to be outstanding to its officers and employees unsecured advances, which in aggregate amount for any one officer or employee **exceed the annual remuneration of such officer or employee.**

12.0 OTHER TRANSACTIONS WITH RELATED PERSONS

12.01 All other transactions with related persons should be governed by adequately documented contracts or agreements. These agreements/contracts should be approved and reviewed annually by the board.

12.02 A financial institution must obtain prior written approval from the Central Bank to enter into any related person transaction involving:-

a) Management Service Agreements

Payment of fees for management services performed by Parent Company, subsidiary, affiliate or Group shall commensurate with the level of services provided.

To determine the appropriateness of management service fees, the volume, quality, and market value of the services performed or provided to the related person should be carefully reviewed. The principal criterion for assessing reasonableness of fees is the relationship of the payments to the fair market value of the services provided. If the fair market value cannot readily be determined or estimated, the analysis may focus on the cost to the parent of providing a service plus a reasonable profit margin as a proxy for fair market value.

b) Sharing of Common Resources

Bank financial institutions may enter Service Level Agreements (SLAs) in respect of shared services with their

related persons. However, cost allocations to a bank financial institution for the sharing of common resources such as computer systems and physical premises shall be determined on the basis of actual usage or by using a fair and measurable basis for allocation. Flat charges or charges based on a percentage of income/revenue generated shall not be used for cost allocations.

c) **Purchase or Sale of Property**

In the case of a purchase of property by the bank financial Institution from bank financial institution to a related person, the consideration received must not be less than the value of the property determined through an independent valuation.

- d) Banks that incur losses for at least two consecutive quarters shall suspend the payment of any fee/charge relative to management service and sharing of common resource agreements signed with parent companies, affiliates, subsidiaries or Groups. The suspended payments/charges shall be resumed only when the bank posts period to date profits for at least two consecutive quarters. All agreements between a bank financial institution and its parent company, affiliate, subsidiary or group shall incorporate this caveat.

13.0 Prohibited Practices

- 13.1 Management or service fees, or other payments made to a related person, that bear no reasonable relationship to the fair market value, cost, volume or quality of services rendered by the related person;
- 13.2 Maintaining non-interest bearing balances (i.e. current account) with related persons such as parent, subsidiary, affiliate or group that are not being used to support money transfers and other operations of the bank.

14.0 DECLARATION OF INTEREST

- 14.1 In accordance with the provisions of Section 29 of the FIA, the following declaration shall be made by all directors, officers or employees of a licensed bank:-
 - [1] Every director, officer, or employee of a bank who is in any manner whatsoever, whether directly or indirectly, interested in

an advance from that bank shall, as soon as possible, declare the nature of his interest to the board of directors or other body responsible for the management of that bank and shall cause such declaration to be circulated forthwith to all members of its board.

- [2] The requirement of the preceding paragraph is not applicable where the interest of the member of the board consists only of being a creditor to or holder of an ownership interest in a concern which is interested in an advance from that institution if, in either case, the interest of the member of the board may properly be regarded by the Central Bank as not being a substantial interest.
- [3] A declaration by a member of the board of a bank to the effect that he is to be regarded as interested in any advance, which may, after the date of the notice, be made by that bank shall be deemed to be sufficient declaration of interest in relation to any advance so made if:
 - [i] it specifies the nature and extent of his interest, and
 - [ii] his interest shall not be different in nature from or greater in extent than the nature and extent so specified in such notice at the time any advance is made.
- [4] Every director, officer, or employee of a bank who possesses any property or holds office in connection therewith, whether directly or indirectly, or who may have a family member with interest in such property, whereby such interest might be in conflict with his duties to the bank, shall declare at a meeting of the board of the bank the fact, nature, character and extent of the conflict.
- [5] The declaration referred to above shall be made at the first meeting of the members of the board held:
 - [i] after he becomes a member of the board or an officer or employee of the bank; or
 - [ii] if already a member of the board, officer, or employee of the bank, after he commences to hold office related to the property, or comes into possession of the property.
- [6] Every member of the board and every officer or employee of a bank who qualifies as an interested party under the provisions of Section 29 of the FIA shall cause to be brought up and read any declaration made at the next meeting of the board of the bank, and shall cause to be recorded any declaration made in the

minutes of the meeting at which it was made or at which it was brought up and read.

- [7] Each licensed financial institution shall disclose any financial, economic or other interests of its directors, officers, senior management staff and/or members of their family in the financial institution which they manage in their annual reports, and submit such reports to the CBL by January 31 after each preceding year.

15.0 RECORDS-KEEPING

- 15.1 Each bank shall maintain records on disclosures made by directors or officers who are a party to, or have an interest in, any credit accommodation or other transaction with a bank.
- 15.2 Each bank shall have procedures in place to identify related persons and groups of inter-related persons. A bank's records shall be updated at least on a quarterly basis.
- 15.3 Each bank shall be maintained records of any transaction with a related person.

16.0 REPORTING REQUIREMENTS

- 16.1 Each bank will maintain records in sufficient detail and accurately complete the Quarterly Related Persons Transactions Report (**See Format attached**).
- 16.2 For those bank financial institutions that are branches or subsidiaries of a foreign owned bank, the bank financial institution shall maintain a copy of the most recent annual financial statements of the parent bank and/or holding company for review by the CBL during any examination.

17.0 TRANSITIONAL ARRANGEMENT

Any bank which, prior to the effective date of these regulations, entered into any transactions or contract that are inconsistent with the regulations shall liquidate all such transactions and amend all such contracts within ninety (90) days after the coming into effect of this regulation.

Part III – REMEDIAL MEASURES AND ADMINISTRATIVE SANCTIONS

18.0 PENALTIES FOR NON - COMPLIANCE

18.1 The Central Bank may impose any or all of the following administrative sanctions with regard to a financial institution that is not in compliance with these Regulations:-

- a) Any director or officer or employee of a bank who acts in contravention of Section 29 (1) or Section 29 (4) – (7) of the FIA, is in violation of the law and shall be liable to pay a fine of up to Two Hundred Thousand (L\$200,000) Liberian Dollars, or be imprisoned for a term of not less than two years or to both fine and imprisonment.
- b) In addition, such individual shall make restitution of the amount of money lost as a result of the violation and he/she shall be removed from office.
- c) Any other supervisory sanctions as may be deemed necessary.

19.0 EFFECTIVE DATE

These regulations shall take effect immediately upon publication in Official Gazette, and shall remain in force until otherwise advised by the Central Bank of Liberia.

Issued this 4th of January, A. D. 2018 in the City of Monrovia, Republic of Liberia.

BY ORDER OF THE PRESIDENT

**Marjohn Kamara
MINISTER
MINISTRY OF FOREIGN AFFAIRS**

**MINISTRY OF FOREIGN AFFAIRS
MONROVIA, LIBERIA**