DECREES

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N.P.R.C. Decree No. 4

1996

Sierra Leone

The Banking (Amendment) Decree, 1996

Short title.

Being a Decree to amend the Banking Act in order to increase the minimum paid-up capital, the capital adequacy ratio and other matters related to banking.

PURSUANT to paragraph 3 of the Proclamation entitled "The Administration of Sierra Leone (National Provisional Ruling Council) Proclamation, 1992", the National Provisional Ruling Council makes and issues the following Decree—

[14th March, 1996] Date of Commencement.

Act No. 11 of 1970

1. The Banking Act, 1970 (hereafter referred to as "the principal Act") is amended by the insertion in section 2 of the following new definition in the appropriate places— Banking Act amended.

"development bank" means a bank whose lending and investment activities are mainly directed towards the development of the economy, by the extension of short, medium/or long-term financial assistance;

"commercial bank" means any bank other than a development bank or a rural bank;

"rural bank" means a bank which bases its operations mainly in the rural areas and provides banking services mainly to the people in such areas."

Section 6 repealed and replaced.

2. The principal Act is amended by repealing section 6 and replacing it with the following section —

"Minimum paid-up capital.

6 (1) No company or co-operative society incorporated or registered in Sierra Leone shall be licensed to carry on banking business in Sierra Leone unless —

(a) in the case of commercial banking, it maintains unimpaired minimum paid-up capital of three hundred million leones;

(b) in the case of development banking, it maintains unimpaired minimum paid-up capital of one billion leones; and

(c) in the case of rural banking or co-operative banking it maintains unimpaired minimum paid-up capital of such amount as the Central Bank may prescribe.

(2) No bank registered outside Sierra Leone shall be licensed to carry on banking business unless it maintains unimpaired minimum assigned capital of six hundred million leones for commercial banking business and two billion leones for development banking business respectively.

(3) The assigned capital of a bank referred to in subsection (2) shall be remitted to Sierra Leone in a convertible currency and shall be held in deposit with the Central Bank in the form of cash or unencumbered securities of the Government.

(4) The Central Bank may, in consultation with the Minister allow any or all the banks referred to in subsection (1) such time or extension of time to comply with the requirements of minimum paid-up capital as the Bank may consider appropriate".

Section 6A inserted.

3. The principal Act is amended by the insertion immediately after section 6 of the following new section —

"Capital adequacy.

6A (1) Every licensed bank shall at all times after a date to be notified in the *Gazette* by the Central Bank maintain a minimum capital adequacy ratio of six percent.

(2) The Central Bank may fix a higher capital adequacy ratio with the prior approval of the Minister—

(a) with respect to a particular bank; or

(b) generally with respect to all banks and for such period as the Central Bank may determine.

(3) The capital adequacy ratio shall be measured as a percentage of the capital base of the bank to its adjusted asset base in accordance with the provisions of the Fourth Schedule.

(4) Any bank which fails to maintain the level of capital adequacy determined under subsection (1) shall be liable to pay to the Central Bank on each day that the deficiency continues, as penalty, one half per *mille* of the difference between the capital adequacy that the bank should have maintained and the level of

capital adequacy actually maintained by the bank; and unless such deficiency is remedied within 90 days after it has occurred, the Central Bank may prohibit the bank concerned from granting loans or credits or from making investments or accepting deposits or from all such transactions."

Section 9 repealed and replaced

4. The principal Act is amended by repealing section 9 and replacing it with the following section —

Maintenance of reserve fund.

"9 (1) Every licensed bank shall maintain a reserve fund into which shall be transferred out of the bank's net profits for each year before the bank declares any dividend and after it has made provision for any taxes, the following amounts —

(a) where the amount of the bank's reserve fund is less than 50 percent of its paid-up capital, an amount which shall not be less than 50 percent of the bank's net profit for the year;

(b) where the amount of the bank's reserve fund is 50 per cent or more but less than 100 per cent of its paid-up capital, an amount which shall not be less than 25 per cent of the bank's net profit for the year; and

(c) where the amount of the bank's reserve fund is equal to 100 per cent or more of its paid-up capital, an amount equal to 12.5 per cent of the bank's net profit for the year.

(2) A bank shall not appropriate any sum or sums from the balance in the reserve fund unless prior approval in writing is obtained from the Central Bank for the purpose, which may be granted for such amount

and subject to compliance with such conditions as the Central Bank may determine."

5. The principal Act is amended by repealing section 13 and replacing it with the following section — Section 13 repealed and replaced.

"Payment of dividends, etc.

13 (1) No licensed bank shall pay any dividend on its shares out of its net profits until it has completely recovered all its capitalised expenditure and accumulated or unprovided for losses.

(2) For the purposes of subsection (1) "capitalised expenditure" includes preliminary expenses, share selling commissions, brokerage losses incurred by the bank and any other items of expenditure not represented by tangible assets.

(3) No bank shall declare or pay any dividend on its shares in any year if the level of capital adequacy of the bank is less than that prescribed by section 6A.

(4) Where a bank declares or pays any dividend in contravention of subsection (1) or (3), every director of the bank shall be liable to pay to the Central Bank a penalty of not less than half a million leones.

(5) No director shall be liable to pay the penalty if he proves to the satisfaction of the Central Bank that the contravention was committed without his consent or connivance by a person other than himself and that he exercised all due diligence to prevent the commission of the contravention having regard to all the circumstances."

6. The principal Act is amended by repealing section 14 and replacing it with the following section— Section 14 amended.

"Credit risk exposures.

14 (1) No licensed bank shall grant any advance or credit or undertake any financial guarantee or indemnity to or in respect of any one person or group of persons or carry out any other transactions for any

one person or group of persons which constitutes in the aggregate a liability to the bank amounting to more than twenty-five percent of the net-worth of the bank; and in the case of an unsecured advance, credit, financial guarantee or indemnity, the bank shall not extend such facilities in the aggregate to more than ten per cent of the net-worth of the bank.

(2) In the case of transactions between banks, the aggregate of credit exposures and other financial guarantees or indemnities to any single bank or banking group shall not, otherwise than with the written approval of the Central Bank, exceed 50 percent of the net-worth of the bank undertaking such exposures or 50 per cent of the net-worth of the counter-party bank to or in respect of which such facilities are extended, whichever of the two amounts is lesser.

(3) A licensed bank shall not—

(a) grant any advance or credit facility against the security of its own shares;

(b) grant or permit to be granted—

(i) unsecured advances or credit facilities to any of its directors whether such advances or facilities are obtained by its directors jointly or severally;

(ii) any loan or credit facilities in excess of two percent of the bank's net worth to any firm or company or group of firms or companies in which any of the bank's directors or officials is interested as a partner or guarantor or is one of the principal shareholders; and in

the case of an unsecured loan or credit facility the bank shall not grant such loan or credit facility in an amount which in the aggregate exceeds one-third of such percentage;

(c) grant or permit to be outstanding to its officials and employees unsecured advances or unsecured credit facilities which in aggregate amount for any one official or employee exceed one year's emoluments of such official or employee;

(d) engage, whether on its own account or on a commission basis, in the wholesale or retail trade, including the import or export trade, except in so far as may exceptionally be necessary in the course of the banking operations and services of that bank or in the course of the satisfaction of debts due to it;

(e) acquire or hold any part of the share capital of any finanacial, commercial, agricultural, industrial or other undertaking except such share holding as a bank may acquire in the course of the satisfaction of debts due to it which share holding shall, however, be disposed of at the earliest suitable moment:

Provided that this paragraph—

(i) shall not prevent the purchase and sale of shares or stock upon the order and for the account of a

customer and without recourse; and

(ii) shall not apply—

(aa) in respect of any share holding approved by the Central Bank in any corporation set up for the purpose of insuring bank deposits or of promoting the development of a money market or securities market in Sierra Leone or of facilitating the financing of economic development;

(bb) to all share holdings in other undertakings the aggregate value of which does not at any time exceed twenty-five per cent of the sum of the paid up or assigned capital and published reserves of that bank;

(f) purchase, acquire or lease real estate except as may be necessary for the purpose of conducting its business including provision for future expansion or housing its staff or in other exceptional circumstances where the agreement of the Central Bank is obtained:

Provided that a bank may secure a debt on any transferable real or other property and in default of repayment may acquire such property for resale by the bank as soon as possible thereafter.

(3) The auditor shall state in his statutory report whether or not—

(a) the accounts give a true and fair view of the state of affairs of the bank and its results for the period under review;

(b) he was able to obtain all the information and explanations required by him for the efficient performance of his duties;

(c) the bank's transactions are within the powers of the bank; and

(d) the bank has complied with the relevant provisions of this Act.

(4) The auditor shall submit a long form audit report on the accounts and the affairs of the bank generally, and in addition his comments in respect of the matters specified in the Fifth Schedule.

(5) The Central Bank may by notice published in the *Gazette* amend the Fifth Schedule.

(6) The Central Bank may at any time at the expense of the bank—

(a) require the auditor to undertake such further audit or provide such additional information or both as the Central Bank may consider necessary;

(b) engage an independent auditor to audit either in whole or in part the accounts of the bank."

9. The principal Act is amended by repealing section 21 and replacing it with the following section— Section 21 repealed and replaced.

"Minimum liquidity requirements.

21 (1) Every licensed bank shall maintain at all times such amount of liquid assets as may from time to time be prescribed by the Central Bank and notified the bank.

(2) The amount so prescribed shall be expressed as a percentage which such assets shall bear to the gross demand and time liabilites of each bank.

(3) No bank shall be required to maintain a higher percentage than any other bank.

(4) For the purposes of this section, advances granted to a bank by any other bank or by an overseas branch, office or wholly owned subsidiary of the same bank, shall be excluded from any computation of the bank's demand and time liabilities.

(5) For the purposes of this section "liquid assets" shall consist of freely transferable assets, free from any charge or lien, and of all or any of the following classes—

(a) notes and coins which are legal tender in Sierra Leone;

(b) balances in current account with the Central Bank;

(c) inland bills of exchange and promissory notes which are eligible for rediscount at the Central Bank, subject to such limitations in amount as the Central Bank may prescribe;

(d) treasury bills issued by the Government and maturing within ninety-three days; and

(e) such other assets as may be specified by the Central Bank in consultation with the Minister.

(6) Any bank or credit institution which fails to hold the minimum liquid assets as prescribed by the Central Bank shall be guilty of an offence and shall be liable, in addition to any other penalty, to pay to the Central Bank such interest as the Bank may specify, subject to a ceiling limit of ten per cent, on the deficiency which exists.

(7) The Central Bank may further direct that during a period of any deficiency such bank shall discontinue or limit in a manner specified in the direction, the granting of credit or the making of investments and shall not distribute dividends to its shareholders."

Section 29A inserted.

10. The principal Act is amended by the insertion immediately after section 29 of the following new section—

"Central Bank to give directions.

29A (1) Where the Central Bank is satisfied that—

(a) in the public interest;

(b) in the interest of banking policy;

(c) to prevent the affairs of any bank being conducted in a manner detrimental to the interests of the depositors or creditors or in a manner prejudicial to the interests of the bank; or

(d) to secure the proper management of any bank generally,

it is necessary to issue directions to banks generally or to any particular bank, it may from time to time issue such directions as it deems fit and the banks or the bank, as the case may be, shall comply with such directions.

(2) The Central Bank may, on representation made to it by any bank affected by the direction or on its own motion, modify or cancel any direction issued under subsection (1) and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.

(3) Any director, executive, manager or other official of a bank who fails to take all steps necessary to secure compliance by the bank of the directions issued by the Central Bank, shall be punishable in the manner and to the extent prescribed under section 25 of this Act."

Fourth and Fifth Schedules inserted.

11. The principal Act is amended by the insertion immediately after the Third Schedule of the following new Schedules—

FOURTH SCHEDULE
(SECTION 6A)
CAPITAL ADEQUACY

1. Capital Base

(1) "Capital base" shall comprise primary capital and secondary capital.

(2) The sum of primary and secondary capital as indicated in paragraphs 3 and 4 shall not be less than 6 percent of the adjusted asset base subject to the total of secondary capital being limited to a maximum of 50 per cent of the total primary capital; and not more than one-half of the total of secondary capital shall be in subordinated term debt.

(3) Deductions from—

(a) primary capital shall be goodwill, other intangible assets, fixed assets exclusive of revaluation reserves and anticipated losses not yet provided for;

(b) total (primary plus secondary) capital shall be—

(i) investment in unconsolidated subsidiaries and associates;

(ii) investments in the capital of other banks and financial institutions; and

(iii) connected lending of a capital nature.

2. Adjusted Asset Base

'Adjusted asset base' means total assets plus off-balance sheet items (net of cash margins) less—

(i) cash (comprising currency notes and coins which are currently legal tender in Sierra Leone)

(ii) balances with the Central Bank;

(iii) Sierra Leone Government Treasury Bills;

(iv) Sierra Leone Government Stocks and Bonds;

(v) overnight money with discount houses in Sierra Leone;

(vi) investments in unconsolidated subsidiaries and associates;

(vii) investments in the capital of other banks and financial institutions;

(viii) connected lending of a capital nature;

(ix) goodwill and other intangibles;

(x) fixed assets (inclusive of revaluation surpluses);

(xi) anticipated losses not yet provided for.

3. "Primary capital" includes permanent shareholders' equity (issued and fully paid ordinary shares), disclosed reserves (created or increased by appropriation of retained earnings or other surplus profits and other distributable and legal reserves excluding revaluation reserves and bonus issues of equity out of revaluation reserves).

4. "Secondary capital" includes—

(a) hybrid (debt or equity) capital instruments which are—

(i) unsecured, subordinated and fully paid up;

(ii) not redeemable at the initiative of the holder or without the prior consent of the Central Bank;

(iii) available to absorb losses without the bank being obliged to cease trading; and

(b) subordinated term debt, which includes conventional unsecured subordinated debt, capital instrument with a fixed term to maturity and limited life redeemable preference shares in excess of five years which are not normally available to absorb the losses of a bank which continues trading.

5. "Connected lending" means any loans, advances or credit facilities extended by a bank to its subsidiary, associate or holding companies or to a company or firm in which any of its directors or principal shareholders owns or holds more than 20 per cent of the issued and paid-up share capital.

FIFTH SCHEDULE
(SECTION 20A)

MATTERS TO BE INCLUDED IN THE LONG FORM AUDIT REPORT

Accounting, management information and internal controls:

(a) the accuracy and reliability of the accounting system in general;

(b) the effectiveness of the management information system;

(c) the effectiveness and enforcement of internal controls;

(d) the accuracy and reliability of completion of the prudential returns to the Banking Supervision Department of the Central Bank.

2. **Comments on the financial accounts**

(a) the financial performance of the bank during the period under review including—

(i) the reliability and composition of reported earnings;

(ii) the breakdown and analysis of operating costs;

(iii) the liquidity and capital adequacy ratios;

(b) the accounting policies and valuation criteria applied in the preparation of the accounts;

(c) the adequacy of provisions made—

(i) against the advances portfolio, investments and other asset accounts;

(ii) against off-balance sheet items;

(iii) for credits, accruals and other liabilities;

(d) re-classifications and other adjustments made by the auditors to the accounts originally submitted for audit;

(e) details of any adjustments not made to the accounts because they are not considered to be material:

(f) details of any areas where the Manual of Accounting for Banks issued by Central Bank has not been complied with;

(g) the full accounts of the bank for the period under review.

3. **Audit work**

(a) The adequacy of work undertaken by the bank's internal audit department. The extent to which the external auditors have relied on the internal audit department's work when performing their own duties;

(b) the amount of audit work undertaken in particular areas including scope of the tests, sampling criteria, coverage achieved, extended work and confirmation exercise with third parties;

(c) the results of audit work undertaken;

(d) the effectiveness and timeliness of remedial action taken following the previous year's management letter and long form audit report from the external auditors;

(e) details of any areas where the Manual of Auditing for External Auditors issued by the Central Bank has not been complied with.

MADE AND ISSUED this *19th* day of *February, 1996.*

BRIGADIER JULIUS MAADA BIO
Chairman,
National Provisional Ruling Council.