

LEGAL NOTICE No. 139

REPUBLIC OF TRINIDAD AND TOBAGO

THE FINANCIAL INSTITUTIONS ACT, 1993

REGULATIONS

MADE BY THE MINISTER AFTER RECEIVING THE RECOMMENDATIONS OF
THE CENTRAL BANK UNDER SECTION 38 OF THE FINANCIAL
INSTITUTIONS ACT, 1993

THE FINANCIAL INSTITUTIONS (PRUDENTIAL CRITERIA)
REGULATIONS, 1994

PART I

PRELIMINARY

1. These Regulations may be cited as the Financial Institutions Citation
(Prudential Criteria) Regulations, 1994.

2. In these regulations—

Definitions

“Government” means the Government of Trinidad and Tobago;

“licensee” means a company duly, or deemed to be duly,
licensed under the Financial Institutions Act, 1993;

“local government” means the municipalities and the Tobago
House of Assembly;

“qualifying capital” means the capital of a licensee ascertained
in accordance with regulations 4 to 7;

“risk adjusted assets” means the assets of a licensee
ascertained in accordance with regulations 8 to 10;

“statutory authority” means a commission, board, committee,
council or body (whether incorporated or unincorporated)
established by or under an Act other than the Companies
Ordinance and declared by the President under section 3 of
the Statutory Authorities Act to be subject to the
provisions of that Act;

Chap. 24:01

“State-owned entity” means a company in which the
Government holds over fifty per cent of the issued shares
and which engages in financial or commercial activities.

PART II

CAPITAL ADEQUACY

Capital
adequacy

3. (1) Subject to subregulation (3), a licensee's qualifying capital shall not be less than eight per cent of its risk adjusted assets.

(2) All licensees shall comply with subregulation (1) within one year after the commencement of the Act.

(3) For the purposes of section 32 of the Act, the minimum capital adequacy requirement for a licensee is four per cent of its risk adjusted assets.

Qualifying
capital

4. Subject to these regulations, qualifying capital comprises core capital and supplementary capital.

Core capital

5. (1) Core capital comprises—

- (a) fully paid issued ordinary share capital and related surplus;
- (b) fully paid perpetual non-cumulative preference shares and related surplus;
- (c) the statutory reserve fund of the licensee referred to in section 25(1)(a) of the Act;
- (d) capital reserves excluding asset revaluation reserves;
- (e) general reserves excluding those for losses on assets;
- (f) retained earnings as stated at the end of the last financial year in the audited financial statements of the licensee;
- (g) retained earnings as stated in audited interim financial statements of the licensee.

(2) The following deductions are made from core capital:

- (a) losses made by the licensee in its current year of operation that are audited or unaudited and whether or not publicly disclosed;
- (b) bonus shares included under subregulation (1)(a) that have been issued from capitalisation of asset revaluation reserves subsequent to the commencement of the Act;
- (c) intangible assets, including goodwill arising from the acquisition of assets and capitalised preliminary expenses.

Supple-
mentary
capital

6. Supplementary capital comprises—

- (a) fully paid issued perpetual cumulative preference shares in respect of which the issuer has no right to defer or eliminate preferred dividends;

- (b) limited life preference shares which are redeemable at the end of a stated period and the original maturity of which is not less than five years;
- (c) bonus shares issued from capitalisation of asset revaluation reserves, being equity created from unrealised gains which resulted from the revaluation of real estate property or other fixed assets as stated in paragraph (f)(ii);
- (d) capital instruments which are essentially permanent in nature and consist of a combination of equity and debt;
- (e) term debt which is subordinated to general creditors and claims of depositors and which has an original maturity of no less than five years;
- (f) asset revaluation reserves arising from—
 - (i) the formal restatement of the balance sheet; or
 - (ii) the revaluation of real estate or other fixed assets ascertained as at a balance sheet date and supported by an independent professional valuation conducted within one year before or three months after that balance sheet date;
- (g) undivided profits of the current year that are unaudited, and whether or not publicly disclosed;
- (h) general reserves or provisions for losses on assets, namely—
 - (i) reserves set aside for future unidentified losses on assets, which reserves are normally reported as part of shareholders' equity;
 - (ii) general provisions that have been created for unidentified losses and form part of the accumulated provision account, but excluding specific reserves and provisions created against identified losses.

7. Qualifying capital is subject to the following limits and restrictions—

- (a) core capital is not less than fifty per cent of qualifying capital;
- (b) the aggregate of limited life redeemable preference shares referred to in regulation 6(b) and subordinated term debt referred to in regulation 6(e) shall not exceed fifty per cent of core capital;
- (c) limited life redeemable preference shares and subordinated term debt are discounted by twenty per cent of the original amount, less any redemptions in each year of the last five years before maturity;
- (d) general provisions and reserves for losses on assets referred to in regulation 6(h) are limited to a maximum of 1.25 per cent of risk adjusted assets after deductions specified in regulation 10(a) and (c);
- (e) asset revaluation reserves do not exceed twenty per cent of core capital.

Limits and
restrictions
on qualifying
capital

Risk adjusted
assets and
conversion
factors

8. (1) Subject to these Regulations, risk adjusted assets are the aggregate of—

- (a) the value of gross assets reported on the balance sheet of the licensee multiplied by the appropriate risk weights specified in regulation 9(1), and
- (b) the credit conversion equivalent of items not reported on the balance sheet applying the conversion factors specified under subregulation (2), multiplied by the appropriate risk weight specified in regulation 9(2).

Schedule I

(2) The conversion factors set out in the first column of Schedule I apply to the credit facilities specified in the second column of that Schedule.

Risk weights
Schedule II

9. (1) The risk weights set out in the first column of Schedule II attach to balance sheet assets specified in the second column of that Schedule.

Schedule III

(2) The risk weights set out in the first column of Schedule III attach to off-balance sheet items specified in the second column of that Schedule.

(3) Where a asset or item qualifies for classification in more than one risk category, it is assigned to the category that has the lowest risk weight.

Deductions in
computing
risk adjusted
assets

10. The following deductions are made in computing risk adjusted assets:

- (a) specific accumulated provisions made for losses on assets;
- (b) general reserves and provisions for losses on assets disallowed under regulation 7(d);
- (c) assets disallowed under regulation 5(2)(c).

PART III

OTHER PRUDENTIAL CRITERIA

Treatment of
loans and
other credit
facilities

11. (1) Subject to paragraph D(10) of the Second Schedule to the Act, a licensee's records and systems of control are not adequate if they do not enable the licensee to identify its problem credits promptly and to make adequate provisions for losses on credit facilities.

(2) Where a licensee makes a specific provision for all or part of a credit facility, such credit facility shall be reported net of the specific provisions.

Treatment of
investments

12. (1) Subject to subregulations (2) to (5), investments shall be classified as either trading account investments and held in a trading account, or long-term investments and held in an investment account.

(2) Investments purchased to be held long-term and not for resale to customers or other banks shall be classified and held in the investment account only when management has the ability and intent to hold the investments until maturity.

(3) Investments purchased to be held short-term for resale to customers and other third parties shall be classified and held in the trading account.

(4) Once classified, investments may not be transferred between the investment account and the trading account.

(5) Cross-utilization of investments between the investment account and the trading account is prohibited.

(6) Subject to subregulations (7) and (9), investments held in the investment account shall be recorded on the balance sheet at the lower of cost or market value and investments held in the trading account shall be recorded on the balance sheet at market value.

(7) For listed investments the market value is based on closing market quotations.

(8) For unlisted investments the estimated market value is based on the discounted cash flow method of valuation which includes factors such as rate of return, perceived risk, profitability expectations and the value of underlying assets.

(9) Subject to subregulation (10), the market value of listed investments and the estimated value of unlisted investments shall be disclosed in a note to the licensee's accounts.

(10) Investments held in the investment account shall not be valued higher than cost to reflect unrealised capital gains.

13. (1) Interest shall not be included as income in a licensee's account— Treatment of interest

(a) in respect of credit facilities mentioned in subregulation (3), for the period specified therein where—

- (i) the contractual payment is not made; or
- (ii) a part of the contractual payment is outstanding;

(b) in respect of overdraft credit facilities, where, in breach of the contractual terms and conditions—

- (i) the deposits made within three months of the due date are insufficient to cover the interest charges for that period; or
- (ii) the deposits are irregular and insignificant in relation to the limit sanctioned,

unless the credit facility, including the accrued interest, is fully secured and is in the process of collection or is one hundred per cent secured by a cash deposit at the licensee.

(2) Where subregulation (1) applies to a credit facility, interest previously included as income over the period specified in sub-regulation (3) is reversed out of a licensee's account.

(3) The period in respect of —

(a) consumer and commercial credit facilities excluding overdrafts, is ninety days or more;

(b) residential mortgages is one hundred and eighty days or more.

(4) This regulation does not apply to credit facilities extended to Government, local government and statutory authorities or to credit facilities with a Government guarantee.

Treatment of loans to directors, etc.

14. Where a director, controller or deputy controller of a licensee has, with the licensee, a credit facility to which regulation 13 applies—

(a) the licensee shall, within thirty days after regulation 13(1) becomes operative, notify that person in writing of the status of the credit facility; and

(b) that person shall, within sixty days of the notification, regularise the facility by cash deposit.

SCHEDULE I

[Regulation 8(2)]

<i>Percentage Conversion Factor</i>	<i>Credit Facility</i>
(1) Zero 	(a) unused portion of overdraft facilities; (b) unused portion of credit card facilities.
(2) Twenty 	short term self-liquidating trade-related contingencies, including commercial letters of credit which arise from the movement of goods and which are collateralised by the underlying goods.
(3) Fifty 	(a) performance bonds; (b) guarantees; (c) indemnities; (d) performance standby letters of credit.
(4) One hundred 	(a) items which substitute for loans, including guarantees of indebtedness, bankers' acceptances and financial standby letters of credit; (b) legally binding arrangements that obligate the licensee to extend credit, including loans and lease commitments and undisbursed loan funds; (c) sale and repurchase agreements with recourse to the licensee where the credit risk remains with the licensee; (d) documentary letters of credit and bills of collections accepted by the licensee.

SCHEDULE II

[Regulation 9(1)]

<i>Percentage Risk Weight</i>				<i>Balance Sheet Asset</i>
(1) Zero	...	...	...	(a) cash, Trinidad and Tobago currency and foreign currency, owned and held by the licensee; (b) deposits held by the licensee at the Central Bank; (c) treasury bills and other government securities; (d) claims on Government and all Government guaranteed obligations, including securities; (e) securities of and claims on local government; (f) obligations of statutory authorities; (g) claims and obligations guaranteed by foreign central banks and foreign governments; (h) claims collateralised by cash on deposit at the licensee.
(2) Ten	...	...	...	obligations of State-owned entities.
(3) Twenty	...	...	...	(a) claims on licensees including items in the process of collection; (b) claims on other financial institutions, including foreign commercial banks; (c) bankers' acceptances held as part of a licensee's investment portfolio.
(4) Fifty	...	...	...	loans fully secured by mortgages on residential properties that are owner-occupied by the borrower or rented.
(5) One hundred	...	...	...	(a) loans secured by commercial or agricultural properties; (b) all other assets not specified in (1) to (4).

SCHEDULE III

[Regulation 9(2)]

<i>Percentage Risk Weight</i>				<i>Off Balance Sheet Item</i>
(1) Zero	...	...	...	credit facilities extended to Government, local government, statutory authorities, the Central Bank, foreign central banks and foreign governments.
(2) Ten	...	...	...	credit facilities extended to State-owned entities.
(3) Twenty	...	...	...	credit facilities extended to financial institutions not mentioned in (1) and (2).
(4) One hundred	...	...	...	credit facilities extended to private sector non-financial institutions and individuals.

Made by the Minister this 15th day of June, 1994.

W. MOTTLEY
Minister of Finance

Approved by the House of Representatives this day of
1994.

Acting Clerk of the House

Approved by the Senate this day of , 1994.

Acting Clerk of the Senate