



## **UNTAET**

**UNITED NATIONS TRANSITIONAL ADMINISTRATION IN EAST TIMOR**  
*Administração Transitória das Nações Unidas em Timor Leste*

UNTAET/REG/2000/8  
25 February 2000

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### **REGULATION NO. 2000/8**

#### **ON BANK LICENSING AND SUPERVISION**

The Special Representative of the Secretary-General (hereinafter: Transitional Administrator),

Pursuant to the authority given to him under United Nations Security Council resolution 1272 (1999) of 25 October 1999,

Taking into account United Nations Transitional Administration in East Timor (UNTAET) Regulation No. 1999/1 of 27 November 1999 on the Authority of the Transitional Administration in East Timor,

Taking into account United Nations Transitional Administration in East Timor (UNTAET) Regulation No. 2000/6 of 22 January 2000 on the Establishment of a Central Payments Office of East Timor,

Endeavoring to strengthen the economy in East Timor by providing measures to protect the interests of bank depositors, to prevent systemic risk to the banking system, to allow sufficient scope for market forces to operate in the provision of financial services, and to promote a sound and competitive banking sector in East Timor,

After consultation in the National Consultative Council,

Promulgates the following:

Section 1  
Scope of operation of the present regulation

1.1 The present regulation shall apply to banks and their shareholders, administrators, employees, agents and affiliated entities.

1.2 Persons other than those described in Section 1.1 who are in violation of provisions of Section 2 of the present regulation shall be equally subject to the penalty provisions of Section 36 of the present regulation.

## Section 2 Prohibitions and exemption

2.1 No person shall engage in the business of a bank without an effective license issued by the Central Payments Office of East Timor (hereinafter: "Central Payments Office").

2.2 No person shall use the word "bank" or derivatives of the word "bank" in respect of a business, product, or service without an effective license issued by the Central Payments Office, unless such usage is established or recognized by instruction or international agreement, or it is clear from the context in which the word "bank" is used that it does not concern financial activities.

2.3 No bank shall use words in its title that are misleading concerning the financial condition or legal status of the bank, or its connection with government or international institutions.

2.4 No bank organized outside East Timor shall be permitted to engage directly in any financial activity in East Timor unless the activity is undertaken through a branch office for which an effective license has been issued by the Central Payments Office.

2.5 No person shall make a misstatement of material fact or false representation or do anything to create a false appearance or engage in any manipulative device or practice in relation to taking of deposits.

2.6 The Central Payments Office may exempt in whole or in part from the application of the present regulation banks whose total deposit liabilities are less than the equivalent of US\$ 1,000,000; provided that any such banks shall not use the word "bank" in their name.

## Section 3 Licensing responsibility of the Central Payments Office

The Central Payments Office shall have sole responsibility for the issuance of licenses to banks.

## Section 4 Minimum capital for new banks; initial financial activities

4.1 The Central Payments Office shall have sole responsibility for establishing the required amount of minimum capital for licensed banks, which may not be less than the

equivalent of US\$ 2,000,000, and may increase such amount from time to time by instruction.

4.2 The amount of capital shall determine the financial activities in which a licensed bank will be permitted to engage, in accordance with Section 24 of the present regulation.

## Section 5 License application

5.1 A person shall apply, in writing, to the Central Payments Office for a license. The application shall be in a form prescribed by the Central Payments Office and shall be accompanied by the following basic information:

- (a) the qualifications and experience of the administrators of an existing or proposed bank, including business or professional history for the past ten years;
- (b) the amount of the actual or proposed capital of the bank and, for proposed banks, the amount that may have previously been paid in or subscribed to; provided, no capital for proposed banks shall be contributed in kind;
- (c) a business plan setting out, *inter alia*, the organizational structure, the types of financial activities envisaged, and projected financial statements for three years and, for existing banks, financial statements and annual reports for the past three years;
- (d) the name, residence, business or professional history for the past ten years and financial statements for the past three years of each person who is or proposes to be a principal shareholder of the bank, and the amount and percentage;
- (e) such additional basic information as shall be prescribed by instruction of the Central Payments Office.

5.2 For the purposes of Section 5.1 (d), the proposed ownership interest of affiliated persons shall be aggregated to determine the amount of the proposed ownership interest.

5.3 The Central Payments Office may request an applicant to submit additional or supplementary information for its license application if, in the opinion of the Central Payments Office, the basic information submitted is incomplete or insufficient.

5.4 A foreign bank shall apply for the license concerning a branch office of that bank. The application for such license shall be accompanied by such information, in addition to the information required by Section 5.1, as the Central Payments Office may prescribe by instruction.

## Section 6 License decision

6.1 Within forty-five days (45) days from the date of receipt of an application for a license

that has been completed to the satisfaction of the Central Payments Office, the Central Payments Office shall notify the applicant of the status of their application in writing.

6.2 Subject to Sections 6.3, 6.4 and 6.5 of the present regulation, within sixty (60) days from the date of receipt of an application for a license that has been completed to the satisfaction of the Central Payments Office, the Central Payments Office shall grant preliminary approval of, or deny, the application and notify the applicant of its decision in writing.

6.3 Where the Central Payments Office requests additional or supplementary information pursuant to Section 5.3, the time limit of sixty (60) days for a decision on an application for a license may be extended by twenty (20) days. If the time limit is extended, the Central Payments Office shall notify the applicant in writing.

6.4 During the first six (6) months from the date the present regulation enters into force, if the Central Payments Office does not make a decision on an application within the time limit prescribed in Section 6.2 of the present regulation or the extended time limit prescribed in Section 6.3 of the present regulation, the Central Payments Office may extend, or further extend, as the case may be, the time limit for the making of this decision by sixty (60) days. The applicant shall be notified, in writing, if the time limit for the making of a decision is extended or further extended, as the case may be. If the Central Payments Office does not make a decision on the application within the further sixty (60) days, the application shall be deemed to have been approved on a preliminary basis.

6.5 After six (6) months from the date the present regulation enters into force, if the Central Payments Office does not make a decision on an application within the time limit prescribed in Section 6.2 of the present regulation or the extended time limit prescribed in Section 6.3 of the present regulation, the application shall be deemed to have been approved on a preliminary basis.

6.6 The decision of the Central Payments Office to refuse a license shall be final and shall include an explanation of the grounds on which the license was refused.

6.7 Subject to Sections 6.4 and 6.5 of the present regulation, the Central Payments Office shall grant preliminary approval of an application for a license only if it is satisfied that the information submitted by the applicant is sufficient to show that the applicant meets the following criteria:

- (a) the business plan is based on reasonable assumptions;
- (b) the bank will comply with all provisions of the present regulation; and
- (c) the qualifications, experience, and integrity of its administrators and principal shareholders are appropriate for its business plan.

6.8 If preliminary approval of an application for a license is granted, the applicant will have to fulfil the following conditions for final approval by the Central Payments Office for a license for the bank to commence those activities in which it is authorized to engage:

- (a) the payment by shareholders to the bank of its initial capital funds;
- (b) the hiring and training of the staff of the bank;

- (c) the lease or purchase of operations equipment and the establishment of operations systems, including risk measurement and controls and internal audit and controls;
- (d) the lease or purchase of bank premises; and
- (e) the engagement of an auditor, in accordance with Section 32 of the present regulation.

6.9 If a bank fails to comply within one year with the conditions for final approval specified in Section 6.8, the preliminary approval of the application for a license shall become void.

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:

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;

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

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 owning fifty (50) percent or more 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.

13.3 The decision of the Central Payments Office whether to authorize a transfer under Section 13.1 or 13.2 shall be based upon the criteria described in Section 6.7 of the present regulation, as if the authorization were for the issuance of a license.

13.4 No bank shall, alone or in concert with one or more other persons, without prior written authorization of the Central Payments Office, directly or indirectly:

- (a) hold an equity interest in a juridical person or undertaking that is engaged in other than financial activities that either represents a significant interest or exceeds as to its net current value the equivalent of fifteen percent of the regulatory capital of the bank; or
- (b) permit the aggregate net current value of all such equity interests to exceed the equivalent of one hundred (100) percent of the regulatory capital of the bank.

13.5 No such authorization shall be required for:



- (a) equity interests that have been acquired by a bank in lieu of repayment of credit granted by the bank, in which case the bank shall entirely dispose of such equity interests within one year from the date they are acquired or within such longer time period as the Central Payments Office may decide; or
- (b) equity interests held by a bank as an agent in securities underwriting or brokerage or investment portfolio management.

Section 14  
Mergers of banks

14.1 To have legal effect, the merger, amalgamation or sale of substantially all the assets of a bank shall require the prior written authorization of the Central Payments Office.

14.2 The decision of the Central Payments Office whether to authorize shall be based upon whether the proposed transaction would result in the substantial lessening of competition in any market served by the bank and on the criteria described in Section 6.7 of the present regulation, as if the authorization were for the issuance of a license.

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; the classes, numbers and nominal values of its shares, and the voting rights attaching to its shares. No amendment of the charter of a bank shall take effect without the prior written consent of the Central Payments Office.

15.2 Each bank shall be governed by internal by-laws, approved by its Governing Board, which in compliance with its charter shall establish:

- (a) the structure of the organization and administration of the bank, including its operational and administrative units, their sub-units and functions, supervisory positions, and reporting relationships;
- (b) the duties of each departmental director and the units under his or her direction and supervision;
- (c) the functions of the Audit Committee, the Risk Management Committee (or separate Credit and Asset and Liability Management Committees), and other permanent internal committees; and
- (d) the limits of the authority of the administrators and other employees of the bank to engage in financial activities in the name and for the account of the bank.

15.3 Each bank shall maintain on file with the Central Payments Office a duly certified copy of its charter, its by-laws, and a list of the officials of the bank who are currently authorized to obligate the bank, together with their specimen signatures and a description of the limits of their authority.

#### Section 16

##### Administrative structure of banks

16.1 Each bank shall be administered by a Governing Board and shall have an Audit Committee. Each bank shall have a Risk Management Committee or separate Credit and Asset and Liability Management Committees.

16.2 The Governing Board of a bank shall be responsible for establishing the policies for the operations of the bank and for supervision of their implementation.

16.3 The Governing Board of a bank shall have an uneven number of not less than three (3) nor more than seven (7) members. Board members shall be appointed by the general meeting of shareholders of the bank for a period of not more than four (4) years. Board members may be re-appointed for subsequent periods by the general meeting of shareholders of the bank.

16.4 The general meeting of shareholders of a bank may establish remuneration for Board members; provided, however, that remuneration of the Governing Board and senior management of a bank shall be subject to approval of the Central Payments Office for the first three years of the operations of a bank.

16.5 The Governing Board of a bank and its members cannot delegate their responsibilities to others.

#### Section 17

##### Qualifications of administrators

All persons elected or appointed as administrators of a bank must be of good repute and must meet the criteria prescribed by the Central Payments Office regarding qualifications, experience and integrity. Prior to their assuming office, the Central Payments Office must approve members of the Governing Board.

#### Section 18

##### Disqualification and removal of administrators and principal shareholders

A person shall not be eligible to become a member of the Governing Board of a bank, or shall by decision of the general or special meeting of shareholders of the bank be relieved of his membership on the Governing Board of the bank, or, if such meeting fails to act within 30 days of the Central Payments Office having issued an instruction concerning disqualification, by the Central Payments Office, in the event that:

- (a) the person has by law been deprived of the right to sit on the governing board of a juridical person;
- (b) the person is serving, or has served at any time during the immediately preceding twelve (12) month period, as the Comptroller of the Central Payments Office or on the management of the Central Payments Office;
- (c) the person has been convicted of a crime;
- (d) the Central Payments Office determines that the person has been a party to a transaction that violates the present regulation or an instruction issued under it; or
- (e) the person has been subject to an insolvency proceeding as debtor.

### Section 19 Committees

19.1 Each bank shall establish an Audit Committee that shall consist of three (3) members appointed by the general meeting of shareholders of the bank for periods of two(2) years. Members of the Governing Board shall not concurrently serve on the Audit Committee. The Audit Committee shall:

- (a) establish appropriate accounting procedures and accounting controls for the bank, including those prescribed by the Central Payments Office under Section 31 of the present regulation, supervise compliance with such procedures, and, as it deems appropriate, commission audits at the expense of the bank of some or substantially all of the records of the bank;
- (b) monitor compliance with the present regulation and laws applicable to the bank and report to the Governing Board thereon;
- (c) engage experts at the expense of the bank to assist in the fulfillment of the responsibilities of the Audit Committee; and
- (d) deliver opinions on any matters submitted to it by the Governing Board or that it wishes to address.

19.2 The Audit Committee shall meet ordinarily once per quarter and extraordinarily when convened by the Governing Board or by two of its members. Decisions shall be taken by a majority of the members present and no abstentions shall be allowed. Minutes of meetings shall be recorded in such manner as prescribed by instruction of the Central Payments Office.

19.3 Each bank shall establish a Risk Management Committee that shall consist of three members of the Governing Board who shall serve for a term of two years which term shall be renewable. The Risk Management Committee shall:

- (a) establish and monitor implementation of procedures for credit appraisal, loan administration, and asset and liability management, including those prescribed by the Central Payments Office, including such matters as underwriting standards, approval of large extensions of credit and all equity investments, requirements for collateral for credit, classification of and provisioning for value-impaired assets, pursuit of borrowers and issuers in default, and managing interest rate and market risk;

- (b) monitor compliance with the laws and regulations applicable to credit and other risks and report to the Governing Board thereon; and
- (c) deliver opinions on any matters submitted to it by the Governing Board or that it wishes to address.

19.4 The Risk Management Committee shall meet ordinarily once per month and extraordinarily when convened by the Governing Board or by two of its members. Decisions shall be taken by a majority of the members present and no abstentions shall be allowed.

19.5 Banks may establish a separate Credit Committee and Asset and Liability Management Committee to perform the functions described in Section 19.3 of the present regulation.

## Section 20 Secrecy

20.1 Present and past administrators, employees, and agents of a bank shall keep secret, and not use for personal gain or gain by other than the bank that they serve or have served, or permit to be examined by others, any non-public information that they obtained in the course of their services to the bank. Such information includes, but is not limited to, customers' accounts balances, amounts, conditions, and use of proceeds of banks' loans, customers' business relationships, and recipients and amounts of payments made by the bank.

20.2 The information described in Section 20.1 of the present regulation may be disclosed only to the Central Payments Office, including its inspectors and the auditors appointed by it, to external auditors of the bank, to judicial authorities as the law shall provide, to foreign bank 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.

21.2 The knowledge described in Section 21.1 of the present regulation may be inferred from objective factual circumstances.

21.3 Notwithstanding Section 21 of the present regulation, banks shall on their own initiative inform the authorities in East Timor responsible for combating money laundering of the evidence that property is derived from criminal activity and provide, at the authorities request, any additional related information, in accordance with the procedures established by applicable law.

## Section 22

## Disclosure of conflicts of interest and fiduciary obligations

22.1 An administrator of a bank who:

- (a) is a party to a material contract or a proposed material contract with the bank, or
- (b) is an administrator of, or has a material interest in or a material relation to any person who is a party to a material contract or a proposed material contract with the bank,

shall disclose in writing to the bank the nature and extent of the material interest or relation.

22.2 The disclosure required by Section 22.1 shall be made by the administrator when the contract or proposed contract comes or ought reasonably to come to the attention of the administrator.

22.3 A administrator shall give a general notice, in writing, to the Governing Board of the bank disclosing no less than annually the names and addresses and reasonably full particulars of the administrator's material commercial, financial, agricultural, industrial or other business or family interests. Any material contract between the bank and any person named in the general notice shall be a sufficient declaration of conflict of interest in relation to any such contract.

22.4 An administrator who has a material interest or a material relation within the scope of Sections 22.1 or 22.3 shall leave any meeting at which the contract or proposed contract is discussed. An administrator who has a material interest or a material relation within the scope of Sections 22.1 or 22.3 shall also refrain from voting on any matter related thereto that becomes the subject of action by the Governing Board of the bank, provided that such an 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  
General prudential principles

23.1 Banks shall conduct their administration and operations in accordance with sound administrative and accounting procedures, the requirements of the present regulation, and the instructions or guidelines issued by the Central Payments Office.

23.2 Banks shall maintain adequate capital and sufficient liquid resources, and, with due regard to the nature of their business, shall ensure that their assets are diversified as to risk of loss.

Section 24  
Financial activities

24.1 Banks shall be authorized in their license to engage in the financial activities described in Section 24.2. Banks with the required regulatory capital, may engage, in addition to the activities described in Section 24.2, in activities described in Sections 24.3 and 24.4, as follows:

- (a) Banks with the minimum amount of required capital in accordance with Section 4 of the present regulation, as adjusted from time to time, may engage in the financial activities described in Section 24.2;
- (b) Banks that have twice the minimum capital or such further amount as may be determined by instruction from time to time, may engage in the financial activities described in Sections 24.2 and 24.3;
- (c) Banks that have three times the minimum capital or such further amount as may be determined by instruction from time to time, may engage in the financial activities described in Sections 24.2, 24.3 and 24.4.

- 24.2
- (a) receiving deposits (in the form of demand deposits, time deposits, or other forms of deposit) bearing interest or not in one currency;
  - (b) buying and selling for a bank's own account debt securities issued or guaranteed by governments or central banks that are denominated and payable in the currency of the bank's deposits, that have a term to maturity not

exceeding one year, and that are rated in one of the two highest categories by an internationally-recognized credit rating agency;

- (c) extending credit, including: consumer and mortgage credit; factoring with or without recourse; and financing of commercial transactions;
- (d) providing payment and collection services;
- (e) issuing and administering means of payment (including payment cards, travelers' checks and bankers' drafts);
- (f) buying and selling foreign exchange for cash for the account of a customer;
- (g) providing for safekeeping of securities and other valuables; and
- (h) such other financial activities as the Central Payments Office shall determine by instruction.

- 24.3
- (a) receiving deposits bearing interest or not in more than one currency;
  - (b) borrowing funds and buying and selling for a bank's own account or for the account of customers (excluding underwriting) of:
    - (i) money market instruments (including, checks, bills of exchange and certificates of deposit);
    - (ii) debt securities;
    - (iii) futures and options relating to debt securities or interest rates; or
    - (iv) interest rate instruments;
  - (c) money broking;
  - (d) financial leasing;
  - (e) providing credit reference services;
  - (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  
Corporate Records and Records of Transactions

27.1 Every bank shall prepare and maintain at its head office written records containing:

- (a) its charter and by-laws and all amendments thereto;
- (b) a register of its shareholders, including the number of shares registered in the name of each shareholder;
- (c) minutes of meetings and resolutions of the Governing Board;
- (d) minutes of meetings and resolutions of the shareholders;
- (e) accounting records exhibiting clearly and correctly the state of its business affairs, explaining its transactions and financial position so as to enable the Central Payments Office to determine whether the institution has complied with all the provisions of the present regulation;
- (f) records showing, for each customer of the bank, on a daily basis, particulars of its transactions with or for the account of that customer, and the balance owing to or by that customer; and
- (g) such other records as are required by the present regulation, or by instruction of the Central Payments Office.

27.2 Every bank shall cause to be created and shall maintain at the head office of the bank in East Timor, proper credit documentation and any other information concerning its business relations with its customers and other persons that the Central Payments Office may prescribe by instruction.

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 their benefit in excess of the limits established by instruction of the Central Payments Office.

### 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) any fraudulent act by any administrator, employee or agent; or
  - (ii) any irregularity or deficiency in the administration or operations that should be expected to result in a material loss for the bank or such subsidiary.

32.2 For banks whose assets do not exceed the amount established by instruction from time to time of the Central Payments Office, the functions described in Section 32.1 may be performed by their internal auditor; provided, however, that such auditor shall have had no less than ten (10) years of professional experience in auditing.

### 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 both an individual and a consolidated basis.

Section 35  
Reports and inspection

35.1 Each bank shall prepare and submit to the Central Payments Office reports concerning its administration and operations, liquidity, solvency, and profitability, and those of its subsidiaries, that accurately reflect the financial condition of the bank and each of its subsidiaries on an individual and a consolidated basis. The reports shall be prepared in such form and detail and shall be submitted at such intervals as shall be prescribed by instruction of the Central Payments Office.

35.2 Each bank and each of its subsidiaries shall be subject to inspections by inspectors of the Central Payments Office or by auditors appointed by the Central Payments Office. Such inspectors may include officials of the authority of another country that is charged with the monetary or prudential supervision of financial activities in that country if it concerns the inspection of a bank that:

- (a) is a branch or subsidiary of a foreign bank that has its head office in that country; or
- (b) has a significant interest in a foreign bank that is located in that country.

35.3 In their inspections of banks and their subsidiaries, the Central Payments Office and its auditors may:

- (a) examine the accounts, books, documents and other records of the bank or subsidiary; and
- (b) require administrators, employees and agents of the bank or subsidiary to provide all such information on any matter relating to its administration and operations as they shall reasonably request.

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.

36.2 The Central Payments Office may take the actions or impose the penalties described in Section 36.3 with respect to a bank if it determines that the bank or any of its administrators or principal shareholders is guilty of an infraction consisting of:

- (a) the violation of a provision of the present regulation or of any instruction of the Central Payments Office;
- (b) the violation of any condition, restriction, or provision of an authorization issued to a bank by the Central Payments Office; or
- (c) the violation of any provision of an enforcement agreement concluded by a bank with the Central Payments Office pursuant to Section 36.3(b).

36.3 Following a determination pursuant to Section 36.2, the Central Payments Office may take the following actions or impose the following penalties:

- (a) issue written warnings;
- (b) conclude a written enforcement agreement with the Governing Board providing for a program of remedial action;
- (c) issue written orders to cease and desist from such infractions and to undertake remedial action;
- (d) impose fines on the bank or on its administrators or principal shareholders in an amount from US\$ 500-5,000 per day for each day that the infraction continues; provided, however, that fines shall be of similar amount for entities with comparable total assets for the same type of infraction;
- (e) suspend temporarily or dismiss administrators from positions in a bank and terminate their receipt of remuneration from the bank; or
- (f) revoke the license of the bank and appoint a receiver for the bank whose powers are described in Section 41 of the present regulation.

36.4 The penalties described in Section 36.3 may be applied to any person who violates any of the provisions of Section 2 of the present regulation.

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 by instruction of the Central Payments Office; and
- (c) in determining the value of a bank's assets and liabilities for a future date, the bank's reasonably anticipated future income and expenses until that date shall be taken into account.

38.3 A receiver may be a person from the private sector or an official of the Central Payments Office who meets the qualifications prescribed by instruction of the Central Payments Office. The Central Payments Office may, for good cause, dismiss a receiver it appoints. The terms of the receiver's compensation shall include incentives for meeting the objectives described in Section 40.1 of the present regulation and penalties for failure to meet such objectives.



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 Notice and registration of receivership

Whenever a receiver is appointed under Sections 36 or 38, the receiver shall within two days of such appointment:

- (a) post in each office of the bank a notice announcing such action pursuant to the present regulation, specifying the effective date and time of possession by the receiver and specifying that:
  - (i) authorizations of persons to engage the financial responsibility of the bank have been canceled;
  - (ii) persons who previously had authorization to give instructions on behalf of the bank with respect to payment or transfer of the bank's assets or assets managed by the bank are no longer so authorized; and
  - (iii) the bank's license has been revoked.
- (b) publish a notice to the same effect in one or more newspapers of general circulation in the communities in which the bank maintains offices and arrange for the publication of such notice each week for the next four weeks;
- (c) register as necessary with the competent authorities; and
- (d) transmit copies of such notices and registration to the Central Payments Office within two days of each of the posting, publication, and registration.

### Section 40 Powers and Duties of Receiver; Effects of Receivership

40.1 A receiver shall have all the powers of the administrators and shareholders of the bank for which it has been appointed. Notwithstanding that the bank's license has been revoked, the receiver may, subject to Section 40.2, operate the bank in its own name and take steps to sell the bank or its assets if, in its opinion, this is likely to satisfy more of the bank's liabilities to depositors and other creditors within one (1) year from the date of the receiver's

appointment. 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.

40.14 The procedures for determinations of the validity and priority of claims and for liquidation of bank assets and return of bank customers' property shall be prescribed by

instruction of the Central Payments Office; provided, however, that the sale of bank assets shall be in a transparent and commercially reasonable manner by one or more methods of auction or negotiated transactions.

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 received consideration, made within three years prior to the effective date of the receivership.

41.3 An action to set aside a transfer under Section 41.1 may be brought by the receiver within one year following the effective date of the receivership.

41.4 Notwithstanding the provisions of Section 41.2, the receiver may not set aside a payment or transfer by the bank if it was made in the ordinary course of the bank's business, or if it was part of a contemporaneous exchange for reasonably equivalent value, or to the extent that following the transfer the recipient extended new unsecured credit to the bank which had not been satisfied by the bank as of the effective date of the receivership.

41.5 The recipient of a transfer set aside under Section 41.2(c) shall return the property transferred to the receiver or, if the property no longer exists, the value of the property at the time of its transfer by the bank; provided, however, that a recipient who has returned to the receiver the value of property transferred by the bank shall have a claim against the bank for that amount, if the recipient gave reasonably equivalent value to the bank and accepted the

transfer in good faith and without an intention to hinder, delay, or defraud the bank's depositors or other creditors.

41.6 The receiver may recover property or the value of property transferred by the bank from a transferee of an initial transferee only if the second transferee did not give fair value 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 person taking title to or acquiring any security interest or other interest in such property after the filing of such a notice takes his title or interest subject to the rights of the bank to recover the property.

41.8 A lessor of bank premises or a utility company or other provider of utility services including, without limitation, a company that supplies electricity, natural gas, water, or telephone service, may not alter, refuse, or discontinue such service to a bank because of its receivership or because the debtor has failed to pay for services prior to its receivership; provided, however, that upon request of a lessor of bank premises or a utility company, the bank shall place a security deposit in a commercial bank as a condition to the lessor's or utility company's duty to continue to provide services during the receivership, and any such deposit shall not be required in an amount greater than the cost of services provided to the bank during the month immediately prior to the effective date of the receivership.

#### Section 42 Priorities in Payment of Claims

42.1 In any liquidation of a bank's assets, allowed secured claims shall be paid to the extent of the realization of the security or the security shall be delivered to the secured creditor, and from the proceeds other allowed claims shall be paid in priority to all other debts, in the order of the class of claims described below:

- (a) necessary and reasonable expenses incurred by the receiver and the Central Payments Office, including professional fees, in application of Sections 38-44;
- (b) deposits up to an amount not exceeding ten (10) times the average monthly wage per depositor;
- (c) the amount not paid on deposits under Section 42.1(b);
- (d) other claims of creditors against the bank.

42.2 If the amount available for payment for any class of claims listed under Section 42.1 is insufficient to provide payment in full, such claims shall abate in equal proportions.

42.3 After payment of all claims filed, any remaining allowable claims that were not filed within the time specified by instruction of the Central Payments Office for the filing shall be paid.

42.4 Any proceeds remaining after all claims of depositors and other creditors have been paid shall be distributed among the shareholders of the bank in accordance with their rights and interests.

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.

Section 48  
Judicial Review; Liability

In any court or arbitration proceeding arising out of or in connection with the present regulation against the Central Payments Office or a receiver, employee, or agent of the Central Payments Office:

- (a) the sole question before the court or arbitration panel in determining whether the defendant acted unlawfully shall be whether the defendant exceeded his authority or acted in an arbitrary or capricious manner in light of the facts and the applicable UNTAET regulation or Central Payments Office instruction in the case;
- (b) an official, employee, or agent of the Central Payments Office shall not be liable for damages or otherwise liable for acts or omissions performed pursuant to and in the course of the duties and responsibilities unless such acts or omissions constitute intentional wrongful conduct; and
- (c) the action in question shall continue without restriction during the period of an appeal and any further appeal or other judicial proceedings related to the appeal.

Section 49  
Definitions

Wherever used in the present regulation, the following terms shall have the following meanings:

- (a) "administrator" means any person who is an officer of a bank, or other juridical person, including any member of the Governing Board or the Audit Committee and further including any person who alone or together with one or more others has the authority to enter into commitments for the account of such juridical person;
- (b) "affiliate" of a bank or other juridical person means a subsidiary of such juridical person or a company of which the juridical person is a subsidiary or a company that is under common control with the juridical person;
- (c) "bank" means a person engaged in the business of accepting deposits from the public in East Timor and using such funds, either in whole or in part, to make extensions of credit or investments for the account of and at the risk of the person carrying on the business;
- (d) "branch office" means a place of business that forms a legally dependent part of a bank and that conducts directly all or some financial activities;



- (e) "capital" means the net worth or own funds of a bank that is the difference between its assets and liabilities in accordance with balance sheet accounts that reflect applicable accounting principles;
- (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 and an appraisal of its value;
  - (iii) a statement of the terms of the credit, including the principal amount, rate of interest, schedule of repayments, the borrower's objective or purpose for borrowing, and any required insurance to be contracted by the borrower; and
  - (iv) the signature of each person who authorized the credit on behalf of the lender;
- (i) "debt security" means any negotiable instrument of indebtedness and any other instrument equivalent to such instrument of indebtedness, and any negotiable instrument giving the right to acquire another negotiable debt security by subscription or exchange; negotiable debt securities may be in certificated or in book-entry form;
- (j) "deposit" means a sum of money paid on terms:
  - (i) that it is to be repaid in full, with or without interest or premium of any kind, and either on demand or at a time agreed by or on behalf of the person making the payment and the person receiving it; and

- (ii) that are not referable to the provision of property or services or the giving of security;

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 that juridical person or undertaking;

- (v) "subsidiary" means any juridical person in which another person or group of persons acting in concert holds the equivalent of fifty percent or more of any 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 shall enter into force on 25 February 2000.

Sergio Vieira de Mello  
Transitional Administrator