

FINANCIAL RESOURCES REQUIREMENTS RULES FOR CUSTODIANS 2023

NBFIRA/RS/CM/RUL04

NBFIRA

Non-Bank Financial
Institutions Regulatory
Authority



CONTROL TABLE

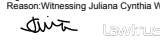
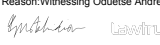
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1. PURPOSE

The purpose of the Financial Resources Requirements Rules for Custodians is to foster financial soundness and stability of Custodians by prescribing financial parameters/limits to be maintained in order to ensure operational viability.

2. SCOPE

These Rules apply to all custodians licensed and regulated by Non-Bank Financial Institutions Regulatory Authority in the Republic of Botswana.

3. ASSOCIATED DOCUMENTS

Associated documents are documents that are indispensable to the implementation of this procedure. These are:

Document	Reference
Insurance Industry Act	No.10 of 2015
NBFIRA Act	No.21 of 2023
Securities (Amendment) Act	No.16 of 2023
Securities Act	No.26 of 2014
Securities (Institutions Licensing) Regulations	Statutory Instrument No.31 of 2017
Securities (Persons Operating a Securities Infrastructure Business) Regulations	Statutory Instrument No.32 2017

4. DEFINITIONS

Term	Definition
Approved by	The person endorsing or authorizing documents.
Asset Manager	Has the same meaning assigned to it under the Securities Act.
Authored by	The individual responsible for creating or writing a particular document.
Custodian	Has the same meaning assigned to it under the Securities Act.
Key Personnel	Has the same meaning assigned to it under the Securities (Institutions Licensing) Regulations.

5. ACRONYMS AND ABBREVIATIONS

Abbreviation	Full Phrase
CEO	Chief Executive Officer
CM	Capital Markets
FRRR	Financial Resources Requirements
NBFI	Non-Bank Financial Institution
NBFIRA	Non-Bank Financial Institutions Regulatory Authority
PII	Professional Indemnity Insurance

6. RESPONSIBILITY

The Director of CM Department is responsible for ensuring the effective implementation and maintenance of these rules.

7. RULES

7.1 APPLICATION

- (a) The Financial Resources Requirements Rules (FRRRs) for Custodians replace the Capital Adequacy Requirements Guidelines (CAR) for Custodians, 2021.
- (b) The Non-Bank Financial Institutions Regulatory Authority (NBFIRA) may issue guidance regarding the standards of conduct and practice expected in relation to any aspect of the regulatory framework.

7.2 FINANCIAL RESOURCES REQUIREMENTS

- (a) A Custodian which is not a bank licensed by Bank of Botswana, shall at all times, maintain;
 - i. a net worth of a minimum of P10,000,000 or;
 - ii. Liquid assets sufficient to cover at least 3 months of expenditure, whichever is greater based on the previous year's audited financial statements.
- (b) The Custodian shall follow the framework for the calculations of financial resources requirements as may be prescribed by NBFIRA from time to time.

i. Guidance Note

The FRRRs recognize that there will be some instances where the Rules for Financial Resources Requirements and Liquidity Requirements will not take into account the nature and complexity of the NBFI.

Such instances might be, for example, due to foreign exchange risk, risk of counterparty, default, off balance sheet assets and liabilities (including contingent liabilities or principal positions which the NBFI has taken.

Accordingly, the Board and Management of the NBFI should consider an appropriate additional provision above the required level in these Rules and evidence of that consideration.

A custodian which is a bank shall maintain those financial resources as are set out under the Banking Act or relevant law.

7.3 INSURANCE ARRANGEMENTS

- (a) An NBFI, acting as a Custodian must maintain insurance cover which is commensurate with the size and nature of the business. The cover must include professional indemnity insurance (PII) and insurance against employee dishonesty or fraud.

ii. Guidance Note

The consideration by the Asset Manager of its insurance requirements should be clearly documented, at local Board or Senior Management level, to demonstrate how the decision was made.

NBFIRA expects all Asset Managers, whether they are part of organisations with offices elsewhere, to consider the insurance requirements for entities in Botswana.

Where a local operation is part of a group and the local Board or Management do not consider available cover to the Botswana NBFI, to be adequate, the NBFIRA expects the Board, or Management, to make arrangements to maintain appropriate cover. This may include purchasing a separate policy for the local operation.

NB: An insurance cover for a Botswana licensed NBFI shall be placed with a Botswana based Insurers and Re-Insurers in line with the Insurance Industry Act.

NB: An insurance cover for Botswana licensed NBFI, shall be placed with Botswana based insurers and reinsurers in line with the Insurance Industry Act.

iii. Guidance Note

Insurance cover based on a prior year's audited financial statements does not need to be amended before the next annual renewal following the release of the following year's annual financial statements. However, the NBFI should consider whether to arrange additional cover if the audited financial statements show a material increase in income.

- (b) Where the NBFI also carries out activities not regulated by NBFIRA, must consider whether the minimum indemnity limit of its PII policy, and scope of the PII cover, are appropriate for its business, considering possible claims that may also arise from the unregulated business.

7.3.1 Scope of Cover

- (a) An NBFI shall maintain, at all times, cover for;
- i. negligence, errors, or omissions by the NBFI or its employees;
 - ii. any liability for the dishonest or fraudulent acts of employees which may fall on the NBFI;
 - iii. liabilities which the NBFI might incur, in any jurisdiction, in which it could reasonably foresee that it may be held liable for damages and costs;
 - iv. legal defence costs; and
 - v. Any other operational risk that might be incurred by the NBFI.

7.4 NOTIFICATIONS

7.4.1 Immediate Notification

- (a) An NBFI shall notify NBFIRA, immediately, where;

- i. it is in breach of its financial resources requirements or liquidity requirements, including setting out, in writing, the steps that it is taking, or were taken, to remedy the breach;
- ii. it anticipates being in breach of its financial resources requirements or liquidity requirements, within thirty (days); including setting out, in writing, the steps that it proposes to take to avoid the breach;
- iii. its auditor intends to qualify the Financial Statements;
- iv. the liabilities of a subsidiary of the NBFIR exceeds the subsidiary's assets; and
- v. the liabilities of the parent company of the NBFIR exceed the parent company's assets.
- vi. Remedial actions taken to address (iv) and (v) above.

7.5 GENERAL PROVISIONS

- (a) The returns submitted by a custodian company shall be signed by the Managing Director and Head of Finance.
- (b) No custodian shall be allowed a shortfall in any capital funds, other than in specific temporary exceptions granted by NBFIRA due to unusual circumstances.
- (c) NBFIRA may require the Key Personnel to appear personally and produce the company's set of financial statements and answer questions, including questions relating to any actual or possible violation of these Rules.
- (d) NBFIRA may appoint an external auditor to verify capital/liquidity shortfalls when they are detected or suspected. In the event that such irregularities and/or capital shortfall, as the case maybe are confirmed by the auditor, the custodian shall bear all the costs associated with the verification exercise.
- (e) NBFIRA will have full discretion regarding the necessity and sufficiency of special adjustments in any particular case presented by the Custodian, taking into consideration all factors pertaining to the market with regard to the financial position or future contracts and the affairs as a whole, of the custodian involved.
- (f) The Regulatory Authority may modify these or prescribe additional requirements as it may deem appropriate for the discharge of its mandate from time to time.

7.6 TRANSITIONAL ARRANGEMENTS, REVOCATIONS, CITATIONS AND COMMENCEMENT

7.6.1 Transitional Arrangements

- (a) The NBFIs shall comply with these Rules at their next insurance renewal, following the date on which the FRRRs for Custodians, 2023, come into effect.

7.6.2 Revocations

- (a) Citation and Commencement
- i. The Capital Adequacy Requirements Guidelines for Custodians, 2021 are revoked.

7.6.3 Citation and Commencement

- (a) These Rules may be cited as the Financial Resources Requirements Rules for Custodians.
- (b) (2) These rules come into force on 1st January 2024.

8. RECORDS

Reference Number	Record (Description of records)	Location / Holder	Retention Period	Justification
Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable