Revised Regulations of Anguilla: B12-7

BANKING ACT (R.S.A. c. B12)

BANKING (CAPITAL ADEQUACY AND CAPITAL RATIOS) REGULATIONS

Note: These Regulations are enabled made by the Minister, under section 182 of the Banking Act, R.S.A. c. B12.

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PART 1

PRELIMINARY

Interpretation

1. In these Regulations, unless the context otherwise requires—

"capital adequacy" refers to maintenance of the aggregate of the minimum paid up capital stipulated in section 14 of the Act, and adherence to the capital adequacy requirements prescribed in Part 3 of these Regulations;

"financial asset" means any asset which is—

(a) cash;

(b) an equity instrument of another enterprise;

(c) a contractual right to receive cash or another financial asset from another enterprise; or

(d) a contractual right to exchange financial instruments with another enterprise under conditions that are potentially favourable;

"financial institution" refers to an institution licensed under the Act;

"financial liability" refers to a contractual obligation to—

(a) deliver cash or another financial asset to another enterprise;

(b) exchange financial instruments with another enterprise under conditions that are potentially unfavourable;

"fixed assets revaluation reserve" means the increase in the book value of a fixed asset based on an independent and professional appraisal as to the market value of such an asset;

"Manual of Instructions" means the current Manual of the Eastern Caribbean Central Bank Banking Schedules and Instructions;

"person" means an individual or legal person, including an association or any group of persons acting in common, whether or not incorporated;

"specific provision for loan losses" means loan loss reserves held against identified losses or potential losses and which cannot be utilised to satisfy general losses which subsequently materialise;

"subordinated debt" means debt having a claim against the issuer's assets that is lower ranking or junior to other obligations, and is paid after claims to holders of senior claims are satisfied;

"substantial equity investment" means an investment by a licensed financial institution which allows the licensed financial institution to own at least 20% of another entity's equity;

"Tier I capital" refers to capital computed in accordance with relevant criteria established in Schedule 1;

"Tier II capital" refers to capital computed in accordance with relevant criteria established in Schedule 1;

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"total regulatory capital" refers to capital which is approved for regulatory purposes and computed in accordance with Schedule 1.

Application

2. These Regulations apply to all financial institutions licensed under the Act.

PART 2

REQUIREMENT FOR CERTAIN CAPITAL COMPONENTS

Capital adequacy requirement

3. (1) Every licensed financial institution shall maintain adequate capital in accordance with the following—

(a) section 13(1) of the Act;

(b) Schedule 1; and

(c) the capital adequacy ratios as provided for under section 7.

(2) Every foreign licensed financial institution shall, within one month after the end of each calendar year, submit to the Central Bank an undertaking that an amount—

(a) equivalent to its net assets; or

(b) which supplements the amount required to be equivalent to its net assets;

being not less than 5% of its deposit liabilities or such other liabilities as may be determined by the Central Bank, has been attributed or pledged as assigned capital.

(3) The undertaking referred to in subsection (2) shall be in writing in the form of the Letter of Comfort set out in Schedule 2.

(4) The amount of assigned capital referred to in subsection (2) shall be specified in the appendix to the Letter of Comfort and shall be calculated on the financial institution's deposit liabilities as at the end of the financial year.

Preference shares

4. Perpetual cumulative preference shares, long-term preference shares and mandatory convertible debt instruments must satisfy the following criteria to be eligible for inclusion in Tier II capital—

(a) they must be unsecured, subordinated and fully paid;

(b) they must not be redeemable at the discretion of the holder;

(c) they must be available to absorb losses; and

(d) service obligations attached to them must be deferrable.

Fixed assets revaluation reserves

5. (1) Fixed assets must be valued on a basis satisfactory to the Central Bank.

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(2) Revaluation of premises shall only be carried out by independent and certified valuers.

(3) A financial institution must fully disclose and report, in its balance sheet or notes to the audited accounts, details of the reserves arising from revaluation of fixed assets.

(4) A financial institution must disclose the basis used to revalue the assets and the effective date of revaluation.

(5) Revaluation reserves on fixed assets may be included in Tier II capital in accordance with Schedule 1.

Subordinated debt

6. (1) Approved subordinated debt may be included in Tier II capital if it satisfies the following requirements—

(a) it is unsecured;

(b) it has an original fixed term to maturity of over 5 years;

(c) it may be redeemed before maturity only at the option of the licensed financial institution and with the prior approval of the Minister in consultation with the Central Bank; and

(d) it satisfies such further conditions prescribed by the Central Bank.

(2) In addition to the requirements of subsection (1), approved subordinated debt may be included in Tier II capital during the last 5 years before maturity if a cumulative discount or amortisation factor of 20% per annum is applied to reflect the diminishing value of the subordinated debt as a continuing source of strength.

PART 3

CAPITAL ADEQUACY RATIO

Capital adequacy ratio

7. (1) A licensed financial institution shall assign all assets recorded on the balance sheet as well as off-balance sheet exposures to broad risk categories in accordance with Schedule 1.

(2) A licensed financial institution shall maintain a minimum ratio between its total regulatory capital (the numerator) and the aggregate of its risk weighted on-balance sheet assets and risk weighted off-balance sheet assets less approved deductions, of not less than 8%, calculated on a consolidated and solo basis.

(3) A licensed financial institution shall calculate its capital adequacy ratio in accordance with the criteria prescribed in Schedule 1.

(4) The Central Bank may require a licensed financial institution to increase its capital adequacy ratio above the amount specified in subsection (2).

(5) A licensed financial institution shall maintain adequate systems and procedures, satisfactory to the Central Bank, to facilitate computation of the capital adequacy ratio.

(6) In determining the adequacy of the systems and procedures, the Central Bank may have regard to international standards of best practice, the risk profile of a licensed financial institution and the resources of the licensed financial institution.

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(7) A licensed financial institution shall provide the Central Bank with computations of its capital adequacy ratio in such form and frequency as the Central Bank may determine.

(8) A licensed financial institution whose capital adequacy ratio falls below the minimum required amount shall employ one or a combination of the following strategies in order to achieve compliance within 3 months of the reduction in the capital adequacy ratio—

(a) change the risk profile of its assets by converting high risk assets to lower risk assets;

(b) increase its total regulatory capital; or

(c) apply any other strategy approved by the Central Bank.

(9) Nothing in this section shall be interpreted to exempt a licensed financial institution from the requirements imposed by the Central Bank under sections 15(3) and (4) of the Act.

PART 4

IMPAIRMENT OF CAPITAL ADEQUACY

Declaration and payment of dividend and other transfers

8. (1) No licensed financial institution shall declare, credit or pay any dividend or make any other transfer from profits where such declaration, credit, payment or transfer would impair its capital adequacy.

(2) A financial institution shall not take any of the actions specified in subsection (1) unless and until—

(a) all its capitalised expenses (including preliminary expenses, organisation expenses, share selling commission or brokerage, amount of losses incurred and any other item of expenditure not represented by tangible assets) of the financial institution have been completely written off;

(b) all bad and doubtful debts and other classified assets of the financial institution have been fully and duly provided for, as required by guidelines issued by the Central Bank under section 36 of the Act; and

(c) the financial institution has complied with the requirements of section 3.

(3) A licensed financial institution may declare, credit or pay any dividend on its shares or make any other transfer from retained earnings, due to losses in the current year, upon certification from an external auditor of the adequacy of capital.

(4) A licensed financial institution shall not pay any dividend from unrealised gains including gains arising from asset revaluations.

Sanctions

9. (1) Where the Central Bank has reasonable cause to believe that a licensed financial institution is in breach of the capital adequacy requirement specified in section 3, the Central Bank may suspend access by the financial institution to credit facilities of the Central Bank or direct the financial institution to—

(a) inject additional capital in the institution;

(b) refrain from declaring or paying dividends;

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(c) suspend the acceptance of new deposits;

(d) suspend the acquisition of fixed assets; or

(e) suspend lending operations.

(2) Where in the opinion of the Central Bank a licensed financial institution is in breach of the capital adequacy requirement, the Central Bank may also recommend that the Minister impose any or all of the sanctions prescribed in section 21(2) of the Act.

(3) Where the Central Bank determines that a licensed financial institution's capital deficiency is severe enough to have resulted in impairment of capital and such capital impairment is assessed to be detrimental to the interests of depositors, the Central Bank may recommend to the Minister that the licence be revoked under section 21(2)(b) of the Act.

Citation

10. These Regulations may be cited as the Banking (Capital Adequacy and Capital Ratios) Regulations, Revised Regulations of Anguilla, B12-7.

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SCHEDULE 1
(Sections 1, 3, 5 and 7)

WORKSHEET 1 – PART A

CAPITAL ADEQUACY COMPUTATION WORKSHEET

On-Balance Sheet Items
All figures in EC$000's

Category		Assets	Value (V)	Weight (W)	Weighted Value (V x W) $000's
Zero Weight	(a)	**Cash**	-	0	
		1 Local			
		2 Foreign			
	(b)	**Due from Central Bank**	-	0	
		1 Current Account			
		2 Fixed Deposits and Call Accounts			
		3 Other Claims			
	(c)	**Performing securities issued or guaranteed by the territory's Government**	-	0	
		1 Treasury Bills			
		2 Government Securities			
		3 Other Claims on Government			
	(d)	**Performing claims on territory's government, statutory bodies and other public sector entities**	-	0	
		1 Loans to Government			
		2 Loans to Statutory Bodies (Government Guaranteed)			
		3 Other (Government Guaranteed)			
	(e)	**Performing claims on other CARICOM and approved Foreign Government[1]**	-	0	
		1 Deposits at CARICOM Central Banks			
		2 Other claims on CARICOM Central Banks			
		3 Securities issued by CARICOM Governments			
		4 Other claims on CARICOM Governments			
		5 Deposits at approved foreign central banks			
		6 Other claims on approved foreign central banks			
		7 Securities issued by approved foreign governments			
		8 Other claims on approved foreign governments			
	(f)	**Fully Secured Claims (inclusive of credit)**	-	0	
		1 By Cash			
		2 By Government Securities[1]			
	Sub-total of Zero Weight Category		-		

[1]Securities of Governments of countries listed in the Appendix

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Risk Weight		Assets	Value (V)	Weight (W)	Weighted Value (V x W) $000's
20% Risk Weight		**(a) Due from Banks**	-	0.2	-
	1	Locally Incorporated			
	2	Incorporated in CARICOM Territories			
	3	Incorporated in approved foreign countries			
		(b) Due from Financial Institutions*(inclusive of Fixed Deposits)*	-	0.2	-
	1	Locally Incorporated			
	2	Incorporated in CARICOM Territories			
	3	Incorporated in approved foreign countries			
		(c) Other claims and loans guaranteed by Financial Institutions	-	0.2	-
	1	Locally Incorporated			
	2	Incorporated in CARICOM Territories			
	3	Incorporated in approved foreign countries			
	4	Incorporated in other foreign countries with a residual maturity of up to 1 year			
		(d) Claims on state owned enterprises not guaranteed by government	-	0.2	-
	1	Securities Issued			
	2	Loans			
		(e) Non-Performing claims on territory's government, statutory bodies and other public sector entities	-	0.2	-
	1	Loans to Government			
	2	Loans to Statutory Bodies (Government Guaranteed)			
	3	Other (Government Guaranteed)			
	4	Securities Issued			
		(f) Non-performing claims on other CARICOM and approved Foreign Government	-	0.2	-
	1	Securities Issued by CARICOM Governments			
	2	Other Claims on CARICOM Governments			
	3	Securities issued by approved foreign governments			
	4	Other claims on approved foreign governments			
		(g) Claims on or guaranteed by multilateral development banks or collaterized by securities issued by such banks		0.2	-
		(h) Bankers' Acceptances		0.2	-
		(i) Cash items in a process of collection		0.2	-
		Sub-Total of 20% Risk Weight	-		-

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Risk Weight	Assets		Value (V)	Weight (W)	Weighted Value (V x W) $000's
50%	**Fully secured real estate residential mortgages**			0.5	-
100% Risk Weight	**(a) Loans and Advances**		-	1.0	-
	1	Commercial			
	2	Personal			
	3	Other			
	(b) Claims on loans guaranteed by financial institutions incorporated in other foreign countries with a residual maturity of over 1 year			1.0	-
	(c) Claims on foreign governments		-	1.0	-
	1	Claims on other foreign central banks			
	2	Claims on and obligations guaranteed by other foreign central governments			
	(d) Fixed Assets		-	1.0	-
	1	Land and buildings			
	2	Plant and equipment			
	3	Other fixed assets			
	(e) Investments		-	1.0	-
	1	Investments in financial institutions			
	2	Quoted shares/stocks			
	3	Other Investments			
	(f) Other Assets			1.0	-
	Sub-Total of 100% Risk Weight		-		-
	TOTAL ON BALANCE SHEET ITEMS		-		-

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WORKSHEET 1 - PART B

CAPITAL ADEQUACY COMPUTATION WORKSHEET

Off-Balance Sheet Items

All figures in EC$000's

Risk Weight			Off - Balance Sheet Items	Value (V)	Conversion factor (C)	Weight (W)	Converted Weighted Value (V x C x W) $000's
0% Risk Weight	(a)		**Domestic and Foreign Entities**	-			
		1	Bankers' acceptances		1.00		
		2	Bills of collection		1.00		
		3	Unused loan funds		1.00		
		4	Unused portion of overdraft facilities		1.00		
		5	Unused portion of credit card facilities		1.00		
		6	Documentary credits (collieries by underlying shipments)		0.20		
		7	Documentary credits - Other		1.00		
		8	Unconditional formal standby letters of credit and other commitments with an original maturity of up to one year		1.00		
		9	Formal standby letters of credit and other commitments with a maturity of over one year		0.50		
		10	Other standby letters of credit		1.00		
		11	Performance bonds, warranties and transactions related contingent items		0.50		
		12	Financial guarantees and items which substitute for loans and advances		1.00		
		13	Sale and repurchase agreements with recourse		1.00		
		14	Forward asset purchases, forward deposits and partly paid shares and securities with certain drawdown		1.00		
		15	Other		1.00		
	(b)		**Domestic, CARICOM and Approved foreign Public Sector Entities and Local Governments (Guaranteed by Central Government)**	-			
		1	Bankers' acceptances		1.00		
		2	Bills of collection		1.00		
		3	Unused loan funds		1.00		
		4	Unused portion of overdraft facilities		1.00		
		5	Unused portion of credit card facilities		1.00		
		6	Documentary credits (collieries by underlying shipments)		0.20		
		7	Documentary credits - Other		1.00		
		8	Unconditional formal standby letters of credit and other commitments with an original maturity of up to one year		1.00		
		9	Formal standby letters of credit and other commitments with a maturity of over one year		0.50		
		10	Other standby letters		1.00		
		11	Performance bonds, warranties and transactions related contingent items		0.50		
		12	Financial guarantees and items which substitute for loans and advances		1.00		
		13	Sale and repurchase agreements with recourse		1.00		
		14	Forward asset purchases, forward deposits and partly paid shares and securities with certain drawdown		1.00		
		15	Other		1.00		

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	Sub-Total of 0% Risk Weight	-			

Risk Weight			Off-Balance Sheet Items	Value (V)	Conversion factor (C)	Weight (W)	Converted Weighted Value (V x C x W) $000's
20% Risk Weight	**(c)**		**Domestic, CARICOM and Approved Foreign Financial Institutions and Public Sector Entities and Multilateral Development Banks**	-			-
		1	Bankers' acceptances		1.00	0.20	-
		2	Bills of collection		1.00	0.20	-
		3	Unused loan funds		1.00	0.20	-
		4	Unused portion of overdraft facilities		1.00	0.20	-
		5	Unused portion of credit card facilities		1.00	0.20	-
		6	Documentary credits (collieries by underlying shipments)		0.20	0.20	-
		7	Documentary credits - Other		1.00	0.20	-
		8	Unconditional formal standby letters of credit and other commitments with an original maturity of up to one year		1.00	0.20	-
		9	Formal standby letters of credit and other commitments with a maturity of over one year		0.50	0.20	-
		10	Other standby letters		1.00	0.20	-
		11	Performance bonds, warranties and transactions related contingent items		0.50	0.20	-
		12	Financial guarantees and items which substitute for loans and advances		1.00	0.20	-
		13	Sale and repurchase agreements with recourse		1.00	0.20	-
		14	Forward asset purchases, forward deposits and partly paid shares and securities with certain drawdown		1.00	0.20	-
		15	Loans managed on behalf of the Home Mortgage Bank		0.50	0.20	-
		16	Other		1.00	0.20	-
	Sub-Total of 20% Risk Weight			-			-

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Risk Weight			Off-Balance Sheet Items	Value (V)	Conversion factor (C)	Weight (W)	Converted Weighted Value (V x C x W) $000's
100% Risk Weight	(d)		**Private Sector and Other Institutions**	-			-
		1	Bankers' acceptances		1.00	1.00	-
		2	Bills of collection		1.00	1.00	-
		3	Unused loan funds		1.00	1.00	-
		4	Unused portion of overdraft facilities		1.00	1.00	-
		5	Unused portion of credit card facilities		1.00	1.00	-
		6	Documentary credits (collieries by underlying shipments)		0.20	1.00	-
		7	Documentary credits - Other		1.00	1.00	-
		8	Unconditional formal standby letters of credit and other commitments with an original maturity of up to one year		1.00	1.00	-
		9	Formal standby letters of credit and other commitments with a maturity of over one year		0.50	1.00	-
		10	Other standby letters		1.00	1.00	-
		11	Performance bonds, warranties and transactions related contingent items		0.50	1.00	-
		12	Financial guarantees and items which substitute for loans and advances		1.00	1.00	-
		13	Sale and repurchase agreements with recourse		1.00	1.00	-
		14	Forward asset purchases, forward deposits and partly paid shares and securities with certain drawdown		1.00	1.00	-
		15	Other		1.00	1.00	-
	Sub-Total of 100% Risk Weight			-			-
	Total Off-Balance Sheet Items			-			-

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WORKSHEET 2

CAPITAL COMPUTATION WORKSHEET

					$000's
		CAPITAL ITEMS			
Tier I	(a)	Issued and fully paid up ordinary share capital or common stock			
	(b)	Fully paid up ordinary share capital surplus			
	(c)	Fully paid up perpetual non-cumulative preference shares			
	(d)	Fully paid up perpetual non-cumulative preference shares surplus			
	(e)	Statutory reserves			
	(f)	Capital Reserves - excluding asset revaluations			
	(g)	General reserves - excluding reserves losses on assets			
	(h)	Loan loss reserve - appropriated from retained earnings			
	(i)	Retained earnings (accumulated losses) - audited			
	(j)	Other core capital items approved by the Central Bank			
	Tier I Capital before deductions				
	Less deductions				
			1	Current year losses	
			2	Bonus shares from capitalization of unrealized asset revaluation reserves	
			3	Goodwill	
			4	Other intangibles	
			5	Other items approved by the Central Bank	
	Total Core Capital - Tier I				
Tier II	(a)	Fixed assets revaluation reserves (limited to 20% on Tier I capital)			
	(b)	General provisions and loss reserves (limited to 1.25% of total risk-weighted assets)			
	(c)	Paid up perpetual cumulative preference shares			
	(d)	Paid up perpetual cumulative preference shares surplus			
	(e)	Bonus shares from capitalization of unrealized fixed asset revaluation reserves and unrealized securities revaluation reserves (subject to limits in (a) and (g), respectively)			
	(f)	Unaudited undivided profits excluding unrealized gains on the revaluation of fixed assets and securities			
	(g)	Reserves arising from the revaluation of securities (the surplus arising on revaluation shall be discounted by 55%)			
	(h)	Mandatory convertible debt instruments			
	(i)	Other hybrid capital instruments with combined characteristics of equity and debt			
	(j)	Subordinated term debt and limited life preference shares (limited to 50% of Tier I Capital)			
	(k)	Other capital items approved by the Central Bank			
	Total Tier II Capital				
	Allowable Tier II Capital (the lesser of Tier I or Tier II Capital)				
	Total Capital before deductions (Tier I and allowable Tier II Capital)				
	Less deductions				
	(a)	Substantial equity investments in non-consolidated subsidiaries			
	(b)	Other items approved by the Central Bank			
	TOTAL REGULATORY (QUALIFYING) CAPITAL				

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WORKSHEET 3

CAPITAL COMPUTATION WORKSHEET

Calculation of Risk-Based Capital ratios

		EC$000
1	Total risk weighted on-balance sheet assets (Schedule 1 – Worksheet 1 – Part A)	
2	**Less** deductions as per Schedule 1 – Worksheet 2	
3	Net risk weighted on-balance sheet assets (item 1 – item 2)	
4	Total risk weighted off-balance sheet assets (Schedule 1 – Worksheet 1 – Part B)	
5	Total risk weighted assets (item 3 + item 4)	
6	**Less** specific accumulated provision for losses on assets	
7	**Less** general provisions and loss reserves disallowed in capital (Tier II Capital, Item b)	
8	Total adjusted risk weighted assets (item 5 – item 6 – item 7)	
	Capital Ratios	
	Tier I Capital to Total Adjusted Risk Weighted Assets (item 8)	0.0%
	Total Regulatory Qualifying Capital to Total Adjusted Risk Weighted Assets (item 8)	0.0%
	Tier I Capital to Deposits	
	Single Largest Loan Facility to Tier 1 Capital	0.0%
	Single Largest Group Loan to Tier 1 Capital	0.0%
	Top 20 Largest Loan Groups to Tier 1 Capital	0.0%

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APPENDIX

LIST OF CARICOM AND APPROVED FOREIGN COUNTRIES

CARICOM COUNTRIES	APPROVED FOREIGN COUNTRIES[1]
Antigua and Barbuda	Australia
Anguilla	Austria
Bahamas	Belgium
Barbados	Canada
Belize	Denmark
Dominica	Finland
Grenada	France
Guyana	Germany
Jamaica	Greece
Montserrat	Iceland
St Lucia	Ireland
St Kitts and Nevis	Italy
St Vincent and the Grenadines	Japan
Suriname	Luxembourg
Trinidad and Tobago	Netherlands
	New Zealand
	Norway
	Portugal
	Spain
	Sweden
	Switzerland
	United Kingdom
	United States

[1] Approved foreign Governments and Central Bank are the Governments and Central Banks of these territories.

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SCHEDULE 2

(Section 3)

LETTER OF COMFORT

We [Bank A] are the direct parent company of [Bank B] (hereinafter referred to as our Branch) which is incorporated in ……..……..... and conducts banking business at ..... in Anguilla.

We have set aside the amount specified in the Appendix to this Letter of Comfort in respect of our Branch, which is equivalent to or supplements the amount which is required to be kept as assigned capital by our Branch during the term of the Banking Business Licence, in accordance with section 14 of the Banking Act, R. S. A. c. B11 and the provisions of the Banking (Capital Adequacy and Capital Ratios) Regulations.

We will maintain the amount specified in the Appendix to this Letter of Comfort in respect of our Branch in accordance with the law.

Regardless of this, we confirm to you that we accept ultimate responsibility for the maintenance of the required amount of assigned capital by our Branch in any further way should this ever be required.

It is understood that the amount specified in the Appendix to this Letter of Comfort will be reviewed at the end of each year in consultation with the Eastern Caribbean Central Bank in light of the balance sheet of our Branch.

We will confirm annually any revision of the amount specified in the Appendix to this Letter of Comfort.

This Letter of Comfort applies to our Branch and is valid during the term of the respective Banking Business Licence.

Dated this …….. day of ……, 20…..... .

Authorised Officer: ……..……..

Witness: ……..……

Address: …….

Occupation: ……

_____

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