

## CHAPTER 324A

### FINANCIAL INSTITUTIONS

1996-16

This Act came into operation on 1st July, 1997 by Proclamation (S.I. 1997 No. 48).

#### **Amended by:**

2006-30

#### **Law Revision Orders**

*The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:*

1997

2007

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#### **Guide to symbols in historical notes:**

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument



**CHAPTER 324A**

**FINANCIAL INSTITUTIONS  
1996-16**

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**BARBADOS**

## FINANCIAL INSTITUTIONS

1996-16

*An Act to provide for the regulation of financial institutions.*

[Commencement: 1st July, 1997]

## PART I

## PRELIMINARY

**Short title**

1. This Act may be cited as the *Financial Institutions Act*.

**Interpretation**

- 2.(1) In this Act,

“advertisement” means any form of advertising, whether notified or published

- (a) in a newspaper, magazine, journal or other periodical publication;
- (b) by the display of posters or notices;
- (c) by means of circulars, brochures, pamphlets or handbills;
- (d) by an exhibition of photographs or cinematograph films; or

(e) by way of sound broadcasting or television;

“assigned capital” means such portion of the capital of a foreign financial institution represented by such unencumbered assets as are approved by the Central Bank and specifically assigned by the financial institution to its local operations;

“auditor” means a person described in section 46(14);

“bank” means a company carrying on banking business;

“banking business” means the business of

(a) receiving money from the public on current account, deposit account or other similar account and paying and collecting cheques drawn by or over a period by customers, and making advances to customers; or

(b) receiving money on a savings account from the public repayable on demand or after not more than 3 months’ notice and generally the undertaking of any business appertaining to the business of banking provided that such business has not been specifically prohibited by the Central Bank;

“Barbados bank” means a bank incorporated in Barbados;

“Central Bank” means the Central Bank of Barbados;

“Deposit Insurance Corporation” means the Deposit Insurance Corporation established under the *Deposit Insurance Act*, Cap. 323;

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“Deposit Insurance Fund” means the Deposit Insurance Fund established under the *Deposit Insurance Act*, Cap. 323;

[2006-30]

“financial institutions” includes commercial banks, trust companies, finance companies, merchant banks and brokerage houses;

“foreign bank” means a bank incorporated outside Barbados;

“holding company” and “subsidiary” have the same meanings as in the *Companies Act*, Cap. 308;

“immediate relative”, in respect of any person, means the spouse, parent, brother, sister, child or step-child of that person or the spouse of that person’s parent, brother, sister, child or step-child;

[2006-30]

“insured deposit” means a deposit which is insured under the *Deposit Insurance Act*, Cap. 323;

[2006-30]

“licensee” means a company licensed under this Act;

“Minister” means the Minister responsible for Finance;

“re-organise”, in relation to a licensee, includes the restructuring of the licensee;

[2006-30]

“short-term deposit” means a deposit with an original term to maturity of less than 7 days or with a period of call or notice of less than 7 days;

“unsecured advances” or “unsecured credit” means advances or credit granted without security or any part thereof that at any time exceeds the market value of the assets constituting that security.

(2) For the purposes of this Act,

- (a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person; and
- (b) if 2 bodies corporate are affiliated with a third body corporate at the same time, they are affiliated with each other.

PART II  
COMMERCIAL BANKS  
*Licensing Requirements*

**Interpretation**

**3.** In this Part,

“control” means in relation to a licensee or other company the power of a person or company

- (a) by means of the holding shares;
- (b) by the possession of voting rights in a licensee or other company;
- (c) by virtue of an agreement or other authority conferred by the articles or other document regulating the licensee or other company the conduct of the affairs of the licensee or other company in accordance with wishes of that person or company;

“group” means,

- (a) in relation to a company, that company and
  - (i) any other company which is its holding company or subsidiary;
  - (ii) any other company which is a subsidiary of its holding company;
  - (iii) any company which directly or indirectly controls or is controlled by any company referred to in subparagraph (i) or (ii);
  - (iv) any company which is controlled by a person who directly or indirectly controls a company referred to in subparagraph (i), (ii) or (iii);
  - (v) any company in which a group of immediate relatives has a controlling interest;

- (b) in relation to a person other than a company,
  - (i) a group of immediate relatives where each member of the group is substantially dependent upon the same income source;
  - (ii) a group of persons in which one member has power directly or indirectly to control the other members; or
  - (iii) any other group of persons that may be prescribed by the Central Bank;

[2006-30]

“licensee” means a bank licensed under this Part.

### **Prohibition**

4.(1) Subject to Part III and the *International Financial Services Act*, Cap. 325, no person may carry on banking business in Barbados without a licence issued under this Part.

(2) No licence may be issued under this Part to any person other than a body corporate.

(3) In the event of any dispute as to whether a person is carrying on banking business the matter shall be submitted to the Minister for his determination; and the decision of the Minister shall be final and conclusive for all purposes of this Act.

### **Contents of application**

5.(1) A company that wishes to carry on banking business in Barbados shall apply to the Minister in such form as the Minister may approve and

- (a) submit a copy of its articles, by-laws or other instrument under which the company is incorporated or organised;
- (b) submit, in the case of a foreign bank, a copy of its latest audited financial statements; and

- (c) provide such other documents and information of a financial or other nature as the Minister requires.
- (2) An application for a licence and all documents submitted pursuant to this Part in support of the application shall be signed by the directors of the company making the application.
- (3) Where an application is made under subsection (1), the applicant shall pay such fee as may be prescribed in relation thereto.
- [2006-30]*

### **Issue or refusal of licence**

- 6.(1)** It is the duty of the Minister to issue or refuse a licence under this Part to an applicant
- (a) within 3 months of the receipt of the application; or
  - (b) if additional information is required by the Minister, within 14 days of the receipt by him of the additional information.
- (2) Where the Minister is of the opinion that it is in the public interest to do so, he may issue a licence under this Part to the applicant upon payment of the prescribed fee.

### **Grounds for refusal**

- 7.(1)** When the Minister refuses a licence under this Part it is his duty to inform the applicant of the grounds for his refusal.
- (2) Where the Minister states that the refusal is in the public interest, he need not state any other ground.

### **Restrictions on the granting of licences to foreign banks**

- 8.** A licence may be issued to a foreign bank only if the bank designates and notifies the Minister of
- (a) its principal office in Barbados;

- (b) the name of one of its officers who is its authorised agent in Barbados; and
- (c) in the absence or inability to act of the person referred to in paragraph (b), the name of another officer who may act as the authorised agent of the bank.

**Validity of licence**

- 9.** A licence under this Part remains valid
- (a) until revoked pursuant to this Part, but it is a condition of every licence that an annual fee be paid by the licensee in the amount and at the time prescribed; or
  - (b) until a new licence is granted to the bank pursuant to section 13(5).

**Conditions of licence**

**10.(1)** A licence issued under this Part shall be subject to the following conditions:

- (a) with respect to a foreign bank, that the licensee immediately notifies the Minister of any change of its principal office in Barbados or of any of the officers designated under paragraph (b) or (c) of section 8;
- (b) with respect to a Barbados bank,
  - (i) that no person shall, without the approval of the Minister and subject to such conditions as he may consider necessary, directly or indirectly acquire or hold any significant interest in [a] the licensee;  
*[2006-30]*
  - (ii) that where approval has been obtained to increase the shareholding in accordance with sub-paragraph (1) of this subsection, no person shall hold shares the value of which exceeds the amount approved by the Minister.

(1A) For the purposes of subsection (1)(b)(i), a significant interest is any interest or combination of interests that exceed

(a) in aggregate 10 per cent of the value of the stated capital of a licensee;  
or

(b) 10 per cent of any class of shares of a licensee.

[2006-30]

(2) In determining whether the approval of the Minister referred to in paragraph (b) of subsection (1) should be granted, the Minister shall take into account the following:

(a) whether the person who is seeking to acquire the shares

(i) has been convicted of an offence involving fraud or dishonesty;

(ii) is a discharged bankrupt; or

(iii) has been involved in any act of impropriety related to banking business or financial matters; or

(b) whether the acquisition of the shares is likely to prejudice

(i) the financial condition or capitalization of the licensee; or

(ii) the interests of depositors.

(3) A person who acquires shares beyond the value referred to in subsection (1) without the approval of the Minister shall, on the direction of the Central Bank, dispose of such shares.

(4) A person who fails to dispose of the shares directed to be disposed of by the Central Bank under subsection (3) is guilty of an offence and is liable on summary conviction to a fine of \$25 000 or to imprisonment for 12 months or to both such fine and imprisonment.

(5) A licensee that permits any person or group of persons to contravene the provisions of this section is guilty of an offence and liable on summary conviction to a fine of \$25 000.

**Revocation of licence**

- 11.(1)** The Minister may revoke a licence
- (a) if the licensee fails to comply with a condition of its licence;
  - (b) if the licensee does not within 6 months after the issuance of its licence commence business;
  - (c) if the licensee is in breach of any duty or obligation imposed upon it by this Act, or commits an offence under this Act or the regulations;
  - (d) if, in the opinion of the Minister, the licensee is carrying on business in Barbados in a manner that is detrimental to the public interest or to the interest of its depositors;
  - (e) if the licensee goes into liquidation or is wound up or is otherwise dissolved;
  - (f) if the licensee ceases to carry on banking business in Barbados;  
*[2006-30]*
  - (g) if the licensee provides any false or misleading information in respect of its application under this Act or fails to inform the Minister where there is a material change in respect of the information so supplied;  
*[2006-30]*
  - (h) if the licensee does not take the remedial action directed by the Minister under subsection (4);  
*[2006-30]*
  - (i) if the membership of the licensee in respect of the Deposit Insurance Fund is cancelled in accordance with the *Deposit Insurance Act*, Cap. 323.  
*[2006-30]*
- (2) When the Minister intends to revoke a licence under subsection (1) he shall give the licensee written notice of his intention so to do, specifying therein the grounds on which he proposes to revoke, and give the licensee a reasonable opportunity to show cause why the licence should not be revoked.

(3) The revocation of a licence under this Part shall not prejudice the enforcement of any right or claim against the licensee or by the licensee of any right or claim against any person.

(4) Where it appears to the Minister that there are grounds on which his power to revoke a licence is exercisable but the circumstances are such as to allow for remedial measures, he may impose on the licensee such remedial measures as the Central Bank recommends instead of revoking the licence.

[2006-30]

(5) A licensee that is required to take remedial measures under subsection (4) may, within 14 days of the notification, make representation in writing to the Minister as to why the Minister should not take the action intended.

[2006-30]

(6) Where the Minister revokes a licence, he shall give notice in writing to the company whose licence is revoked, and the Central Bank shall

(a) assume forthwith the management and control of the company; and

(b) subject to section 12, apply to the High Court for a winding-up order.

[2006-30]

### **Appeal**

**12.(1)** Any company aggrieved by the revocation by the Minister of its licence under section 11 may, within 14 days of the giving of notice under subsection (3), appeal against the revocation to a Judge in chambers, whose decision thereon is final.

(2) The Minister may, pending an appeal under subsection (1), suspend the operation of the revocation of the licence in relation to any existing business of the licensee, pending the determination of the appeal.

(3) Where the Minister revokes a licence and there is no appeal or where an appeal is disallowed, notice of the revocation shall be published in the *Official Gazette* and in a daily newspaper published and circulating in Barbados.

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[2006-30]

**Alterations in structure and organisation of banks**

- 13.(1)** Every licensee shall submit to the Central Bank
- (a) at the beginning of each year, a list of the shareholders on its register who hold shares of a value of 5 per cent or more of its stated capital;
  - (b) at such times as the Central Bank determines, a list showing such changes in the shareholding as indicated in the list referred to in paragraph (a).
- (2) Where a foreign bank that is a licensee
- (a) makes any alteration in its structure, the articles of incorporation or in any other instrument under which it is incorporated or organised;
  - (b) re-organises its business or makes an arrangement; or
  - (c) enters into an agreement for
    - (i) either the sale or other disposal of its business by amalgamation or otherwise; or
    - (ii) the purchase or other acquisition of the business of any other licensee,
- the Bank shall within 30 days of the event give notice in writing of the occurrence of the event and also submit full particulars of the event to the Minister.
- (3) Particulars furnished under subsection (2) shall be verified by affidavit or declaration sworn to or, as the case may be, made by a senior officer of the licensee.
- (4) A Barbados bank shall not, without the written approval of the Minister,
- (a) enter into any agreement for either the sale or other disposal of any part of its business by amalgamation or otherwise;
  - (b) purchase or otherwise acquire the business of any other licensee;
  - (c) change its title or name or amend its articles of incorporation;

- (d) take any action to reduce or impair in any respect, its capital;
  - (e) re-purchase its own shares or take any action which may have a similar effect.
- (5) Where any particulars or information are received under subsection (1), (2), (3) or (4) the Minister may, having regard to the nature of such particulars or information and notwithstanding the fact that the bank concerned is a licensee, require the licensee to apply for a new licence within such time as the Minister determines.
- (6) The requirement referred to in subsection (5) does not affect the validity of any licence subsisting at the date of the issue of the requirement.
- (7) A foreign bank that is a licensee shall not without the written approval of the Minister
  - (a) reduce or impair its assigned capital; or
  - (b) transfer the whole or a substantial part of its assets or liabilities in Barbados.

#### **Disqualification of directors and officers**

- 14.(1)** A director or officer of a licensee ceases to hold office as a director or to be an officer thereof if he
- (a) becomes bankrupt or suspends payment to his creditors;
  - (b) is convicted of an offence involving fraud or dishonesty;
  - (c) makes an arrangement with his creditors; or
  - (d) becomes the auditor of the licensee.
- (2) A person who has been a director or officer of a company whose licence has been revoked under this Part shall not, without the prior approval of the Minister, act or continue to act as a director or officer of any other company, licensed under this Act.

- (3) Where
- (a) a licensee that permits a person referred to in paragraphs (a) to (d) to act as a director or officer of the licensee; or
  - (b) any person contravenes subsection (2),

the licensee or person, as the case may be, is guilty of an offence and liable on summary conviction to a fine of \$20 000 or to imprisonment for 6 months or to both.

### **Restrictions of voting power**

**15.(1)** Notwithstanding sections 88, 89 and 90 of the *Companies Act*, Cap. 308 a director or officer of a licensee shall not be present at or in any way participate, in a meeting of the Board of Directors or a committee of the Board of Directors of that licensee when a loan, an advance or other credit facility is being considered for

- (a) the director, officer or any of his immediate relatives; or
- (b) a company in which the director, officer or immediate relative owns more than 25 per cent of the stated share capital.

(2) For the purposes of this section “immediate relative” means the spouse, child, step-child, parent, brother or sister of a director or officer and any spouse of such child, step-child, parent, brother or sister.

### *Financial Obligations*

### **Capital requirements**

**16.(1)** A licence may not be issued under this Part to a bank unless, in the case of a Barbados bank, the stated capital or in the case of a foreign bank, the assigned capital is at least \$4 000 000.

(2) The fair market value of the fixed unencumbered assets of the bank in Barbados as approved by the Central Bank may form part of the assigned capital for the purposes of subsection (1).

### **Capital adequacy ratio**

**17.** Subject to this Part, a licensee shall not, at anytime, have a capital adequacy ratio of less than such percentage as may be prescribed and calculated in such manner as may be prescribed.

### **Reserve fund**

**18.(1)** A licensee shall maintain a reserve fund and shall, out of its net profits of each year and before a dividend is declared, transfer to the fund a sum equal to not less than 25 per cent of those profits whenever the amount of the reserve fund is less than the issued and paid-up capital of the licensee.

(2) Subsection (1) does not apply to a licensee in respect of whom it is shown to the satisfaction of the Central Bank that the aggregate reserves of the licensee are adequate in relation to its business.

(3) A licensee may only pay an interim dividend out of the profits of previous years or out of the reserves of previous years.

(4) The Central Bank may set a minimum limit on the reserve fund and may waive the requirement to maintain a specific maximum limit if it is satisfied that the licensee has adequate reserves.

### **Reserve for bad debts**

**19.(1)** The Central Bank may, after consultation with licensees, require each licensee to maintain reserves for bad and doubtful debts in such amounts as the Central Bank considers adequate.

(2) The Central Bank may specify guidelines

- (a) for the reporting of loans on which the payment of interest and principal is due;

- (b) for the treatment of overdue debts and accrued interest; and
- (c) for writing off such debts either generally or in respect of a specific class.

### **Dividends**

- 20.** A licensee shall not declare or pay a dividend on its shares
- (a) if there are reasonable grounds for believing that
    - (i) the company is unable or would after the payment be unable to pay its liabilities as they become due, or
    - (ii) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities and stated capital of all classes;
  - (b) until all its capitalized expenditure not represented by tangible assets and all prior losses have been written off;
  - (c) where the stated capital or cumulative balance of the reserve fund has been impaired, until such impairment is corrected;
  - (d) until the requirements of this Act relating to capital and reserves have been met;
  - (e) until all charges due to the Central Bank by the licensee have been paid.

### **Restriction on banking activities**

- 21.(1)** Subject to this section, a licensee
- (a) shall not grant to 1 person or group that is under the control of another person or group, any advance or credit or give any financial guarantee or incur any other liability on behalf of such person or group so that
    - (i) the total value of the advances, credit facilities, financial guarantees or other liabilities at any time exceed 25 per cent of the sum of the stated capital and published reserves of the licensee,

- (ii) where a portion of the facilities referred to in sub-paragraph (i) is unsecured, that portion exceeds 10 per cent of the sum of the stated capital and reserves of the licensee;
- (b) shall not grant unsecured advances or unsecured credit of an aggregate amount in excess of \$40 000 or of 1 per cent of the sum of the stated capital of the licensee whichever is the greater or give any financial guarantee in excess of such amount without security, or incur any other liability in excess of that amount without security
  - (i) to or on behalf of any 1 of its directors whether or not such advances, credit, guarantees or other liabilities are obtained by or on account of the directors jointly or severally,
  - (ii) to or on behalf of any person in whom it or any of its directors is interested as a director, partner, manager or agent or as guarantor, or
  - (iii) to its holding company, any subsidiary or affiliate or any director thereof;
- (c) shall not grant credit facilities on terms and conditions more favourable than the terms and conditions generally applicable to borrowers to
  - (i) its holding company or any subsidiary or affiliate,
  - (ii) any firm in which any director or officer or the immediate relative of such officer or director has an interest or controls 20% or more of the voting shares,
  - (iii) any person, firm or corporation, if the credit facilities are guaranteed by an officer, director, or any immediate relative of the officer or director,
  - (iv) any person who controls more than 20% of the bank's shares;
- (d) shall not grant to its officers or employees unsecured advances or unsecured credit which exceed in aggregate for any 1 officer or employee, 1 year's emoluments of that officer or employee;

- (e) shall not, except in so far as may be necessary with respect to the interests or shareholding that a bank may acquire in satisfaction of debts due to it
- (i) engage, whether on its own account or on a commission basis, in the wholesale or retail trade including the business of import and export or otherwise have a direct interest in, or
  - (ii) acquire or hold in an aggregate amount exceeding 25 per cent of the sum of the paid-up capital and published reserves of the bank, any part of the share capital of any commercial, agricultural, industrial or other undertaking,

but all such interests or shareholding, as the case may be, shall be disposed of within a period not exceeding 5 years unless permission to extend this period has been given by the Central Bank;

- (f) shall not purchase, acquire or lease real estate unless
- (i) such real estate is necessary for the purpose of conducting its business or providing housing or amenities for its staff, having regard to any reasonable requirements for future expansion of its business or staff, and
  - (ii) the market value of the real estate does not exceed the stated capital of the bank,

except that where the bank exercises its legal right in respect of any property which is the security for any debt the bank may acquire such property but in that case the property shall not be retained for a period in excess of 5 years without the permission of the Central Bank;

- (g) shall not
- (i) acquire, deal in or underwrite its own shares or the shares of its holding company,
  - (ii) grant any advance against the security of its own shares, or the shares of its holding company or a subsidiary of the licensee.

- (2) The provisions of subsection (1)(a) shall not apply to
- (a) any financial exposure to the Government or to a statutory corporation where repayment is guaranteed by the Government;
  - (b) transactions in respect of which the portion thereof in excess of 25 per cent of the stated capital and reserves of the licensee is fully supported by collateral in the form of cash deposits or securities issued by the government.
- (3) Where prior to 1st July, 1997 a licensee has given to any person any advance, credit or financial guarantee or incurred any liability referred to in subsection (1), no action shall be taken under this Act against the licensee in respect of such advance, credit, guarantee or liability for a period of 3 years after that date.
- (4) Subsection (3) does not apply where the licensee does not within the period specified in that subsection increase the amount of advance, credit, guarantee or liability and complies with the directions given by the Central Bank.

### PART III

#### TRUST AND FINANCE COMPANIES AND MERCHANT BANKS

##### *Licensing Requirements*

#### **Interpretation**

**22.** In this Part, “licensee” means a company licensed under this Part to carry on business as a trust company, a finance company or a merchant bank or similar financial institution licensed under this Part.

#### **Business of trust or finance company or a merchant bank**

**23.(1)** The business of a trust company, a finance company or a merchant bank or similar financial institution is

- (a) banking business; or

- (b) the business of the acquisition of funds by
    - (i) the acceptance of deposits,
    - (ii) the issue of shares,
    - (iii) the grant of loans,
    - (iv) the collection of premiums, and the investment of such funds;
  - (c) performing functions as trustee, administrator or executor; and
  - (d) the business of broker, investment analyst, investment adviser and such other business that is not specifically prohibited by the Central Bank by notice published in the *Official Gazette* for the purposes of this Part.
- (2) A trust company, a finance company or a merchant bank shall not offer chequing facilities.
- (3) In subsection (2), “chequing facilities” means the acceptance of deposits that are repayable on demand and the payment of amounts to a third party by virtue of a claim drawn on the licensee and convertible into cash.

### **Prohibition**

**24.** No person other than a bank licensed under Part II or the *International Financial Services Act*, Cap. 325 shall carry on the business of a trust company, a finance company or a merchant bank without a licence issued under this Part.

### **Contents of application**

- 25.(1)** A company that wishes to carry on the business of a trust company, a finance company or a merchant bank shall apply to the Minister in such form as the Minister may approve and shall
- (a) give the names and addresses of its directors;
  - (b) give the particulars of the business it proposes to carry on;
  - (c) give the expected minimum and maximum maturity periods of its advances;

- (d) provide such other documents and information of a financial or other nature as the Minister requires.
- (2) An application for a licence shall be accompanied by a copy of the articles, by-laws or other documents constituting the company.
- (3) An application for a licence and all documents submitted pursuant to this Part in support of the application shall be signed by the directors of the company making the application.
- (4) Where an application is made under subsection (1), the applicant shall pay such fee as may be prescribed in relation thereto.

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### **Issue of licence**

**26.** Where the Minister is of the opinion that it is in the public interest to do so, he may issue a licence under this Part to the applicant upon payment of the prescribed fee.

### **Conditions of licence**

**27.(1)** A licence issued under this Part shall show the class or classes of business to be carried on by the licensee.

(2) A licence issued under this Part is subject to such conditions as the Minister may specify in respect of the class or classes of business to be carried on by the licensee.

(3) A licence under this Act remains valid until revoked pursuant to this Part, but it is a condition of every licence that an annual fee be paid by the licensee in the amount and at the time prescribed.

### **Application of certain sections**

**28.** Sections 6, 7, 10, 11, 12 and 13 apply, *mutatis mutandis*, to a company under this Part as they apply to a bank licensed under Part II.

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*Financial Obligations***Capital requirements**

**29.(1)** A licence may not be issued under this Part to a company unless the stated or assigned capital of the company is at least \$2 000 000.

(2) No action shall be taken against a company that fails to increase its stated or assigned capital from \$500 000 to \$2 000 000 for a period of one year after 1st July, 1997.

**Reserve requirements**

**30.** The Minister may, on the advice of the Central Bank, impose reserve requirements on any class of company licensed under this Part.

**Application of further sections**

**31.** Sections 17, 19, 20 and 21 (save for paragraph (a) of subsection (1) of section 21) apply, *mutatis mutandis*, to a company licensed under this Part as they apply to a bank licensed under Part II.

**Restrictions on loans**

**32.(1)** Except as provided in subsection and subject to subsections (3) and (4), a licensee shall not grant any advance or credit or give any financial guarantee

(a) to any person; or

(b) to any group that is under the control of one person or group,

or incur any other liability on behalf of such person or group.

(2) A licensee may grant advances, credit, financial guarantees or other liabilities where

(a) the total value of the advances, credit facilities, financial guarantees or other liabilities does not at any time exceed 25 per cent of the sum of the stated capital and reserves of the licensee;

- (b) any unsecured portion of the advances, credit, financial guarantees or other liabilities does not at any time exceed 10 per cent of the stated capital and reserves of the licensee.
- (3) No action shall be taken under this Act against a company whose advances, credit facilities and financial guarantees or other liabilities to any person exceeds that which is permitted by subsection (2), for any such financial exposure for a period of 4 years after 1st July, 1997.
- (4) Subsection (3) does not apply where the company complies with directions given by the Central Bank in this regard and does not in that period increase its financial exposure to the same person.
- (5) The provisions of subsections (1) and (2) do not apply to
  - (a) any financial exposure to the Government, or to a statutory corporation where the repayment is guaranteed by the Government;
  - (b) transactions in respect of which the portion thereof in excess of 25 per cent of the stated capital and reserves of the bank is fully covered by cash deposits or by securities issued by the Government.

### **Reserve Fund**

- 33.(1)** Every licensee shall establish a reserve fund into which it shall deposit annually out of its net profits and before a dividend is declared, 15 per cent of its profits wherever the amount of the reserve fund is less than the stated capital of the licensee.
- (2) Subsection (1) does not apply to a licensee in respect of which it is shown to the satisfaction of the Central Bank that the aggregate reserves of the licensee are adequate in relation to its business.
- (3) A licensee may only pay an interim dividend out of the profits of previous years or out of the reserves of previous years.

(4) The Central Bank may set a minimum limit on the reserve fund and may waive the requirement to maintain a minimum limit if it is satisfied that the licensee has adequate reserves.

### *Trust Activities*

#### **Separation of trust assets**

- 34.** It is the duty of a licensee in carrying on its business
- (a) to keep all assets held in trust separate from its other assets; and
  - (b) subject to section 35, to keep separate from those of its other accounts the assets of each trust account unless they are properly identified as the property of the trust account.

#### **Common trust fund**

**35.(1)** A licensee may in the course of its business establish, maintain and administer 1 or more common trust funds and subject to subsection (2), invest assets held in trust accounts in a common trust fund.

(2) The assets of a trust account may only be invested in a common trust fund if the instrument creating the trust expressly permits the investment and the consent in writing of any co-trustee is obtained to the investment.

(3) A common trust fund is a trust that operates by the process of pooling funds from a number of participants in the trusts who share, as beneficiaries under the trust, in the income or other gains derived from the acquisition, holding, management or disposal of assets acquired for the trust.

#### **Declaration of trust**

**36.(1)** Every common trust fund of a licensee shall be established, administered and maintained in accordance with a written declaration of a trust in a form approved by the directors of the licensee.

- (2) A licensee may sell assets held by it in a trust account to another trust account held by the licensee, if
- (a) the transaction is fully disclosed to the parties who have an interest in those accounts and their consent is obtained prior to the transaction;
  - (b) the transaction is fair to both accounts; and
  - (c) the transaction is not prohibited by the terms of the instruments creating the trusts.

### **Trust funds awaiting disposition**

**37.(1)** A licensee holding trust funds awaiting investment or distribution shall not hold those funds uninvested or undistributed any longer than is reasonable for the proper management of the account.

(2) Unless it is contrary to the terms of the instrument establishing the trust, the trust funds described in subsection (1) may be held in the commercial or savings department of the licensee subject to such conditions as may be prescribed.

### **Contents of declaration**

**38.** A declaration of trust establishing a common trust fund must, subject to or in addition to other prescribed provisions, contain provisions relating to

- (a) the manner in which the common trust fund is to be administered;
- (b) the investment powers of the licensee with respect to the common trust fund, including the nature of investment to be made by the common trust fund;
- (c) the allocation and apportionment of income, profits and losses of the common trust fund;
- (d) the terms and conditions governing the admission or withdrawal of investments for participation in the common trust fund;

- (e) the auditing and settlement of accounts of the licensee with respect to the common trust fund;
- (f) the basis and method of valuing assets in the common trust fund;
- (g) the basis on which the common trust fund may be liquidated or interests therein may be disposed of;
- (h) the expenses to be charged for management of the common trust fund; and
- (i) such other matters as are necessary or proper to define the rights of participants in the common trust fund.

### **Dealing with trust assets**

**39.** Subject to the terms of the instrument creating the trust, the assets comprising the funds of the trust may be sold, converted, re-invested, exchanged, transferred or otherwise changed or disposed of at any time by the licensee administering the trust.

### **Interest in common fund**

**40.(1)** Each trust account that participates in a common trust fund has a beneficial interest in so much of the common trust fund as is proportionate to the amount of that participation.

(2) An interest in a common trust fund is not negotiable or assignable, but an interest in the fund may be disposed of in the manner provided by the declaration of trust or as may be prescribed in the absence of any provision relating thereto in the declaration of trust establishing the fund.

### **Status of licensee as trustee**

**41.** The licensee in the carrying out of its trust business has all the powers, rights, duties and obligations applicable to trustees but subject to any requirements under this Act.

PART IV  
AUDIT AND INSPECTION

**Interpretation**

**42.** In this Part and Parts V, VI, VII and VIII

“Barbados licensee” means a licensee incorporated in Barbados;

“licensee” means a company licensed under Part II or III, as the case may be.

**Financial statements**

**43.(1)** A licensee shall, in relation to its operations in Barbados, submit to the Central Bank in the prescribed form

- (a) not later than 21 days after the end of each month, a monthly statement showing the assets and liabilities of the licensee accompanied by a statement showing the amounts of all outstanding unsecured advances or unsecured credit;
- (b) not later than 21 days after the end of each quarter ending on 31st March, 30th June, 30th September and 31st December respectively, a return providing an analysis of customers’ liabilities to the licensee in respect of loans, advances and other assets of the licensee; and
- (c) within such period and in such manner as the Central Bank determines such other returns as the Central Bank requires.

(2) The Central Bank may require a licensee to submit such further information as he considers necessary for the proper understanding of any statement or return furnished by that licensee under subsection (1) and such information shall be submitted within such period and in such manner as the Central Bank requires.

(3) If, in the opinion of the Central Bank, a trust company, a finance company or a merchant bank is imposing charges that are unreasonable the Central Bank may require the company to disclose the basis for the charges.

(4) The Central Bank may require a licensee to show separately, amounts of unsecured credit.

(5) A licensee shall disclose to the Central Bank amounts of credit to individual customers that are in excess of 20 per cent of the stated capital and reserves of the licensee or such amount as the Central Bank may prescribe.

(6) The assets that a Barbados bank which is a licensee holds for its own account shall be shown separately, and its equity interests in subsidiaries shall be separately disclosed.

(7) The Central Bank may publish in the *Official Gazette* and in a daily newspaper published and circulating in Barbados information submitted on the quarterly returns of each licensee under this section. No information in respect of the affairs of a particular customer of a licensee shall be so published.

### **Confidentiality**

**44.(1)** Subject to subsection (7) of section 43 and to subsection (2), no statement, return or information furnished or submitted by a licensee in respect of its business shall be disclosed by the Central Bank, any officer of the Central Bank or any person authorised by the Central Bank to receive such information on behalf of the Central Bank.

(2) The Central Bank may, without the consent of a licensee, disclose information received

- (a) to the Commissioner of Inland Revenue;
- (b) to the Deposit Insurance Corporation;
- (c) to any other supervisory or regulatory authority of financial institutions in Barbados; or
- (d) subject to subsection (3), to the appropriate supervisory authority of financial institutions in a country outside Barbados, at the request of that authority, where there is a branch, holding company or affiliate of the licensee operating in that country,

if the Central Bank is satisfied that the authority has given appropriate undertakings for protecting the confidentiality of the information and for controlling the use that will be made of it.

[2006-30]

(3) In the case of paragraph (d) of subsection (2), information may only be given where there is a reciprocal arrangement with that authority for the exchange of information.

[2006-30]

### **Financial statements**

**45.** Not later than 4 months after the close of its financial year, or within such longer period as the Minister allows, a licensee shall

- (a) publish in the *Official Gazette* and in a daily newspaper published and circulating in Barbados;
- (b) place in a conspicuous position in each of its offices and branches;
- (c) forward to the Central Bank,

copies of its audited financial statements as may be prescribed in respect of its business in Barbados, and in respect of its consolidated operations, in the case of a Barbados bank, and the full and correct names of all persons who are directors for the time being of the licensee.

### **Appointment of auditor**

**46.(1)** A licensee shall appoint annually an auditor.

(2) It is the duty of

- (a) the auditor appointed under subsection (1) to submit a report to the shareholders and directors of the licensee; and
- (b) the licensee to submit to the Central Bank a copy of an audited financial statement.

- (3) A licensee shall give notice in writing to the Central Bank
- (a) if it fails to appoint an auditor; or
  - (b) if it intends to terminate the appointment of its auditor,
- and shall in the notice state the reason for its failure to appoint an auditor or for the intention to terminate the appointment, as the case may be.
- (4) Where a licensee
- (a) fails to appoint an auditor under this section; or
  - (b) terminates the appointment of its auditor without appointing a replacement

the Central Bank may appoint an auditor who shall have all the powers of an auditor appointed by the licensee to carry out an audit, and shall fix the remuneration to be paid by the licensee to the auditor.

- (5) It is the duty of the auditor to note in his report and to report to the Central Bank any instances where the operations of the licensee might not in his opinion be in compliance with the requirements of the Act, the regulations, the conditions of the licensee's licence or its articles of association.
- (6) The Central Bank may, when it considers it necessary to do so, request in writing from the auditor of a licensee information obtained in the course of an audit.
- (7) An auditor shall, within 14 days of the request referred to in subsection (6), supply the information requested to the Central Bank.
- (8) Where the Central Bank is not satisfied with the annual report of an auditor appointed by a licensee, the Central Bank may appoint another auditor to make an independent report and shall fix the remuneration to be paid by the licensee to the auditor.
- (9) An auditor appointed in accordance with subsection (4) or (8) shall report to the Central Bank and shall specify in that report any instance where he believes

the licensee has not complied with the requirements of this Act or the regulations or any condition of the licensee's licence or its articles of association.

(10) Every licensee which is a company, and its auditors, shall comply with the *Companies Act*, Cap. 308 with respect to the audit of a company's account.

(11) An auditor of a licensee shall forthwith give written notice to the Central Bank if he

- (a) resigns before the expiration of his term of office; or
- (b) does not seek re-appointment.

(12) A former director shall not be eligible for appointment as an auditor of the licensee within a period of 2 years after the termination of his term as a director.

(13) An auditor who fails to submit the information requested in accordance with this section is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or imprisonment for 12 months or to both.

(14) For the purposes of this Act, an auditor is a person who

- (a) is in good standing as a member of an association of chartered or public accountants or other similar body;
- (b) is authorised to practise in Barbados; and
- (c) is approved by the Central Bank.

[2006-30]

### **Examination of financial institutions**

**47.** The Central Bank may examine or cause an examination to be made by any of its officers, or any person authorised by it, of the affairs of each licensee

- (a) to determine whether the provisions of this Act, the *Central Bank Act*, Cap. 323C or regulations made under this Act or the *Central Bank Act*, Cap. 323C or any directive of the Central Bank are being complied with;

- (b) to ascertain whether the licensee is in a sound financial condition;
- (c) where the Central Bank has reasonable grounds to believe that a licensee is carrying on its business in a manner detrimental to the interests of its depositors or of its creditors, or may have insufficient assets to cover its liabilities to the public, or may be in breach of any of the provisions of this Act;
- (d) where an application is made by shareholders holding not less than one-third of the total number of issued shares of the licensee or by depositors holding not less than one-half of the gross amount of the total deposit liabilities of the licensee in Barbados and the Central Bank is satisfied on the evidence submitted that an examination is justified and the applicants have furnished adequate security for the payment of the costs of the examination;
- (e) where a licensee informs the Central Bank that it is likely to become unable to meet its obligations or that it is insolvent or about to suspend payment;  
*[2006-30]*
- (f) on the receipt of any information where the Central Bank considers it necessary.  
*[2006-30]*

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*[2006-30]*

### **Production of documents**

**48.(1)** Any person referred to in section 47 that is authorised to examine a licensee or other financial institution pursuant to that section may

- (a) require any auditor, director, employee or affiliate of a licensee or other financial institution to furnish such information as the Central Bank may consider necessary for the purpose of the examination; or

(b) require such auditor, director, employee or affiliate to produce for examination any books, records or other documents in his possession containing or likely to contain any such information.

(2) As soon as may be after the conclusion of an examination, the examiner shall submit a full report of the examination to the Governor of the Central Bank and to the directors of the licensee and, where applicable, to the Head Office of the licensee.

### **Examination and supervision charges**

**48A.(1)** The Central Bank may impose on licensees such charges as may be prescribed to meet the expenses relating to

- (a) an examination under this Part of a licensee or any company that is affiliated with the licensee; and
- (b) the provision of banking supervision services under this Part to the licensee.

(2) The Central Bank may impose on the applicants in respect of an examination made under paragraph (d) of section 47 such charges as are necessary to meet the expenses relating to that examination.

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[2006-30]

### **Authorised disclosure not a breach of duty**

**49.** An auditor, officer or employee of a licensee who is required under this Part to make any disclosure to the Central Bank or to a person authorised by the Central Bank, shall not, by reason of making such a disclosure, be regarded as being in breach of his duty to the licensee.

### **Powers after examination**

**50.(1)** Where the Central Bank is of the opinion that an examination shows that a licensee or director or officer of such licensee is carrying on its business

in an unlawful manner or is engaged in an unsound financial practice, the Central Bank may

- (a) require the licensee, within such period as the Central Bank specifies, to cease engaging in the unsound practice or unlawful behaviour and to take such remedial measures as the Central Bank directs;
- (b) restrict the transactions that may be undertaken by the licensee during the period specified pursuant to paragraph (a); or
- (c) may, with the approval of the Minister, by notice in writing, suspend the licence of the licensee for a period not exceeding one month.

*[2006-30]*

(2) A requirement or a notice of suspension referred to in subsection (1) shall be in writing, and shall specify the reasons for which such requirement or notice of suspension is given.

(3) A licensee that is required to take remedial measures or whose licence is suspended in accordance with this section may, within 14 days of service of the notice, make representation in writing to the Central Bank as to why the Central Bank should not take the action intended.

*[2006-30]*

(4) Where a licensee is aggrieved by the decision of the Central Bank, the licensee may within 7 days after it is notified of the Central Bank's decision appeal to the Minister, whose decision is final.

*[2006-30]*

### **Revocation of licence**

**51.(1)** The Minister may revoke the licence of a licensee where the licensee

- (a) fails to take remedial measures within the period specified; or
- (b) fails, within the period of suspension, to desist from the behaviour which resulted in the suspension or to take any action required by the Central Bank.

(2) The Minister shall give notice in writing to the licensee of the revocation.

*[2006-30]*

(3) Sections 11(6) and 12(1) shall apply where a licence is revoked pursuant to this section.

*[2006-30]*

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*[2006-30]*

### **Inspection of holding companies**

**52.(1)** The Central Bank may inspect the books of holding companies, parent companies or any company that owns the majority of the shares in a Barbados licensee where such companies are located in Barbados, and may request information from the appropriate authorities outside Barbados where applicable.

(2) The Central Bank may also require a Barbados licensee to provide information on its holding companies where the Central Bank considers that such information is necessary for determining the financial soundness of the licensee.

## PART V

### WINDING-UP, RE-ORGANISATION AND SEIZURE OF LICENSEES

#### **Voluntary winding-up**

**53.(1)** Except with the prior written approval of the Central Bank no licensee may be wound-up voluntarily.

(2) Approval for a voluntary winding-up of a licensee may be given by the Central Bank only if it is satisfied that

- (a) the licensee is solvent and has sufficient assets to repay its depositors and other creditors without delay; and

- (b) subject to subsection (3), the winding-up has been approved by the holders of at least two-thirds of the issued voting shares of the licensee.
- (3) Where the Central Bank finds in respect of a licensee that there is imminent danger of its insolvency and certifies to the Minister the existence of an emergency, the Minister may waive the requirement for the approval of the shareholders of the voluntary winding-up of the licensee if
- (a) the winding-up is to be effected in whole or in part through the sale of any of the assets of the licensee to another licensee; and
  - (b) the deposit liabilities of the licensee to be wound-up are to be assumed by that other licensee.

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[2006-30]

#### **Obligations at commencement of voluntary winding-up**

- 54.** When a licensee receives the approval of the Central Bank to its voluntary winding-up, the licensee shall
- (a) cease to do business immediately, and retain only such staff as is necessary for an ordinary winding-up;
  - (b) repay its depositors and other creditors; and
  - (c) wind-up all operations undertaken before the receipt of the approval to wind-up.

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[2006-30]

#### **Notice of winding-up**

- 55.(1)** Within 30 days of the receipt of the approval of the Central Bank to the winding-up of a licensee, a notice of voluntary winding-up, which must contain the prescribed information, shall be sent by the licensee in the prescribed manner or by personal service to the depositors and creditors of the licensee and other persons having any interest in its funds or other property.

(2) The notice mentioned in subsection (1) shall be published in the *Official Gazette* and placed in a conspicuous place on the premises of each office or branch of the licensee to be wound-up.

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[2006-30]

### **Settlement of claims**

**56.(1)** The approval of the Central Bank to the voluntary winding-up of a licensee does not adversely affect the rights of

- (a) a depositor or other creditor of the licensee to settlement in full of his claim; or
- (b) any person having an interest in the funds or property of the licensee to settlement of that interest.

(2) All claims made by persons referred to in subsection (1) shall be settled by the licensee concerned within such time as the Central Bank may determine.

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[2006-30]

### **Distribution of remaining assets**

**57.(1)** The assets of a licensee being voluntarily wound-up that remain after settlements mentioned in section 56 are completed are to be distributed among the shareholders of the licensee in proportion to their respective rights.

(2) Notwithstanding subsection (1), no distribution of the remaining assets of a licensee may be made

- (a) before all claims of depositors and other creditors have been settled or, in the case of a disputed claim, before the licensee has deposited with the Central Bank sufficient funds to meet any liability that could arise under that claim;
- (b) before any funds that are payable to a depositor or other creditor who has not made his claim have been deposited with the Central Bank; or

- (c) before any funds or property held by the licensee that could not be returned in accordance with section 55 to the persons who have an interest therein, have been deposited with or transferred to the Central Bank together with the relevant records.

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[2006-30]

### **Interruption of winding-up**

**58.(1)** If the Central Bank determines that the assets of a licensee which is being voluntarily wound-up are not sufficient for the full discharge of the obligations of the licensee, or that the completion of such a winding-up is being unduly delayed, the Central Bank may seize the management and control of the licensee by posting a notice to that effect on the premises of the licensee and by putting officers of the Central Bank or any person authorised by the Central Bank into the offices of the licensee.

(2) When the Central Bank seizes the management and control of a licensee under subsection (1), it shall immediately begin proceedings for the compulsory winding-up of the licensee or its re-organisation in accordance with this Act.

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[2006-30]

### **Seizure**

**59.(1)** Where

- (a) in the opinion of the Central Bank it is necessary to protect the interest of depositors or creditors of a licensee;
- (b) in the opinion of the Central Bank, a licensee is unlikely to meet its financial obligations or is about to suspend or has suspended payments to its creditors;
- (c) in the opinion of the Central Bank, a licensee is not main-training high standards of financial probity or following sound business practices;

(d) a licensee does not facilitate an audit in accordance with section 46(4) by an auditor appointed by the Central Bank or does not submit to an examination in accordance with section 47; or  
*[2006-30]*

(e) a licence has been suspended or revoked under this Act,  
the Central Bank may, after notifying the Minister, seize, to any extent necessary, the management and control of the licensee and issue any directions to the licensee that it considers necessary.

(2) Where the management and control of a licensee is seized under subsection (1), the Central Bank may, through its officers or through any person authorised by it,

- (a) investigate the affairs of the licensee and any institution affiliated with it;
- (b) take any action to protect the interest of depositors and other creditors of the licensee;
- (c) re-organise the business of the licensee, including its capital base;
- (d) provide financial assistance to the licensee; and
- (e) generally, manage and control the business of the licensee.

(3) A seizure of the management and control of a licensee under this section shall be effected by placing a notice to that effect on the premises of the licensee and by putting into the offices of the licensee

- (a) officers of the Central Bank;
- (b) such other persons as may be authorised by the Central Bank; or
- (c) a combination of the persons referred to in paragraphs (a) and (b).

(4) Where subsection (3) applies, the officers of the licensee shall be deemed to be officers of the Central Bank.

(5) At any time after the Central Bank has seized the management and control of a licensee under this section the Central Bank may apply to the High Court for the compulsory winding-up of the licensee.

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[2006-30]

### **Effects of seizure**

**60.(1)** When the management and control of a licensee is seized under this Act,

- (a) any statutory, contractual or other term or condition on the expiration of which a claim or right of the licensee would expire or be extinguished is extended by 6 months from the date of the seizure;
- (b) an attachment or lien, other than a lien that was in existence during the 6 months immediately preceding the seizure, is vacated and no attachment or lien, other than a lien created by a manager in the application of this Act, attaches to any of the assets of the licensee during the period the seizure continues; and
- (c) a transfer of any assets of the licensee that is made after or in contemplation of its insolvency or seizure, with intent to effect a preference, is void.

(2) No writ of execution or garnishee order may be returned against the assets of a licensee whose management and control has been seized under this Act except such as the High Court may order in respect of an execution effected pursuant to a judgement that was rendered before the seizure for an amount not exceeding \$5 000.

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[2006-30]

### **Effect of appointment of manager**

**61.** Where the Central Bank authorises a person to manage pursuant to section 59(3) the business of a licensee, the appointment shall take effect as

though made by the depositors and other creditors of the licensee pursuant to a charge over all the fixed and floating assets of the licensee.

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[2006-30]

### **Re-organisation**

**62.** For the purposes of re-organising a licensee and subject to section 65, the Central Bank or the manager, as the case may be,

- (a) shall take possession of, collect and get in any property of the licensee;
- (b) may bring any action or proceeding in any court that is necessary;
- (c) may raise or borrow on the security of any property of the licensee, any money that may be required;
- (d) may purchase, sell, lease or otherwise deal with any real property of the licensee;
- (e) may make any arrangement or compromise which the Central Bank may consider necessary;
- (f) may make and effect any improvement of the licensee's equipment and effects;
- (g) may employ such staff, agents and other persons as may be necessary;
- (h) generally, may take any action that is considered necessary for the proper management of the licensee.

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[2006-30]

### **Inventory of assets**

**63.(1)** Where the Central Bank assumes the management and control of a licensee for the purpose of re-organising the licensee, the Central Bank or the manager, as the case may be, shall make an inventory of the licensee's assets and shall transmit a copy of the inventory to the Registrar of the Supreme Court.

(2) The Registrar shall make the copy of the inventory referred to in subsection (1) available at all reasonable times for the inspection of interested persons.

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[2006-30]

### **Notice re winding up and re-organisation**

**64.** Forthwith after it makes an application to the High Court for the winding-up of a licensee, or where the Central Bank proposes to re-organise a licensee, the Central Bank shall publish, once a week for 3 consecutive weeks, a notice in the *Official Gazette* and in at least one daily newspaper published and circulating in Barbados indicating

- (a) to the directors and shareholders of the licensee; and
- (b) to the depositors and other creditors of the licensee,

that an application has been made to the High Court for the winding-up of the licensee or that it proposes to re-organise the licensee, as the case may be.

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[2006-30]

### **Re-organisation plan**

**65.(1)** Where a licensee is re-organised under this Act, the Central Bank or the manager, as the case may be, must draw up a plan of re-organisation and the plan

- (a) must as far as possible be equitable to all classes of depositors;
- (b) must as far as possible be equitable to all classes of creditors;
- (c) must as far as possible provide for bringing in new funds;
- (d) must establish such prudential ratios as the Central Bank considers necessary;
- (e) may provide for the issue of new shares;

- (f) may provide for the reconstitution of a board of directors and the appointment of new officers as may be necessary;
  - (g) may provide for the amalgamation of the licensee with any other licensee;
  - (h) may provide for the removal of any director, officer or employee responsible for the circumstances that led to the seizure of the licensee.
- (2) The plan referred to in subsection (1) must be transmitted to the Registrar of the Supreme Court.
- (3) The Registrar shall make a copy of the plan referred to in subsection (2) available at all reasonable times for the inspection of interested persons.

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[2006-30]

#### **Notice of re-organisation plan**

**66.** The Central Bank shall publish, once a week for 3 consecutive weeks a notice in the *Official Gazette* and in at least one daily newspaper published and circulated in Barbados

- (a) indicating that the re-organisation plan is available for inspection; and
- (b) that objections to the re-organisation plan may be delivered to the manager not later than 30 days after the publication of the notice.

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[2006-30]

#### **Objections to re-organisation plan**

**67.(1)** Any person may, not later than 30 days after the publication of the third notice referred to in section 66, object to the re-organisation plan by delivering a written objection to the manager.

(2) Where after an objection is made the plan is not modified to the satisfaction of the person making the objection, that person may make an application to the

High Court in relation thereto, and the High Court may make such order as it considers just in the circumstances.

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[2006-30]

### **End of seizure**

**68.(1)** Where the Central Bank seizes the management and control of a licensee under this section, the directors of the licensee may institute proceedings in the High Court for the recovery of the management and control of the licensee.

(2) The Central Bank shall relinquish the management and control of the licensee

- (a) where in the opinion of the Central Bank the management and control of the licensee is no longer necessary; or
- (b) from such date as the High Court specifies pursuant to an application by the directors of a licensee under subsection (1).

(3) With respect to,

- (a) subsection (2)(a), the Central Bank may impose such conditions on the licensee as it considers necessary;
- (b) subsection (2)(b), the High Court may impose such safeguards or conditions as it considers necessary for the protection of depositors and creditors.

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[2006-30]

### **Appointment of liquidator**

**69.** Where the High Court orders the compulsory winding-up of a financial institution,

- (a) the High Court shall, in the case of an institution which is not permitted to hold insured deposits, appoint as liquidator such person as is

nominated by the Central Bank to be responsible to the Court for the winding-up of that institution;

- (b) which is permitted to hold insured deposits, the Deposit Insurance Corporation shall be the liquidator and shall be responsible to the Court for the winding-up of that institution.

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[2006-30]

### **Compulsory winding-up**

**70.(1)** Where the High Court orders the compulsory winding-up of a licensee, the liquidator may, subject to subsection (2), perform the functions of the licensee.

(2) The liquidator of a licensee described in subsection (1) may not, without an order of the High Court to do so,

- (a) sell any assets or transfer any property of the licensee that has a value exceeding such amount as may be fixed by the High Court;
- (b) create a security interest in any assets or property of the licensee in favour of a creditor who extends new credit to the licensee;
- (c) compromise or release any claim which exceeds such amount as may be fixed by the High Court; or
- (d) pay any claim, other than one in respect of an obligation incurred by the liquidator in the exercise of his winding-up functions, before the schedule referred to in section 77(b) has been approved by the High Court.

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[2006-30]

### **Termination of employment**

**71.** Subject to any law of Barbados governing conditions of employment, the liquidator of a licensee that has been ordered by the High Court to be

compulsorily wound-up shall terminate, not later than 3 months after the order of the High Court,

- (a) any employment contract of the licensee;
- (b) any contract for services to which the licensee is a party; and
- (c) any obligations of the licensee as a lessee of property.

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[2006-30]

### **Rights of lessor**

**72.** A lessor of any property referred to in section 71

- (a) must be given such notice as is required under the lease agreement or 90 days' notice, whichever is less, of the intended termination of the obligations of a licensee under the lease agreement;
- (b) has no claim for rent thereunder other than rent accrued on the date of the termination of the obligation of the licensee; and
- (c) has no right to damages by reason only of any termination of the obligations of the licensee, notwithstanding any term of the lease to the contrary.

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[2006-30]

### **Settlement of trust accounts**

**73.** It is the duty of the liquidator of a licensee that has been ordered to be wound-up to take such action as is necessary to terminate all the trust functions of the licensee and to settle its trust accounts.

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[2006-30]

**Statements in respect of creditors and lessees**

**74.(1)** Within 60 days after the granting of an order for the compulsory winding-up of a licensee, the liquidator shall

- (a) prepare statements in respect of creditors, lessees of safety-deposit boxes and any bailors of property held by the licensee;
- (b) publish, once a week for 3 consecutive weeks, a notice in the *Official Gazette* and in at least one daily newspaper published and circulating in Barbados indicating
  - (i) the time when and the place where the statements may be inspected; and
  - (ii) the manner and time in which objections to the statements may be made.

(2) The statements referred to in subsection (1) are statements of the nature and amount for which a claim of a creditor, lessee or bailor mentioned in that subsection is shown on the books of the licensee.

(3) Any interested person may make an objection to the statement prepared under subsection (1) within 14 days of the publication of the third notice referred to in that subsection.

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[2006-30]

**Notice to bailors and lessees**

**75.** The statements relating to lessees of safe-deposit boxes and bailors, referred to in section 74, must be delivered to those lessees and bailors together with a notice requesting them to withdraw their property from the licensee within a specified time.

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[2006-30]

**Contents of safe-deposit boxes**

**76.** When the contents of any safe-deposit boxes maintained by a licensee that is being compulsorily wound-up have not been withdrawn before the expiration of the period specified in a notice under section 75, the safe-deposit boxes may be opened in the manner specified by the liquidator of the licensee.

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[2006-30]

**Claims**

**77.** Not later than 90 days after the granting of an order for the compulsory winding-up of a licensee, the liquidator shall

- (a) determine the amount owing to each depositor or other creditor, and the priority of his claim under this Act or the *Deposit Insurance Act*, Cap. 323, where the licensee is a member of the Deposit Insurance Fund;
- (b) file with the High Court a schedule of the actions proposed to be taken for the purpose of the compulsory winding-up of the licensee;
- (c) publish once a week for 3 consecutive weeks in the *Official Gazette*, and in at least one newspaper published and circulating in Barbados, a notice indicating
  - (i) the time when and place where the schedule referred to in paragraph (b) may be inspected;
  - (ii) that objections to the schedule may be made to the High Court within 30 days of the publication of the notice;
  - (iii) the manner in which claims may be made;
  - (iv) the last day for the filing of claims, which day shall not be earlier than 90 days after the publication of the notice;

- (v) the place where claims are to be paid.

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[2006-30]

### **Objections to schedule**

**78.(1)** Within 30 days of the publication of the notice referred to in section 77(c), a depositor, any other creditor or a shareholder of the licensee concerned, or any other interested person, may file with the High Court any objection he has to any action proposed in the schedule referred to in section 77(b).

(2) After notice is served on the liquidator and such interested parties as the High Court may require, the High Court shall hear the objection and make such order thereon as it considers just in the circumstances.

(3) When the High Court allows an objection, the order must set out the manner in which the schedule referred to in section 77(b) is to be modified.

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[2006-30]

### **Priority of claims**

**79.(1)** The following claims have priority against the general assets of a licensee being compulsorily wound-up under this Act, if that licensee does not hold insured deposits, namely:

- (a) firstly, the necessary and reasonable expenses incurred by the liquidator in carrying out his functions under this Act and any costs incurred by the Central Bank pursuant to this Part;
- (b) secondly, the wages and salaries of the officers and employees of the licensee that accrued during the 3 months immediately preceding the seizure of the licensee under this Act;
- (c) thirdly, all taxes and dues owing to the Government of Barbados;
- (d) fourthly, the fees and assessments owing to the Central Bank;

(e) fifthly, all remaining claims against the licensee.

(2) All claims against the licensee that were not filed within the time limit specified under this Act or the *Deposit Insurance Act*, Cap. 323 may only be paid after payment of all other claims filed against the licensee in accordance with this Act and the *Deposit Insurance Act*, Cap. 323, with interest at such rate as the High Court determines.

(3) Where the amount available to pay the claims of any class of claimant specified in this section in respect of priorities is not sufficient to provide payment in full to all claimants in that class, the amount available shall be distributed by the liquidator on a *pro rata* basis among the claimants in that class.

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[2006-30]

### **Left-over assets**

**80.** The assets of a licensee being compulsorily wound-up that remain after the final distribution to claimants pursuant to this Act and the *Deposit Insurance Act* (Act 2006-30) shall be distributed by the liquidator among the shareholders of the licensee in proportion to their respective rights.

### **Abandoned funds**

**81.(1)** Any funds of a licensee being compulsorily wound-up that remain unclaimed after the final distribution and not subject to distribution under any other provision of this Act or the *Deposit Insurance Act*, Cap. 323 shall be deposited with the Central Bank by the liquidator of the licensee.

(2) Funds deposited with the Central Bank under subsection (1) must be held by that Bank for 10 years unless earlier claimed by a person entitled thereto.

(3) On the expiration of the 10 years referred to in subsection (2) in respect of any funds, those funds remaining unclaimed become abandoned property.

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[2006-30]

**Completion of winding-up**

**82.(1)** When all the assets of a licensee being wound-up have been distributed or dealt with as required by this Act, the liquidator shall render an audited statement to the High Court.

(2) If the High Court is satisfied with the audited statement rendered by the liquidator in respect of a licensee being wound-up, it may by order direct the Registrar of Companies to strike the name of the licensee from the register of companies in accordance with the *Companies Act*, Cap. 308 and publish notice thereof in the *Official Gazette*.

(3) When its name is struck off the register of companies, the licensee is thereupon dissolved and its licence under this Act is revoked.

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[2006-30]

**Application under this Part**

**83.(1)** Where this Part states that a person may apply to the High Court, unless the Court otherwise directs, the application may be made *ex parte* by motion supported by affidavit but subject to any order respecting notice to interested parties, costs, undertakings or any other order the court thinks fit.

(2) Any party affected by an order made *ex parte* under subsection (1) may apply for it to be set aside.

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[2006-30]

**Application of this Part**

**83A.** This Part shall apply to institutions that hold insured deposits only in so far as this Part is not inconsistent with the *Deposit Insurance Act*, Cap. 323.

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[2006-30]

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PART VI  
TRANSFER OF LICENSEE'S BUSINESS

**Transfer of business**

**84.(1)** A person who enters into an agreement with a licensee for the transfer of its business to another licensee shall, for the purpose of that transfer, make an application to the Minister in such form as the Minister may approve.

(2) An application under subsection (1) shall be accompanied by a certificate of the Governor of the Central Bank, specifying that the licensee to which the business is to be transferred is able to discharge its obligations under the transfer.

(3) The Minister may, upon an application being made to him under subsection (1), grant the application and make an order giving effect thereto.

(4) An order made under subsection (3) shall, from the date specified therein, vest in the licensee to which the business is transferred the business specified in the order, and upon such vesting, all existing property, rights, liabilities and obligations agreed to be transferred shall vest in the transferee.

(5) No transfer or vesting effected by a vesting order shall

- (a) operate as a breach of covenant or condition against alienation;
- (b) give rise to forfeiture; or
- (c) invalidate or discharge a contract or security.

(6) Notwithstanding anything contained in any enactment to the contrary, a vesting order may, for the purposes of corporation tax, contain provisions respecting the carrying forward and the setting off, by the transferee of a business, of such of the losses of the transferor from that business as may be specified in the order as if the transferor had not discontinued the business on the date specified in the order and a new business had been then established by the transferee.

**Supplementary provisions respecting transfer**

- 85.(1)** Where a business is transferred under section 84,
- (a) every contract to which the transferor is a party shall, from the date of the transfer, be construed as if
    - (i) the transferee had been a party thereto instead of the transferor;
    - (ii) for a reference to the transferor, there had been substituted, in respect of anything falling to be done on or after the date of the transfer, a reference to the transferee; and
    - (iii) for a reference to any director, officer, clerk or servant of the transferor there had been substituted, in respect of anything falling to be done on or after the date of the transfer, a reference to the directors of the transferee or, as the case may be, to such director, officer, clerk or servant of the transferee as the transferee may appoint, or, in default of appointment, to the director, officer, clerk or servant of the transferee corresponding, as nearly as may be, to any director, officer, clerk or servant of the transferor;
  - (b) any account between the transferor and a customer shall be construed as an account between the transferee and that customer;
  - (c) any instruction, direction, mandate, power of attorney or consent given to the transferor shall have effect as if given to the transferee;
  - (d) any negotiable instrument or order for payment of money that is expressed to be drawn on, given to, accepted or endorsed by, the transferor, or payable to any of its places of business, shall have effect as if it had been drawn on, given to, accepted or endorsed by, the transferee or payable at the place of business of the transferee;
  - (e) any security transferred to the transferee by a business vesting order that immediately before the date of the transfer was held by the transferor as security for the payment or discharge of any debt, liability

or obligation, whether present or future, actual or contingent, shall be held by and shall be available to, the transferee as security for the payment or discharge of such debt, liability or obligation, and any such security that extends to future advances or liabilities shall, from the date of the transfer, be held by, and shall be available to, the transferee as security for future advances by, and future liabilities to, the transferee, in the same manner and in all respects as future advances by, or liabilities to, the transferor were secured thereby immediately before the date of the transfer;

- (f) any judgment or award obtained by, or against, the transferor and not fully satisfied before the date of the transfer shall be enforceable by or against the transferee;
- (g) unless an agreement by the parties to the transfer provides to the contrary, any officer, clerk or servant employed by the transferor immediately before the date of the transfer shall be an officer, clerk or servant, as the case may be, of the transferee on terms and conditions no less favourable than those on which he was so employed immediately before the date of the transfer; and such employment with the transferor and transferee respectively shall be deemed, for all purposes, to be a single continuing employment, save that no director, secretary or auditor of the transferor shall by virtue only of a business vesting order be a director, secretary or auditor, as the case may be, of the transferee.

(2) Paragraphs (a) (ii) and (iii) of subsection (1) apply to

- (a) any statutory provision;
- (b) any provision of any contract to which the transferrer was not a party; and
- (c) any provision of any other document, not being a contract or will,

as they apply in relation to a contract to which paragraph (a) of subsection (1) applies.

(3) Any property or rights transferred to, and vested in, the transferee that immediately before the date of the transfer were held by the transferor whether severally or jointly with any other person

- (a) as trustee or custodian trustee of any trust, deed, settlement, covenant, agreement or will, whether originally appointed or not, or whether appointed under hand or seal by order of a court;
- (b) as executor of the will of a deceased person;
- (c) as administrator of the estate of a deceased person;
- (d) as judicial trustee; or
- (e) in any other fiduciary capacity,

shall, from the date of the transfer, be held by the transferee, whether severally or jointly with that other person, in the same capacity upon the trusts and with, and subject to, the powers, provisions, liabilities and obligations, applicable thereto, as the case may be.

#### **Exemption from stamp duty and property transfer tax**

**86.** The Minister may, in a vesting order under this Part, exempt the parties to the transfer from the payment of stamp duty or property transfer tax.

## PART VII

### ABANDONED PROPERTY

#### **Abandoned property**

**87.(1)** Property of any kind held by or owing in the course of its business by a licensee in respect of which no activity has been evidenced for a period of 10 years is abandoned property.

- (2) Activity is evidenced in respect of the property described in subsection (1) if the owner thereof has within 10 years
- (a) of the date of deposit increased or decreased the amount of the deposit, or presented a passbook or other record for the crediting of interest in respect of the deposit;
  - (b) of paying funds for the purchase of shares or other interest, increased or decreased the amount of the funds or presented a document or book for the crediting of dividends in respect thereof;
  - (c) of making the last deposit, inquiry or communication concerning any item, corresponded with the licensee concerning the item or otherwise indicated an interest in the items as evidenced by a memorandum about them by the licensee.

#### **Disposal of abandoned property**

- 88.(1)** A licensee shall, within 60 days of the end of each financial year,
- (a) report to the Central Bank all its holdings of abandoned property within the meaning of this Part;
  - (b) publish in the *Official Gazette* and in a daily newspaper published and circulating in Barbados a notice containing
    - (i) the names of the owners and particulars concerning the abandoned property; and
    - (ii) a statement that a claim in respect of property that is not claimed within 90 days from the date of the publication of the notice must be made to the Central Bank;
  - (c) mail a copy of the notice referred to in paragraph (b) to the beneficial owner of the property at his latest known address.
- (2) A notice referred to in subsection (1) shall require the beneficial owner of the property to submit a claim to the licensee within 60 days of the publication of the notice in the newspaper.

- (3) A licensee shall
- (a) deposit with or convey to the Central Bank, in the prescribed manner, all abandoned property which remains unclaimed after the expiration of 90 days from the date of publication in the newspaper of the notice referred to in subsection (1);
  - (b) together with the abandoned property, submit a list of the owners and particulars concerning the abandoned property to the Central Bank.
- (4) When a licensee has deposited with or conveyed to the Central Bank any abandoned property,
- (a) the licensee is relieved from any liability to the beneficial owner thereof to the extent of the value of the property deposited or conveyed to the Central Bank; and
  - (b) interest shall cease to accrue in respect of that abandoned property.

#### **Sale of abandoned property**

- 89.(1)** The Central Bank may sell at public auction any property that has been deposited with or conveyed to it under section 88 after the expiration of 30 days from the date of receipt of such property.
- (2) The public auction may be held after such reasonable advertising of the sale as the Central Bank considers suitable.

#### **Payment into Consolidated Fund**

**90.** The Central Bank shall pay into the Consolidated Fund all monies received by it as abandoned property and the proceeds of the public auction of any abandoned property, less, in each case, amounts deducted by the Central Bank for reasonable expenses incurred by it in connection with the publishing of notices, service charges, and the sale of abandoned property.

**Claims against property**

**91.(1)** A person who claims a beneficial interest in any abandoned property deposited with or conveyed to the Central Bank may make a claim for the value thereof within 6 years of the publication of the notice referred to in section 88(1) (b) and in the prescribed manner.

(2) When the Central Bank is satisfied that a claimant is entitled to the abandoned property, the Central Bank shall deliver up the property, or make payment for the value thereof, as the case requires.

(3) Payments made in accordance with subsection (2) are a charge on the Consolidated Fund and shall be met out of funds provided therefrom by the Accountant-General.

**Refusal to pay claims**

**92.(1)** When the Central Bank admits or refuses a claim under section 91, it shall immediately notify the claimant of its decision.

(2) A person aggrieved by a refusal of his claim for abandoned property by the Central Bank may, within 21 days of receiving notice of the refusal, appeal the decision to a Judge in chambers, who may make such order thereon as he considers just.

## PART VIII

## MISCELLANEOUS

**93.** *[Repealed by 2006-30.]*

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*[2006-30]*

**Codes of conduct**

**94.** The Central Bank or any other person appointed in writing by the Minister for the purpose may require a trust company, a finance company or a merchant bank to observe codes of conduct relating to transactions in commercial paper.

**Charges**

**95.** Where, in the opinion of the Central Bank, a licensee is imposing charges that are unreasonable, the Central Bank may require the licensee to disclose the basis for the charges.

**Delegation of functions**

**96.** The Minister may delegate to the Central Bank any of his functions under this Act other than the function of issuing or revoking a licence.

**Approval for branches of financial institutions**

**97.(1)** A licensee that is incorporated in Barbados as a financial institution shall not without the prior approval in writing of the Central Bank establish a branch, a representative office or a subsidiary or relocate its head office outside Barbados.

(2) A licensee that is a branch of a foreign financial institution, shall not without the prior written approval of the Central Bank establish a branch, subsidiary or representative office in Barbados.

**Publication of name of licensee**

**98.** The Minister shall publish in the *Official Gazette*, as soon as may be after the 31st December in each year, the name of every company that is the holder of a valid licence under this Act.

**Misleading name**

**99.** No person may be granted a licence under a name that so closely resembles the name of a licensee or other company carrying on business in Barbados or elsewhere as would, in the opinion of the Minister, confuse the persons for whom it intends to provide its services.

**Use of “bank” in name**

**100.** The Minister may, in the public interest, direct any person other than a bank licensed under Part II or Part III, or the *International Financial Services Act*, Cap. 325, that is trading or carrying on business under any name or title of which the word “bank” or any variation forms part to delete from the name under which the business is carried on the word “bank” or any variation thereof.

**Insurance business**

**101.** No officer or employee of a licensee to which Part II or III applies shall

- (a) act as agent for any insurance company or for any person in the placing of insurance other than in the ordinary course of business without the prior approval in writing of the Central Bank;
- (b) exercise any undue influence upon a borrower to place insurance in any particular insurance company as security for a loan granted by the licensee.

**Operating without a licence**

**102.** Any person who, and every director and every manager of a company which, carries on business under this Act when he is not the holder of a valid licence issued under this Act is guilty of an offence and liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years.

**Misuse of name “bank”**

**103.** Any person other than a bank that is a licensee under Part II or III or a person licensed under the *International Financial Services Act*, Cap. 325 who, in connection with a trade or business carried on by him, uses the word “bank” or any derivation thereof in any language that is calculated to lead the public to believe that the person carries on or intends to carry on banking business in Barbados is guilty of an offence and liable on summary conviction to a fine of \$50 000 or to imprisonment for 6 months or to both.

**Prohibition of advertisements**

**104.(1)** No person other than a licensee shall issue any advertisement inviting the public to deposit money or enter into any agreement connected therewith.

(2) A licensee shall not issue or cause to be issued any misleading advertisement.

(3) Every person that contravenes this section is guilty of an offence and liable on summary conviction to a fine of \$10 000 or to imprisonment for 6 months.

**Failure to submit returns**

**105.** Any bank that is a licensee under Part II or III which fails to comply with subsections (1) and (2) of section 43 or with any requirement of the Central Bank thereunder is guilty of an offence and liable on summary conviction to a fine of \$25 000 and in addition thereto, to a fine of \$5 000 for every day that the offence continues after a conviction was first obtained.

**Offence re: financial statements audit**

**106.** A licensee that contravenes or fails to comply with section 45 or 46 is guilty of an offence and liable on summary conviction to a fine of \$50 000.

**Failure to produce documents**

**107.(1)** Where any book, account, document or information is not produced in accordance with section 48, the licensee is guilty of an offence and liable on summary conviction to a fine of \$25 000 and in addition thereto, to a fine of \$5 000 for every day that the offence continues after a conviction was first obtained.

(2) Where any book, account, document or information specified in, and produced in accordance with, section 49 is false in any material particular, the licensee concerned is guilty of an offence and is liable on summary conviction to a fine of \$50 000.

**Offence re: abandoned property**

**108.** A licensee that fails to report to the Central Bank any abandoned property in its possession or that fails to deposit with or convey to the Central Bank any abandoned property as required by Part VII is guilty of an offence and is liable on summary conviction to a fine of \$10 000.

**Prosecution of certain offences**

**109.(1)** Proceedings for an offence under section 105, 106, 107 or 108 of this Act may be instituted by the Central Bank.

(2) An officer of the Central Bank may, although not an attorney-at-law, prosecute or conduct before a court of summary jurisdiction any proceedings relating to an offence referred to in subsection (1).

(3) Proceedings in respect of an offence referred to in subsection (1) may be commenced at any time within the period of 6 months from the date on which evidence, sufficient in the opinion of the Central Bank to justify a prosecution for the offence, comes to its knowledge.

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[2006-30]

**Non-Application of Part II**

**110.** Part II does not apply to any society registered under the *Industrial and Provident Societies Act*, Cap. 380, the *Building Societies Act*, Cap. 377 or the *Co-operative Societies Act*, Cap. 378A.

**Non-application of Cap. 308**

**111.** Sections 147 to 167 of the *Companies Act* do not apply to licensees.

**Designation and exemption of institutions**

**112.(1)** The Minister may by order designate financial institutions other than banks, trust companies, finance companies and merchant banks to which the provisions of this Act shall, as the case may be, apply.

(2) The Minister may by order, and subject to such conditions as may be specified in the order, exempt any trust company, finance company or merchant bank from any of the provisions of Part III.

(3) An order made under this section is subject to affirmative resolution.

**Immunity**

**113.** Neither the Governor of the Central Bank nor any officer of the Bank shall be liable in damages for anything done or omitted in the discharge or purported discharge of his respective functions under this Act, unless it is shown that the act or omission was in bad faith.

**Modification of Cap. 308**

**114.** The Minister may by order make further adaptations and modifications to the *Companies Act* as appear to him to be necessary or expedient having regard to the provisions of this Act.

**Regulations**

- 115.** The Minister may make regulations
- (a) prescribing anything that is authorized by this Act to be prescribed;
  - (b) for the classification of loans and other assets;
  - (c) in respect of doubtful loans and other assets and the writing off of such loans;
  - (d) the treatment of interests;
  - (e) in respect of loan concentrations;
  - (f) in respect of related party transactions;
  - (g) in respect of matters relating to self-dealing;
  - (h) regarding the issue of advertisements by licensees;
  - (i) in respect of such matters as may affect the safety and soundness of financial institutions;
  - (j) generally for giving effect to the provisions of this Act.

**Transitional**

**116.** A company licensed at 1st July, 1997 under the *Financial Intermediaries Regulatory Act* (Act 1992-13) shall, from that date be deemed to be licensed under this Act and the provisions of this Act shall apply accordingly.

**Application of Act**

- 117.** This Act shall apply to any former auditor, officer or employee of a financial institution for a period of 6 years from the date on which
- (a) the auditor, officer or employee ceased to be associated or employed with the company; or
  - (b) the financial institution ceased to be a licensee under this Act,

whichever is later.