



## **BANKING ACT, 2005**

Published by Authority

**BANKING ACT, 2005**

No. of 2005

## TABLE OF CONTENTS

## Section

## PRELIMINARY

1. Interpretation

## PART 1

## LICENCES

2. Requirement for licence
3. Examination of books of person carrying on banking business without a licence
4. Application for licence
5. Restricted words, names, and practices
6. Display of licence certificate
7. Authorisation of location and approval of new business premises
8. Voting
9. Actions of fundamental change requiring approval
10. Revocation of licence and declaration of discontinuance of service
11. Licence fees and penalty for default

## PART 2

## FINANCIAL REQUIREMENT AND LIMITATIONS

12. Minimum paid-up or assigned capital
13. Maintenance of Reserve Fund
14. Adequacy of Capital
15. Restriction on certain activities of licensed financial institutions and affiliates
16. Maintenance of specified assets
17. Credit Institution, Class of Credit Institution and Financial Group

## PART 3

## AUDIT, INFORMATION AND EXAMINATION

18. Annual audit, report and publication of financial statements and results
19. Central Bank examination
20. Disclosure and access to books and records by Central Bank examiner for examination
21. Central Bank's powers and measures for preventing adverse consequences
22. Fixed penalties
23. Submission of returns and production of information as required by the Central Bank
24. Extension of period for providing information
25. Restriction on advertising likely to mislead the public

## PART 4

## MISCELLANEOUS

26. Minimum criteria for determining whether a person is fit and proper

27. Removal and disqualification of director
28. Declaration and registration of related interest and conflict of interests by Director
29. Responsibility for deceiving statements and obstruction of audit or authorised examination
30. Management's duty of compliance with the requirements of the laws
31. Liability of directors, managers, officers and partners
32. Secrecy of information
33. Working days of financial institutions
34. Regulations
35. Compounding of offences
36. Prudential guidelines

## PART 5

### RECEIVERSHIP, LIQUIDATION AND REORGANISATION

37. Voluntary liquidation
38. Cessation of business operations
39. Notice to depositors of voluntary liquidation
40. Rights of depositors and creditors in voluntary liquidation
41. Distribution of assets
42. Insufficiency of assets in discharge of obligations in voluntary liquidation
43. Appointment of receiver
44. Notice of appointment of receiver
45. Financial institution may institute proceedings to have receiver's appointment lifted
46. Period of obligation to commence compulsory liquidation or reorganisation proceedings
47. Compulsory liquidation, reorganisation proceedings
48. Powers of the High Court
49. Powers of receiver, official liquidator
50. Term extensions and attachment and transfer of assets to be void
51. Execution against assets of a financial institution
52. Reorganisation proceedings
53. Reorganisation provisions
54. Petition for modification or revision of reorganisation
55. Preferential and other claims
56. Unclaimed funds
57. Shareholders' rights on remaining assets
58. Safe deposits and unclaimed property
59. Receiver's audited accounts, striking the name of the institution and conclusion of liquidation

## PART 6

### ABANDONED PROPERTY

60. Abandoned property
61. Report, publication and disposal of abandoned property
62. Sale and handling of proceeds of abandoned property
63. Claims on abandoned property
64. Penalties

PART 7

TRANSFER OF BANKING BUSINESS

- 65. Banking business vesting order
- 66. Supplementary provision as to transfers
- 67. Transfers to be subject to stamp duty

PART 8

GENERAL

- 68. Non-application of Aliens (Landholding Regulation) Act
- 69. Repeal and Saving
- 70. Citation and Commencement
  - Schedule 1
  - Schedule 2
  - Schedule 3
  - Schedule 4

I Assent

Alan Edden Huckle  
Governor  

---

## ANGUILLA

No. 9 of 2005

## THE BANKING ACT, 2005

[Gazetted: 14<sup>th</sup> September 2005] [Commencement: Section 70]

An Act to provide for regulating banking business and for related matters.

ENACTED by the Legislature of Anguilla

## PRELIMINARY

**Interpretation****1.** In this Act –

"Agreement" means the Agreement establishing the Eastern Caribbean Central Bank made on the 5<sup>th</sup> day of July, 1983, the text of which is set out in the Schedule to the Eastern Caribbean Central Bank Agreement Act, R.S.A. c. E5;

"affiliate", in relation to a financial institution ("F"), means –

(a) a company which is or has at any relevant time been –

(i) a holding company or subsidiary of F,

(ii) a subsidiary of a holding company of F, or

(iii) a holding company of a holding company or a subsidiary of a subsidiary of F;

(b) any company over which F has control;

(c) any company over which F and any person associated with F has control;

(d) any company which has common ownership with F;

(e) any company which has the same beneficial owner and share common management and interlinked businesses with F,

and "affiliation" shall be construed accordingly;

"assigned capital" means the net assets derived from the funds of a foreign financial institution that such an institution is required to keep during the term of its licence in Anguilla in accordance with the regulations that the Minister after consultation with the Central Bank may prescribe;

"auditor" means an external auditor that is –

- (a) a person who is a member of a professional body of accountants which the Minister has specified by regulations published in the *Gazette*; or
- (b) any other person approved by the Minister, acting on the recommendation of the Central Bank;

"bank" means any financial institution whose operations include the acceptance of deposits subject to the transfer by the depositor by cheque;

"banking business" means the business of receiving funds through –

- (a) the acceptance of monetary deposits which are repayable on demand or after notice or any similar operation,
- (b) the sale or placement of bonds, certificates, notes or other securities,

and the use of such funds, either in whole or in part, for loans or investment; and includes any other activity recognised by the Central Bank as constituting customary banking practice and which a financial institution may additionally be authorised to do;

"board" means the board of directors or other body responsible for the management of a financial institution;

"borrower group" means –

- (a) a family group comprising an individual and that individual's spouse, parent, child, brother or sister where each member of the group is substantially dependent upon the same income sources;
- (b) a company in which the family group indicated in paragraph (a) has control;
- (c) a group of companies which is under a common control;
- (d) a group of persons in which the credit worthiness, ability to generate funds or the future viability of each, depends on 1 or other member of the group;
- (e) a group of persons in which 1 member has power directly or indirectly to control the other members;
- (f) any other group of persons as may be determined by the Central Bank;

"business of a financial nature" means the collection of funds in the form of deposits, shares, loans, premiums, and the investment of such funds in loans, shares and other securities and includes the types of businesses set out in Schedule 2 but does not include banking business;

"Central Bank" means the Eastern Caribbean Central Bank established under Article 3 of the Agreement;

"Council" means the Monetary Council established under Article 7 of the Agreement;

"credit institution" means any financial institution, other than a bank, whose business is that of money lending or the granting of credit facilities;

"director" includes any person occupying the position of director of a company by whatever name called and includes a person in accordance with whose directions or instructions the directors of a company are accustomed to act;

"exposure" includes advances, credit facilities, guarantees, repurchase agreements, swap agreements, and equity investments;

"financial group", in relation to a financial institution, means that financial institution and any affiliate thereof, which conducts banking business or business of a financial nature;

"financial institution" includes any person doing banking business and, all offices and branches of a financial institution in Anguilla shall be deemed to be one financial institution;

"foreign financial institution" means a financial institution formed under the laws of a country other than Anguilla which carries on banking business in Anguilla;

"holding company" means a body corporate that controls a body corporate;

"licensed financial institution" means a financial institution licensed under the provisions of this Act;

"local financial institution" means a financial institution formed under the laws of Anguilla;

"Minister" means the Minister responsible for Finance;

"Participating Governments" has the meaning assigned to it in the Agreement;

"person" includes a public body, company, partnership, trust, association or body of persons whether corporate or unincorporate;

"place of business" means any office including a mobile office of a financial institution, in Anguilla;

"principal place of business" in relation to—

(a) a local financial institution, means its principal office in Anguilla, and

(b) a foreign financial institution, means the office designated in its licence;

"significant shareholder" means a person who either alone or with an affiliate or related or connected person, is entitled to exercise or control 20% or more of the voting rights at any general meeting of the licensed financial institution or another company of which the licensed financial institution is a subsidiary;

"subsidiary" means a body corporate that is controlled by another body corporate;

"unsecured", in relation to advances or credit facilities, means —

(a) advances or credit facilities granted without security; or

- (b) in the case of advances or credit facilities against security, any part of such advances or credit facilities which at any given time exceeds the market value of the assets comprising the security given, or which exceeds the valuation approved by the Central Bank whenever it deems that no market value exists for those assets.

(2) For the purposes of this Act, two or more persons or groups of persons are connected or related if their interests are so interrelated that they should be deemed a single unit or borrower group.

(3) For the purposes of this Act, a body corporate or financial institution is controlled by a person if shares of the body corporate or financial institution carrying voting rights or such other rights held indirectly or directly by or on behalf of the person are sufficient to –

- (a) determine in any manner the financial and operating policies of the body corporate or financial institution;
- (b) appoint or remove a majority of the directors of the body corporate or financial institution;  
or
- (c) carry a resolution at a general meeting of the body corporate or financial institution.

## PART I LICENCES

### **Requirement for Licence**

2. (1) A person shall not carry on banking business or hold himself out as carrying on banking business in Anguilla without a licence granted by the Minister.

(2) A financial institution which, at the commencement of this Act, holds a valid licence to carry on banking business in Anguilla shall be deemed to have been granted a licence under section 4.

(3) Notwithstanding the provisions of subsection (2), the Minister shall, within such period of the commencement of this Act as the Minister after consultation with the Central Bank may determine, issue to a financial institution a new licence certificate under this Act.

(4) Any person intending to carry on banking business in Anguilla shall, before commencing such business, apply for a licence under the provisions of section 4.

(5) Any person who contravenes the provisions of subsection (1) commits an offence and is liable on summary conviction –

- (a) in the case of a financial institution, to a fine of \$500,000, and in the case of a continuing offence, to a further penalty of \$5,000 for each day on which the offence is continued after conviction thereof;
- (b) in the case of a director or a manager, to a fine of \$250,000 or to imprisonment for a term of 3 years or to both such fine and imprisonment, and in the case of a continuing offence, to a further penalty of \$2,500 for each day on which the offence is continued after conviction thereof.

### **Examination of books of person carrying on banking business without a licence**

3. (1) If the Central Bank has reasonable cause to suspect that –

(a) any person is carrying on banking business without a licence granted under this Act; and

(b) evidence of contravention of section 2(1) is to be found on any premises in Anguilla,

the Central Bank may, after consultation with the Minister, lay information on oath to a Magistrate, it shall be lawful for such Magistrate by warrant signed by the Magistrate, to authorize an officer or officers of the Central Bank named in such warrant to enter and search such premises with a police officer and seize any books, accounts, records and other documents, cheques and securities (in this section referred to as “the relevant documents”) and any cash as may be found on the premises relating to the conduct of banking business, to ascertain whether the person is carrying on banking business without a licence.

(2) Any such warrant may authorize the—

(a) Central Bank to detain the relevant documents for a period not exceeding 30 days;

(b) officer or officers to make copies of the relevant documents; and

(c) Central Bank to retain copies of the relevant documents.

(3) It shall be lawful for any officer or officers, in whose name a warrant has been granted pursuant to subsection (1), in the case of resistance, to break open any door, and to force and remove any other impediment or obstruction to such entry, search or seizure.

(4) A person refusing to make available for examination any books, accounts and records having been requested to do so by the Central Bank commits an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of 6 months or to both such fine and imprisonment.

(5) Without prejudice to section 2(5), where a person is found under subsection (1) to be conducting banking business without a licence, the Minister may, on the recommendation of the Central Bank, appoint a receiver for the person under section 43(f).

(6) A person holding funds which the person has obtained by carrying on banking business without being in possession of a licence granted under this Act shall repay such funds in accordance with the directions of the Central Bank.

(7) The Minister may request the Central Bank to undertake the actions under subsection (1) where the Minister has reasonable cause to suspect that the conditions in subsections (1)(a) and (b) exist.

#### **Application for licence**

**4.** (1) In order to obtain a licence as a financial institution, a person shall apply in writing to the Minister and submit the documents and other information as specified in Schedule 1.

(2) In considering an application for a licence, the Minister shall request the Central Bank to conduct such investigation as it may consider necessary to ascertain –

(a) the validity, of the documents submitted in accordance with subsection (1);

(b) the financial condition and history of the applicant;

(c) the character of the business of the applicant;

- (d) whether the proposed directors and other individuals who are to constitute the management of the financial institution are fit and proper persons in accordance with the criteria set out in section 26;
- (e) the adequacy of the capital structure;
- (f) the earning prospects of the applicant;
- (g) the convenience and needs of the community to be served by the granting of the licence;
- (h) the suitability of the significant shareholders;
- (i) the transparency of the ownership structure;
- (j) the source of initial capital; and
- (k) whether the proposed legal and managerial structures will hinder effective supervision of the financial institution.

(3) A foreign financial institution which intends to open a branch or an affiliate within Anguilla must, in addition to submitting the documents and other information required under subsection (1), submit with its application –

- (a) a certificate showing that the home banking supervisor of the jurisdiction in which it was incorporated, formed or organised has no objection to its application for a licence to do business in Anguilla; and
- (b) evidence satisfactory to the Central Bank that it is subject to comprehensive supervision on a consolidated basis by the appropriate authorities in its home country.

(4) Within a reasonable time of its receipt of the application for a licence, the Central Bank shall make its recommendations to the Minister.

(5) Within 30 days of the receipt of the recommendations of the Central Bank, the Minister shall either grant the licence and may place any restrictions as the Minister considers to be prudent in respect of the licence or, if the Minister is of the opinion that it would be undesirable in the public interest to grant the licence, he may refuse to grant the licence and need not give any reason for so refusing but shall inform the applicant that he has refused to grant the licence.

(6) A financial institution shall not be granted a licence under this section unless it fulfils the capital requirements specified in section 12.

(7) The Minister, after consultation with the Central Bank, may by regulations published in the *Gazette* amend the Schedules.

### **Restricted words, names, and practices**

5. (1) No financial institution shall be granted or continue to hold a licence under a name which so closely resembles the name of an existing financial institution in the territories of the Participating Governments or elsewhere as would be likely, in the opinion of the Minister, after consultation with the Central Bank, to mislead the public.

(2) No person, other than a licensed financial institution, shall except with the written consent of the Minister after consultation with the Central Bank—

- (a) use the words "bank", "financial institution", "savings" and "loan", or any of their derivatives or any mutations thereof in any language, or any other word indicating the carrying on of banking business, in the name, description or title under which such person is carrying on business in Anguilla; or make any representation to such effect in any other manner whatsoever for the purpose of indicating that such person is carrying on banking business in Anguilla:

Provided that nothing shall prohibit an association of institutions licensed under this Act formed for the pursuit of common interests from using the words "bank", "financial institution", "savings", or "loan" or any of their mutations or derivatives in any language as a part of its name or description of its activities.

- (b) make or continue to make representations in any billhead, letter, letterhead, circular, paper, notice, advertisement or in any other manner whatsoever that such person is carrying on banking business;
- (c) in any manner whatsoever, solicit or receive deposits from the public or any employee of that person.

(2) Any person who contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine of \$250,000 or to imprisonment for a term of 5 years or to both such fine and imprisonment; and in the case of a continuing offence to a further penalty of \$2,000 for each day on which the offence is continued after conviction thereof.

#### **Display of licence certificate**

6. A copy of the certificate of any licence granted under this Act to a financial institution shall be displayed and kept displayed in a conspicuous place in the public part of any place of business of the licensed financial institution.

#### **Authorisation of location and approval of new business premises**

7. (1) Any licence granted under this Act shall authorise the licensed financial institution to carry on banking business in Anguilla at the place of business designated in the licence and at such other place as the Minister may, after consultation with the Central Bank, in writing authorise.

(2) No financial institution shall open a new place of business or change the location of an existing place of business in Anguilla without the prior approval of the Minister, after consultation with the Central Bank.

(3) No financial institution shall close an existing place of business in Anguilla without having given 90 days prior notification to the Minister and the Central Bank.

(4) No local financial institution shall open a place of business elsewhere than in Anguilla without the prior approval of the Minister after consultation with the Central Bank.

(5) No local financial institution shall close a place of business outside of Anguilla without having given 21 days prior notification to the Minister and the Central Bank.

(6) The Minister, acting on the recommendation of the Central Bank, may direct the closing of a branch of a local financial institution operating outside of the territories of the Participating Governments or, impose limitations on the activities of such a financial institution, if the Central Bank determines that the supervision by the host country supervisor is not adequate relative to the risks that the branch presents to the viability or soundness of the local financial institution.

(7) No financial institution may establish or change the location of an electronic banking system in a place other than a place of business approved under subsection (2), without having given 30 days prior notification to the Minister and the Central Bank.

(8) Where a financial institution operating under a valid licence has, at the commencement of this Act, established an electronic banking system in a place other than a place of business, such financial institution shall notify the Central Bank of the location of all such electronic banking systems within 60 days of the date of commencement of this Act.

(9) Any person who contravenes a provision of this section commits an offence and is liable on summary conviction to a fine of \$250,000 or to imprisonment for a term of 5 years or to both such fine and imprisonment; and in the case of a continuing offence to a further penalty of \$2,000 for each day on which the offence is continued after conviction thereof.

### **Voting**

**8.** (1) Subject to subsection (7), except with the approval of the Central Bank, no person shall hold or acquire either directly or indirectly –

- (a) such of the paid-up capital of a local financial institution which would confer upon such person more than 20% of the total voting rights of all the members at a general meeting of the local financial institution, or
- (b) in the case of a local financial institution not having a share capital, more than 20% of the total voting rights of all the members entitled to vote at a general meeting of the local financial institution.

(2) Where the Central Bank determines that the interests of a group of 2 or more members of a local financial institution are connected or related, the total holdings of those members shall be combined and deemed to be the holdings of a single member.

(3) A local financial institution must submit a report quarterly to the Central Bank on the names and addresses of any person who owns 5% or more of the total voting rights of the local financial institution and where such a person is a nominee, the name and address of any beneficial owner for whom such a person holds the shares or other ownership interests.

(4) In the event that the Central Bank determines that the provisions of subsection (1) have been violated, the Central Bank may issue an order under section 21 requiring the divestment of so much of the offending interest as is necessary to secure compliance with the provisions of subsection (1).

(5) A director of a local financial institution who knows or ought reasonably to know of a transfer made in violation of subsection (1) and who fails to disclose it to the Central Bank commits an offence and is liable on summary conviction to a fine of \$2,000 or to imprisonment for a term of 3 months.

(6) Any person who knowingly acquires an interest in violation of subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of 6 months.

(7) Subsection (1) shall not apply to the Government or to any person who at the commencement of this Act has acquired more than 20% of the total voting rights of all the members of the local financial institution, but no such person shall, without the consent of the Central Bank, acquire any additional shares which shall have the effect of increasing that person's percentage of the voting rights.

**Actions of fundamental change requiring approval**

**9.** (1) Unless the approval of the Minister, acting upon the recommendation of the Central Bank, is first obtained, no financial institution shall –

- (a) transfer the whole or any substantial part of its assets or liabilities in Anguilla other than in the ordinary course of its business;
- (b) effect a reduction of its paid up or, as the case may be, assigned capital established under section 12;
- (c) alter its name as set out in its licence;
- (d) enter into a merger or consolidation within Anguilla, and
- (e) in the case of a local financial institution, amend the instrument or charter under which it is formed in Anguilla.

(2) Every foreign financial institution shall notify the Minister and the Central Bank of any amendment to the instrument or charter under which it is formed, within 60 days of such amendment.

(3) In recommending any proposed action under subsection (1), the Central Bank shall be guided by the criteria specified in section 4 (2).

**Revocation of licence and declaration of discontinuance of service**

**10.** (1) The Minister acting upon the recommendation of the Central Bank, may revoke any licence to carry on banking business in Anguilla if the licensed financial institution –

- (a) fails to commence operations within a period of 12 months following the granting of the licence;
- (b) fails to comply with the conditions of its licence or the measures required by the Central Bank set out in section 21;
- (c) is in breach of any of the provisions of this Act which is applicable thereto;
- (d) ceases to carry on banking business in Anguilla;
- (e) is conducting its affairs in a manner detrimental to the national interest or to the interest of its depositors;
- (f) fails to maintain sufficient capital or liquidity to meet its liabilities;
- (g) has not fulfilled or is unlikely to fulfil the minimum criteria for licensing under this Act;  
or
- (h) merges or amalgamates with another company or institution and the licence is no longer required.

(2) Before revoking any licence under subsection (1), the Minister shall serve the financial institution concerned with a notice in writing of his intention to do so, specifying therein the grounds upon which he proposes to make the revocation and shall require the financial institution to submit to him

within a specified period being not less than 30 days, a written statement of objections to the making of the revocation and thereafter, the Minister shall advise the financial institution of his decision.

(3) Where the decision referred to in subsection (2) is to revoke the licence, the notice shall include a statement of the reasons for the decision.

(4) Notice under subsection (2) shall be served at the last known address of the financial institution or shall be published in the *Gazette* or in a newspaper of general circulation in Anguilla.

(5) If any financial institution is aggrieved by any decision made under subsection (1), that financial institution may appeal to the High Court within 14 days of such decision.

(6) Where a licence to carry on banking business in Anguilla has been revoked, the Minister shall as soon as possible thereafter cause a notice of revocation to be published in the *Gazette* and in a newspaper of general circulation in Anguilla and cause such other steps to be taken as he considers necessary to inform the public of such revocation.

### **Licence fees and penalty for default**

**11.** (1) Every financial institution shall pay such annual licence fee as the Minister may, by regulations published in the *Gazette*, prescribe.

(2) The Minister, after consultation with the Central Bank, may prescribe different licence fees in respect of different classes or categories of financial institutions and such fees shall apply uniformly to such classes or categories.

(3) All licence fees payable under this Act shall be paid to the Financial Services Commission established under section 2 of the Financial Services Commission Act, R.S.A. c. F28.

(4) A person who fails to comply with any requirement of this section and where such person is a company, the company and every director, manager, secretary or other officer of the company who knowingly authorises or permits the default, commit the offence and each is liable on summary conviction to a fine of \$10,000 and in the case of a continuing offence to a further penalty of \$100 for each day on which the offence is continued after conviction thereof.

## **PART 2**

### **FINANCIAL REQUIREMENT AND LIMITATIONS**

#### **Minimum paid-up or assigned capital**

**12.** (1) Every licensed financial institution shall maintain in Anguilla unimpaired, paid-up or, as the case may be, assigned capital at least equal to the minimum amounts specified in accordance with the following requirements –

(a) if operating as a bank, the minimum required capital shall be not less than \$5,000,000;

(b) if operating as a credit or other financial institution, the minimum required capital shall be not less than \$1,000,000.

(2) The Minister may, after consultation with the Central Bank, from time to time –

(a) by written notice to the main office of each licensed credit or financial institution in Anguilla; or

(b) by notice in a newspaper of general circulation in Anguilla or in the *Gazette*, increase or vary the minimum amounts of required capital specified in subsection (1) in respect of all or any appropriate class of financial or credit institution.

(3) Any financial institution which contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$50,000.

#### **Maintenance of Reserve Fund**

**13.** (1) Subject to subsection (3), every licensed financial institution shall maintain a reserve fund and shall, out of its net profits of each year transfer to that fund a sum equal to not less than 20% of such profits whenever the amount of the reserve fund is less than 100% of the paid-up or, or as the case may be, assigned capital of the financial institution.

(2) No financial institution shall declare, credit or pay any dividend or make any other transfer from profits whenever such declaration, credit, payment or transfer would result in an impairment of the capital required under section 12.

(3) The Minister, acting upon recommendation by the Central Bank may, on application made by a foreign financial institution, exempt such an institution from the requirements of this section.

#### **Adequacy of Capital**

**14.** (1) A licensed financial institution shall not at anytime have a capital adequacy ratio of less than such percentage, and calculated in such manner, as the Central Bank may determine, in respect of all or any appropriate class of financial institution.

(2) Any ratio required under subsection (1) shall be calculated on a consolidated and a solo basis for every licensed financial institution within a financial group.

(3) Where there is a deficiency in the capital adequacy ratio referred to in subsection (1), the Central Bank shall require the licensed financial institution to present a plan that is satisfactory to the Central Bank to reconstitute its capital adequacy ratio within 30 days or such longer period as the Central Bank may determine.

(4) Where the financial institution fails to –

(a) present a satisfactory plan pursuant to subsection (3); or

(b) implement a plan presented pursuant to subsection (3),

the Central Bank shall take such remedial action as it considers necessary and in accordance with section 21.

#### **Restriction on certain activities of licensed financial institutions and affiliates**

**15.** (1) A financial institution shall not directly or indirectly, except with the approval of and subject to such terms and conditions as the Central Bank, may determine –

(a) incur exposures to any person, any member of a borrower group or to any borrower group so that the total value of the exposures in respect of such person, member or borrower group, is at any time more than 25% of the aggregate amount of the financial institution's unimpaired capital and reserves:

Provided that the limitation upon the foregoing transactions shall not apply in respect thereof if such transactions represent loans to a Participating Government, or to boards, agencies, or local government bodies of a Participating Government which are guaranteed by the Participating Government;

- (b) grant any advance against the security of its own shares, the shares of its affiliates, or the shares of a company to whom the advance is being granted;
- (c) grant or permit to be outstanding to its officers and employees unsecured advances which in aggregate amount for any one officer or employee exceeds the annual remuneration of such officer or employee;
- (d) engage in trade, except insofar as may be temporarily necessary in the conduct of its business or in the course of the satisfaction of debts due to it;
- (e) acquire or continue in the acquisition of any ownership interest in any financial, commercial, agricultural, industrial or other undertaking except such interest as a financial institution may acquire for the satisfaction of debts due to it which shall, be disposed of as soon as possible thereafter, but this paragraph shall not prevent the purchase and sale of shares or stocks for trust account or upon the order and for the account of a customer without recourse; but a financial institution may -
  - (i) hold shares in any company set up for the purpose of promoting the development of a money market or securities market or of improving the financial mechanism for the financing of economic development in Anguilla, and
  - (ii) hold shares in another company the aggregate value of which does not at any time exceed 10% of the sum of the unimpaired capital and reserves of that financial institution, and where there is no established market value for such shares, the value of such shares shall be established on the basis of a valuation approved by the Central Bank; but the total amount of a financial institution's holdings under this paragraph may not exceed 60% of the sum of the unimpaired capital and reserves of the financial institution; or
- (f) purchase, acquire or lease real or immovable property except as may be necessary for the purpose of conducting its business as a financial institution including provision for future expansion and housing its officers and employees:

Provided that –

- (i) in respect of any real or immovable property held or leased by it prior to the date of commencement of this Act for purposes other than those referred to herein, it shall be allowed a period of 3 years in which to comply with this paragraph, and
- (ii) it may secure a debt on any property immovable or movable and in default of repayment of the debt may acquire such property for resale as soon as possible thereafter, but not later than 5 years thereafter.

(2) Where the total value of exposures granted under paragraph (1)(a) is at any time more than 15% of the aggregate amount of the financial institution's unimpaired capital and reserves, the transaction shall be secured by collateral, fully covered by insurance, having an ascertainable market value or otherwise having such a value as collateral found in good faith by an officer of such financial institution, of at least 20% more than the amount of the obligations secured thereby.

(3) The aggregate of exposures in excess of 10% incurred by a financial institution shall not exceed 400% of its unimpaired capital and reserves, or such other percentage as the Minister on the recommendation of the Central Bank may, by regulations, prescribe.

(4) The amount of exposures permitted under paragraph (1)(a) may be varied or suspended from time to time by the Central Bank.

(5) Any financial institution which contravenes the provisions of paragraph (1)(a), (e) or (f) or of subsection (2), (3) or (4) commits an offence and is liable on summary conviction to a fine of \$10,000 for each contravention.

(6) A financial institution shall not directly or indirectly grant or permit to be outstanding unsecured advances unless such advances have been approved by its board and the Central Bank has been provided with prior notification thereof to –

- (a) the members of its board whether such advances are obtained by them jointly or severally;
- (b) any person in which it or any one or more of its directors have any interest as a director, partner, manager, agent, member or otherwise;
- (c) any person who owns, controls or has the power to vote more than 10% of any class of voting securities of the financial institution;
- (d) any person serving as an auditor under section 18 or conducting an examination under section 19;
- (e) any person, whose relationship to another financial institution in which a correspondent account is maintained, is within any of the categories described in paragraphs (a) to (d);

(7) The total of all unsecured advances made to any person within any of the categories described in paragraphs (6)(a) to (d) shall not exceed 5% of the sum of the paid-up or, as the case may be, assigned capital and reserves of the financial institution.

(8) Any financial institution which contravenes the provisions of subsection (6) or (7) commits an offence and is liable on summary conviction to a fine of \$10,000 for each contravention.

(9) Any advances, extensions or guarantees of credit made to any person under paragraph (1)(a) or within any of the categories described in subsection (6) shall be made substantially on the same terms, including interest rates and collateral, as applicable, as those prevailing for comparable transactions with other persons.

(10) In determining whether any approval referred to in paragraph (1)(e) should be granted, the Central Bank shall take into account whether –

- (a) acquisition of the shares is likely to prejudice the –
  - (i) financial condition of the financial institution,
  - (ii) capitalisation of the financial institution,
  - (iii) interest of depositors of the financial institution; or

- (b) the corporate affiliations and structure of the financial institution expose the financial institution to undue risks or hinder its effective supervision.

(11) A financial institution shall maintain information systems to identify loans to connected or related parties and shall record the amount of such loans and monitor and report on such loans to the Central Bank as the Central Bank shall specify.

(12) In applying subsection (1)(a) and subsection (6), if the Central Bank shall determine that the interests of 2 or more persons are connected, the total indebtedness of such persons shall be aggregated and deemed to be the indebtedness of a single person; and a financial institution shall not be deemed to have violated paragraph (1)(a) or subsection (6) solely by reason of the fact that the aggregated indebtedness exceeds the limitation at the time of the determination, but the financial institution shall dispose of the indebtedness of such persons in the amount in excess of the limitation within such reasonable time as shall be determined by the Central Bank.

(13) Any financial institution to which subsections (1) and (6) are applicable that, prior to the commencement of this Act, entered into any transactions incompatible with paragraph (1)(a), (b), (c), (d), or (e) or subsection (6) shall within 12 months immediately after the commencement of this Act or within such further period as the Central Bank may determine, submit a statement thereof to the Central Bank; and shall, in respect of the transactions, take such action within such reasonable time as shall be determined by the Central Bank.

(14) Unless the approval of the Minister, acting on the recommendation of the Central Bank, is first obtained, no licensed financial institution shall be an affiliate of a company that does not conduct banking business or business of a financial nature.

(15) Where, at the commencement of this Act, a financial institution operating under a valid licence is an affiliate of a company that does not conduct banking business or business of a financial nature, no further affiliation may take place without the approval of the Minister acting on the recommendation of the Central Bank.

### **Maintenance of specified assets**

**16.** (1) Every licensed financial institution may be required to maintain specified assets of an amount not less than that from time to time prescribed by the Minister acting on the advice of the Council by regulations published in the *Gazette*.

(2) The amount of the specified assets prescribed under subsection (1) shall be expressed as a percentage of the aggregate demand, savings, and time deposits and other liabilities of the licensed financial institution to which the regulations relate, and such percentage shall not be more than 40% unless the Council so approves.

(3) The Minister, after consultation with the Central Bank, may approve a period during which surpluses and deficiencies in specified assets may be averaged.

(4) The Minister, after consultation with the Central Bank, may by regulations provide that advances granted to a licensed financial institution by any other financial institution or by an overseas branch or office thereof may be excluded from the computation of the demand, savings and time deposits and other liabilities of the licensed financial institution.

(5) The Central Bank may determine the distribution of amounts required to be held between different classes of specified assets, and may also differentiate between classes of banks, credit institutions and other financial institutions.

(6) Every financial institution which is required to hold specified assets shall be afforded a reasonable time to comply with the regulations referred to in subsection (1).

(7) In this section, "specified assets" means freely transferable assets free from any charge, lien or encumbrance whatsoever and includes –

- (a) notes and coins which are legal tender in Anguilla and such foreign notes and coins as the Central Bank may specify;
- (b) balances at the Central Bank;
- (c) net balances at financial institutions in Anguilla but where such balances are negative they will be subtracted from the specified assets;
- (d) treasury bills and other securities issued or guaranteed by a Participating Government and securities issued by a statutory corporation wholly owned by a Participating Government and approved by the Central Bank;
- (e) bills of exchange and promissory notes eligible for rediscount by the Central Bank and warehouse warrants or their equivalent securing possession of goods against which the Central Bank may grant advances, within the limits and in accordance with the evaluation fixed by the Central Bank;
- (f) net balances at financial institutions in such monetary areas as the Central Bank may approve and the Central Bank may provide for the treatment to be accorded the balance or any portion thereof in respect of the head office of a financial institution organised abroad, and where such balances are negative they will be subtracted from specified assets;
- (g) money at call in monetary areas approved by the Central Bank under paragraph (f), bills of exchange bearing at least two good signatures drawn on and payable at any place in the approved monetary areas, and treasury bills issued by the government of a country in any such approved monetary areas and maturing within 180 days.

(8) A financial institution contravenes this section if –

- (a) it fails to furnish promptly any information required by the Central Bank to satisfy itself that the financial institution is observing the requirements of this section; or
- (b) it allows its holdings of specified assets to be less than the amount which is fixed from time to time; or
- (c) during the period of any such deficiency of specified assets, the financial institution grants or permits increases in its outstanding advances, whether by loans or overdrafts or investment portfolio other than investment in specified assets.

(9) Any financial institution that contravenes this section may be ordered by the Central Bank to pay a charge calculated at an annual rate not exceeding 200% the highest rate fixed at the time of such failure by the Central Bank pursuant to Article 32 of the Agreement for any of its operations on the amount of the deficiency for so long as the failure continues, and such charge shall be payable to the Central Bank on such date as may be fixed by the Central Bank and may be recovered by deduction from any balance of the financial institution with the Central Bank.

**Credit Institution, Class of Credit Institution and Financial Group**

17. The Minister may, after consultation with the Central Bank, by regulations direct that any provision of this Act, which at the date of the commencement of this Act does not apply to a credit institution, class of credit institution or financial group, shall apply with such modifications, adaptations, qualifications and exceptions as may be specified in the regulations to the credit institution, class of credit institution or financial group.

## PART 3

## AUDIT, INFORMATION AND EXAMINATION

**Annual audit, report and publication of financial statements and results**

18. (1) A financial institution shall appoint annually an auditor satisfactory to the Central Bank whose duties shall –

- (a) be to examine the books and records and to make a report on the annual financial statements and financial position, and in every such report the auditor shall state whether in the auditor's opinion the balance sheet and profit and loss account give a true and fair view of the state of affairs of the financial institution and of its results for the period then ended; and
- (b) include all or any of the following duties as may from time to time be imposed on the auditor, by the licensed financial institution, at the request of the Central Bank –
  - (i) to submit such additional information in relation to the audit of the financial institution as the Central Bank considers necessary,
  - (ii) to carry out any other examination or establish any procedure in any particular case,
  - (iii) to submit a report on any of the matters referred to in sub-paragraphs (i) and (ii),
  - (iv) to submit a report on the financial and accounting systems and risk management controls of the financial institution,
  - (v) to submit a report on whether prudent credit-granting and investment criteria, policies, practices and procedures are approved and reviewed by the management and board and communicated to all credit officers and whether major credits and investments are decided at a high managerial level,
  - (vi) to certify whether the systems of loan classification, provisioning and write-offs determined by the Central Bank are being adhered to, and
  - (vii) to certify whether suitable measures to counter money laundering and to combat the financing of terrorism have been adopted by the licensed financial institution and are being implemented in accordance with the applicable laws.

(2) A financial institution shall remunerate the auditor in respect of the discharge by the auditor of all or any of the duties set out in subsection (1).

(3) If in the course of the performance of an auditor's duties, an auditor is satisfied that –

- (a) there has been a serious breach of or non-compliance with the provisions of this Act or any regulations, guidelines or directions issued under this Act;

- (b) there is evidence that a criminal offence involving fraud or other dishonesty may have been committed;
- (c) losses have been incurred which reduce the paid up or assigned capital, as the case may be, of the financial institution by 25% or more;
- (d) serious irregularities have occurred, including those that affect the interest of depositors; or
- (e) the claims of depositors covered by the assets cannot be confirmed;

the auditor shall immediately report the matter to the licensed financial institution and the Central Bank.

(4) The Central Bank may request copies of reports submitted to the board of a licensed financial institution by both its internal and external auditors.

(5) An auditor shall report to the Central Bank any matter it is required to report on any licensed financial institution to any investigative, regulatory or other institution, simultaneously with its report to that institution.

(6) The report of the auditor made in accordance with subsection (1) shall be presented with the report of the board and the financial statements of the financial institution at the annual meeting of shareholders of each local financial institution and shall be transmitted to the head office of each foreign financial institution. A copy of the financial statements and reports shall be sent to the Minister and the Central Bank within 4 months of the end of the financial year.

(7) A local financial institution shall within 4 months of the end of its financial year –

- (a) publish in the *Gazette* and in a newspaper of general circulation in Anguilla; and
- (b) exhibit in a conspicuous place in each of its offices,

a true and full yearly statement of its accounts and a consolidated balance sheet of all its operations in Anguilla and abroad as the case may be as certified by its auditor. Such statement shall be signed by the manager or by such other officer of the financial institution as may from time to time be authorised by the financial institution to sign such statement on behalf of the financial institution.

(8) A foreign financial institution shall within 4 months of the end of its financial year –

- (a) publish in the *Gazette* and in a newspaper of general circulation in Anguilla; and
- (b) exhibit in a conspicuous place in each of its offices,

a true and full yearly statement of its accounts of all its operations in Anguilla as certified by its auditor. Such statement shall be signed by the manager or by such other officer of the financial institution as may from time to time be authorised by the financial institution to sign such statement on behalf of the financial institution.

(9) A licensed financial institution which fails to comply with a request under paragraph (1)(b) commits an offence and is liable on summary conviction to fine of \$10,000 for each such failure.

(10) If any financial institution fails to comply with the requirements of subsection (6), (7) or (8) within 4 months of the end of its financial year it shall be liable to a penalty of \$500 for every day of such default except when an extension to the period has been granted by the Central Bank pursuant to section 24.

(11) If a financial institution fails to appoint an auditor satisfactory to the Central Bank, the Central Bank may appoint an auditor for such financial institution. The remuneration of the auditor so appointed shall be determined by the Central Bank and paid by the financial institution.

(12) The Central Bank may appoint an auditor to conduct an independent audit of a licensed financial institution, in accordance with the instructions of the Central Bank, and to report the findings or results thereof to the Central Bank.

(13) No auditor shall be liable for breach of any duty solely by reason of compliance with the provisions of subsections (1), (3) and (5) or any other request for information by the Central Bank.

(14) No person having an interest in a financial institution otherwise than as a depositor and no director, manager, secretary, employee or agent of a financial institution shall be eligible for appointment as auditor for such financial institution.

(15) Any person appointed as auditor of a financial institution who shall, after an appointment, acquire any interest in a financial institution otherwise than as a depositor, or becomes a director, manager, secretary, employee or agent of such financial institution shall immediately cease to be such auditor.

#### **Central Bank examination**

**19.** (1) The Central Bank shall examine, or cause an examination to be made of, every licensed financial institution from time to time or whenever in its judgment such examination is necessary or expedient in order to determine that the financial institution is in a sound financial condition and that the requirements of this Act have been complied with in the conduct of its business.

(2) For the purpose of determining the condition of a financial institution and its compliance with the provisions of this Act, the Central Bank may at any time examine or cause an examination to be made of any affiliate of the financial institution in Anguilla or abroad or any of the overseas offices to the same extent that an examination may be made of the financial institution.

(3) The Central Bank may assess a financial institution for the reasonable expenses of conducting an examination under subsections (1) and (2).

(4) The Central Bank shall forward copies of balance sheets, statements and reports on the results of any examination to the Minister and the financial institution.

#### **Disclosure and access to books and records by Central Bank examiner for examination**

**20.** (1) A licensed financial institution shall produce for the inspection of any examiner appointed by the Central Bank, at such time as the examiner specifies, all books, minutes, accounts, cash, securities, documents and vouchers relating to its business and the business of its affiliates as requested by the examiner for the purpose of this Act.

(2) If any books, minutes, accounts, cash, securities, documents and vouchers are not provided or information is not supplied in accordance with subsection (1), the defaulting financial institution or affiliate, or both commit an offence and each liable on summary conviction to a fine of \$50,000 and in the case of a continuing offence to a further penalty of \$1000 for each day on which the offence is continued after conviction thereof.

(3) If any information supplied or item produced is false in any material particular, the defaulting financial institution or affiliate or both commit an offence and each liable on summary conviction to a fine of \$50,000.

**Central Bank's powers and measures for preventing adverse consequences**

**21.** (1) If in the opinion of the Central Bank an examination authorised under section 19 shows that the financial institution concerned or any affiliate, director, officer, employee, or significant shareholder of the financial institution is –

- (a) engaging in unsafe or unsound practices in conducting the business of the institution; or
- (b) violating any law, regulation, or guideline issued by the Central Bank, to which the institution or person is subject,

or the Central Bank has reasonable cause to believe that the practices or violations referred to in paragraphs (a) and (b) are likely to occur, the Central Bank may take 1 or more of the following measures–

- (i) issue a written warning as it considers necessary;
- (ii) conclude a written agreement with the defaulting financial institution providing for a programme of remedial action;
- (iii) issue a cease and desist order that requires the defaulting financial institution, the affiliate or the person responsible for the management of the financial institution to cease and desist from the practice or violations specified in the order; or
- (iv) issue such directions as it considers necessary in relation to the persons comprising the management of the financial institution.

(2) Where in the opinion of the Central Bank any of the circumstance specified in subsection (1) exists, the Central Bank may after exhausting all the measures under subsection (1) recommend that the Minister –

- (a) restricts or varies any restriction of a licence; or
- (b) revoke the licence of the financial institution to do banking business pursuant to section 10.

(3) An agreement made under subparagraph (1)(ii) may include stipulations that require the financial institution to –

- (a) increase the paid-up share capital of an affiliate;
- (b) sell or otherwise dispose of an affiliate or part of its business;
- (c) make advances or grant credit facilities to an affiliate; or
- (d) make special provisions for any potential losses which in the opinion of the Central Bank, the affiliate is likely to incur where such affiliate has credit facilities with the financial institution.

(4) A cease or desist order issued under paragraph (1)(iii) may require that the defaulting financial institution take action to correct the condition resulting from any unsound practices or violation of any law, regulation or guideline.

(5) Any person served with a cease and desist order under paragraph (1)(iii) may apply to the High Court for an order setting aside, varying, or suspending the operation of the cease and desist order.

(6) A licensed financial institution, its affiliate, or any director, officer, employee or significant shareholder of a licensed financial institution who fails to comply with any requirement or contravenes any prohibition imposed on the financial institution under this section commits an offence and is liable on summary conviction –

- (a) in the case of the licensed financial institution or its affiliate, to a fine of \$100,000 and in the case of a continuing offence, to a further penalty of \$10,000 for each day on which the offence is continued after conviction thereof;
- (b) in the case of an individual, to a fine of \$50,000 and in the case of a continuing offence, to a further penalty of \$5,000 for each day on which the offence is continued after conviction thereof.

(7) Any order, warning, agreement, or direction issued by the Central Bank under subsection (1) shall be deemed to take effect from the date specified therein.

### **Fixed penalties**

**22.** (1) This section shall apply to the offences specified in Schedule 3.

(2) Where circumstances giving rise to a reasonable belief that a person has committed an offence to which this section applies exist, the Central Bank may give a notice in writing in the form prescribed in Schedule 4 offering that person the opportunity to discharge any liability to conviction for that offence by payment of a fixed penalty under this section.

(3) No person shall be liable to be convicted of the offence if the fixed penalty is paid in accordance with this section and the requirement in respect of which the offence was committed is complied with before the expiration of 15 days following the date of the notice referred to in subsection (2) or such longer period (if any) as may be specified in that notice or before the date on which proceedings are begun, whichever event last occurs.

(4) Where a person is given notice under this section in respect of an offence, proceedings shall not be taken against the person for that offence until the end of the 15 days following the date of the notice or such longer period (if any) as may have been specified therein.

(5) Payment of a fixed penalty under this section shall be made to the Accountant General and in any proceedings a certificate that payment of a fixed penalty was or was not made to the Accountant General by a date specified in the certificate shall, if the certificate purports to be signed by the Accountant General, be admissible as evidence of the facts stated therein.

(6) A notice under subsection (2) shall –

- (a) specify the offence alleged,
- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation, and
- (c) state the period (whether 15 days or a longer period) during which, by virtue of subsection (4) proceedings will not be taken for the offence.

(7) The fixed penalty for the offences specified in Schedule 3 shall be the penalty specified therein in relation to such offences.

(8) In any proceedings for an offence to which this subsection applies, no reference shall be made after the conviction of the accused to the giving of any notice under this section or to the payment or non-payment of a fixed penalty thereunder unless in the course of the proceedings or in some document which is before the court in connection with the proceedings, reference has been made by or on behalf of the accused to the giving of such a notice, or, as the case may be, to such payment.

(9) In this section, "proceedings" means any criminal proceedings in respect of the act or omission constituting the offence specified in a notice issued and served pursuant to subsection (2) and "convicted" shall be construed accordingly.

(10) The Minister may, by regulations, make provision as to any matter incidental to the operation of this section, and in particular, any such regulations may –

- (a) prescribe the nature of the information to be furnished to the Accountant General along with any payment;
- (b) prescribe the arrangements for the Accountant General to furnish to the Central Bank, information with regard to any payment pursuant to a notice under this section;
- (c) amend Schedule 3;
- (d) amend Schedule 4.

### **Submission of returns and production of information as required by the Central Bank**

**23.** (1) Every financial institution shall furnish to the Central Bank at such time and in such manner as the Central Bank may prescribe, such information and data as the Central Bank may require for the proper discharge of its functions and responsibilities.

(2) Without limiting the generality of subsection (1), every financial institution shall, at the request of the Central Bank, in relation to that financial institution's operations in the territory of a Participating Government, submit to the Central Bank in such form as the Central Bank may from time to time approve –

- (a) not later than 14 days after the last day of the month to which it relates, a monthly statement of assets and liabilities at the end of each month;
- (b) not later than 14 days after the end of the quarter to which it relates, a quarterly return providing an analysis of customers' liabilities to the financial institution in respect of loans, advances and other assets of the financial institution at the end of each quarter;
- (c) not later than 14 days after the end of the quarter to which it relates, a quarterly return providing information on all exposures that equal to or are in excess of 10% of the unimpaired capital and reserves of the financial institution;
- (d) within such period as the Central Bank may determine, such other returns as may be required.

(3) All statements and returns submitted by a financial institution under subsection (2) and any data or information submitted by a financial institution under subsection (1) or (2), shall be regarded by the Central Bank as secret:

Provided that the Central Bank may –

- (a) provide international financial institutions, foreign banking supervisors and any other local or foreign authority responsible for the supervision or regulation of a financial institution, or for maintaining the integrity of the financial system with such statements, returns, data and information on a reciprocal basis and subject to an agreement for confidentiality and a Memorandum of Understanding; and
- (b) prepare and publish consolidated statements relating to the territories of the Participating Governments individually or collectively, aggregating the figures furnished in the returns.

(4) At the request of a Participating Government, the Central Bank shall arrange for that Participating Government to be supplied with a copy of any statement or return furnished by a financial institution under subsection (2) in relation to its operation in the territory of that Participating Government and all statements and returns so supplied shall be regarded by the Participating Government as secret.

(5) The Central Bank may require a financial institution to disclose the basis for any of its charges and fees and such disclosure shall be made within such period and in such manner as the Central Bank may require.

(6) The Central Bank may require a financial institution to submit such further information and data relating to the matters described in subsection (2) or (5), and may from time to time call for any other information and data which it may require for the purposes of this Act from any financial institution about its operations and those of its affiliates in Anguilla; or from a local financial institution about its operations and those of its affiliates abroad, and such further information and data shall be submitted within such period and in such manner as the Central Bank may require.

(7) Any financial institution which contravenes subsection (2) or (6) commits an offence and is liable on summary conviction to a fine of \$5,000 for each contravention.

#### **Extension of period for providing information**

**24.** At the request of a financial institution, the Central Bank may extend, from time to time, any period within which such financial institution is in accordance with the provisions of this Act, obliged to furnish any document or information.

#### **Restriction on advertising likely to mislead the public**

**25.** (1) No licensed financial institution shall engage in advertising practices which are likely to mislead the public concerning –

- (a) the relation of the financial institution to the Central Bank or any department or official of the Central Bank;
- (b) the interest rate paid on deposits or charged on credit;
- (c) the insured or guaranteed status of deposits or other liabilities of the financial institution;
- (d) the financial condition of the financial institution.

(2) The Minister, after consultation with the Central Bank, may issue an order to a financial institution as is necessary, to secure compliance with the provisions of subsection (1).

(3) Any financial institution which contravenes subsection (1) or an order issued under subsection (2) commits an offence and is liable on summary conviction to a fine of \$50,000 for each contravention.

#### PART 4

#### MISCELLANEOUS

#### **Minimum criteria for determining whether a person is fit and proper**

**26.** (1) Every person who is or is likely to be a director, controlling shareholder, or manager of the licensed financial institution must be a fit and proper person to hold the particular position which he holds or is likely to hold.

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to –

- (a) the person's probity, competence and soundness of judgment for fulfilling the responsibilities of that position;
- (b) the diligence with which that person is fulfilling or likely to fulfil the responsibilities of that position; and
- (c) whether the interests of depositors or potential depositors of the licensed financial institution are, or are likely to be, in any way threatened by that person holding that position.

(3) Without prejudice to the generality of subsections (1) and (2), regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that the person has –

- (a) committed an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under an enactment designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of a discharged or undischarged bankrupt;
- (c) engaged in any business practices appearing to the board to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on that person's method of conducting business;
- (d) an employment record which leads the board to believe that the person carried out an act of impropriety in the handling of his employer's business; or
- (e) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.

#### **Removal and disqualification of Director**

**27.** (1) Any person who is a director, manager or other officer concerned with the management of a financial institution shall cease to hold office –

- (a) upon notification by the board of a finding by  $\frac{2}{3}$  of its members –

- (i) of that person's permanent incapacity or serious neglect of, or misconduct in, office, or
  - (ii) that the person is not a fit and proper person in accordance with the criteria specified in paragraphs 26(3)(a) and (b).
- (b) if that person –
- (i) is or was convicted of an offence under this Act,
  - (ii) has been declared bankrupt or is compounding with, or suspending payment to, that person's creditors, or
  - (iii) has been convicted of any offence involving fraud, dishonesty, or violence.
- (2) Any person who has been –
- (a) sentenced for an offence involving a term of imprisonment of not less than 6 months or in default of the payment to a fine;
  - (b) a director or manager of a company which has been wound-up by a court or has been placed in receivership;
  - (c) a director or manager of, or directly or indirectly concerned in the management of, a former licensed financial institution, the licence of which has been revoked, unless such revocation was due to its –
    - (i) amalgamation with another licensed financial institution or company, or
    - (ii) voluntary winding up;

shall not, without the express approval of the Minister after consultation with the Central Bank, act or continue to act as a director or manager, or be directly or indirectly concerned in any way in the management, of any licensed financial institution.

(3) A person who contravenes any provision of subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of 1 year or to both such fine and imprisonment and in the case of a continuing offence to a further penalty of \$500 for each day on which the offence is continued after conviction thereof.

#### **Declaration and registration of related interest and conflict of interest by Director**

**28.** (1) Every director of a financial institution who is in any manner whatsoever, directly or indirectly interested in loans, advances, contracts or transactions from that financial institution shall as soon as possible declare the nature of his interest to the board or other body responsible for the management of that institution and shall cause such declaration to be circulated immediately to all the members of the board.

(2) For the purpose of subsection (1), a declaration by a director of a financial institution to the effect that the director is to be regarded as interested in any loan, advance, contract or other transaction, which may, after the date of the notice, be made by the financial institution shall be considered as constituting a sufficient declaration of interest in relation to any loan, advance, contract or other transaction so made if –

- (a) the declaration specifies the nature and extent of the interest of the director; and
- (b) the interest of the director is not different in nature from, or greater in extent than, the nature and extent so specified in such notice at the time any advance is made.

(3) Every director of a financial institution who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as such director in Anguilla shall declare the fact, nature, character and extent of the conflict at the first meeting of the board held –

- (a) after assuming office as a director of the financial institution; or
- (b) if already a director, after he commences to hold office or to possess the property.

(4) Every director of a financial institution who qualifies as an interested director under the provisions of this section shall cause to be brought up and read any declaration made under subsection (1) or (3) at the next meeting of the board after it is given, and shall cause to be recorded any declaration made under this section in the minutes of the meeting at which it was made or at which it was brought up or read.

(5) A director who contravenes subsection (1) or (3) commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of 1 year or to both such fine and imprisonment.

#### **Responsibility for deceiving statements and obstruction of audit or authorized examination**

**29.** Any director, manager, secretary, employee or agent of a financial institution who –

- (a) with intent to deceive –
  - (i) makes any false or misleading statement or entry in any book, account, report or statement of the financial institution,
  - (ii) omits any statement or entry that should be made in any book, account, report or statement of the financial institution; or
- (b) obstructs or endeavours to obstruct –
  - (i) the proper performance by an auditor of his duties in accordance with the provisions of this Act, or
  - (ii) a lawful examination of the financial institution by a duly authorised examiner appointed by the Central Bank;

commits an offence and is liable on summary conviction to a fine of \$15,000 or to imprisonment for a term of 2 years or to both such fine and imprisonment.

#### **Management's duty of compliance with the requirements of the laws**

**30.** Any director, manager, secretary or other officer concerned in the management of a financial institution who -

- (a) fails to take all reasonable steps to secure compliance by the financial institution with the requirements of this Act; or

(b) is implicated in the commission of an offence under section 25; commits an offence and is liable on summary conviction to a fine of \$15,000 or to imprisonment for a term of 2 years or to both such fine and imprisonment.

### **Liability of directors, officers and partners**

**31.** (1) Where an offence under this Act has been committed by a body of persons which is –

- (a) a body corporate, society or other body of persons, every person who at the time of the commission of the offence was a director, manager, secretary or other officer of the body corporate, society or other body of persons as well as that body corporate, society or other body of persons commits the offence;
- (b) a partnership or firm, every partner of the partnership or firm as well as that partnership or firm commits the offence,

and each liable to be proceeded against and punished accordingly.

(2) No person referred to in subsection (1) shall be found guilty of an offence under that subsection where the person proves, that –

- (a) the act constituting the offence took place without his knowledge or consent; or
- (b) he exercised all due diligence to prevent the commission of the offence.

### **Secrecy of Information**

**32.** (1) No person who has acquired knowledge in his capacity as director, manager, secretary, officer, employee or agent of any financial institution or as its auditor or receiver or official liquidator or as director, officer, employee or agent of the Central Bank, shall disclose to any person or governmental authority the identity, assets, liabilities, transactions or other information in respect of a depositor or customer of a financial institution except –

- (a) with the written authorization of the depositor or customer or of his heirs or personal representatives;
- (b) for the purpose of the performance of his duties within the scope of his employment in conformity with the provisions of this Act;
- (c) when lawfully required to make disclosure by any court of competent jurisdiction within Anguilla; or
- (d) under the provisions of any law of Anguilla or agreement among the Participating Governments.

(2) Except that nothing herein shall prevent -

- (a) a financial institution from providing to a person, upon a legitimate business request, a general credit rating, a summary of which will be provided to the depositor or customer upon request;
- (b) the Central Bank from—

- (i) sharing any information received or any report prepared by the Central Bank in the performance of its duties under this Act, with any local or foreign authority responsible for the supervision or regulation of a financial institution, or for maintaining the integrity of the financial system; or
- (ii) providing access to any officer of a foreign authority responsible for the supervision or regulation of financial institutions in order to assess the safety and soundness of a foreign financial institution,

on a reciprocal basis, and subject to an agreement of confidentiality and a Memorandum of Understanding between the Central Bank and such foreign authority.

### **Working days of financial institutions**

**33.** (1) All financial institutions in Anguilla shall remain open for business during such hours and on such days, except public holidays, as may be agreed to by the Minister, after consultation with the Central Bank.

(2) Any obligation which can only be fulfilled at a financial institution which would fall due on any day or at any particular hour on which the financial institution is not open for business under subsection (1) shall be deemed to fall due on the first working day thereafter.

(3) The Minister after consultation with the Central Bank, may, by regulations published in the *Gazette*, declare any day on which no financial institution may be open for business, without regard to whether or not such day is or is not also a public holiday.

### **Regulations**

**34.** The Minister, upon the recommendation of the Central Bank, may make such Regulations as may be required from time to time for giving effect to the provisions of this Act, and, without limiting the generality of the foregoing, may make Regulations respecting the –

- (a) reports or other information to be supplied by persons to whom licences have been granted and any other matter associated with their use;
- (b) records to be kept, returns and reports to be made to the Central Bank or the Minister by persons who are appointed as auditors under this Act;
- (c) character of the records to be kept by any financial institution and the form of the reports and returns to be made by the financial institution and fixing the times when such reports and returns shall be made;
- (d) such forms as may be necessary for the administration of this Act;
- (e) penalties that may be imposed for violations of Regulations made under this Act and may also prescribe the penalties to be imposed on summary conviction, but no such penalty shall exceed a fine of \$10,000 or of a term of imprisonment of 12 months;
- (f) capital adequacy requirements and capital ratios to be maintained by a licensed financial institution.

**Compounding of offences**

**35.** (1) Subject to this section, the Minister on consultation with the Central Bank may, if the Minister is satisfied that any person has committed an offence under this Act, or under any regulations made under this Act, compound the offence, by accepting from the person a sum of money not exceeding \$5,000.

(2) The power conferred by subsection (1) shall only be exercised where the person admits that he has committed the offence and agrees in writing to the offence being dealt with under this section.

(3) If any proceedings are brought against a person for an offence under this Act or under any Regulations made under this Act, it shall be a defence if the person proves that the offence with which he is charged has been compounded under this section.

(4) Any sum of money received under this section shall be dealt with as if the sum of money were a fine imposed by a court.

**Prudential guidelines**

**36.** The Central Bank may issue prudential guidelines and related orders in administering the provisions of this Act to a financial institution and its affiliate, and without limiting the generality of the foregoing, may issue guidelines respecting –

- (a) policies, practices and procedures for evaluating –
  - (i) the quality of assets,
  - (ii) the adequacy of loan loss provisions, and
  - (iii) loan loss reserves;
- (b) a system of loan classification, provisioning and write-offs;
- (c) the method of valuation of collateral;
- (d) rules for non-accrual of income on non-performing or impaired assets;
- (e) the suspension and reversal of accrued interest;
- (f) policies, procedures and systems for identifying, monitoring and controlling country risk, transfer risk, market risk, liquidity risk, interest rate risk, operational risk and such other risks as the Central Bank shall specify;
- (g) liquidity requirements and ratios;
- (h) treatment of assets and investments;
- (i) treatment of loans and other credit facilities;
- (j) related party transactions;
- (k) corporate governance;
- (l) auditors;

- (m) disclosure; and
- (n) anti money laundering and combating the financing of terrorism matters.

## PART 5

### RECEIVERSHIP, LIQUIDATION AND REORGANISATION

#### **Voluntary liquidation**

**37.** A voluntary liquidation of a financial institution shall be subject to the authorization of the Minister, upon the recommendation of the Central Bank, and the Central Bank shall so recommend when

—

- (a) the financial institution is solvent and has sufficient liquid assets to repay its depositors and other creditors without delay; and
- (b) the liquidation has been properly approved by the members or shareholders of the financial institution.

#### **Cessation of Business operations**

**38.** When a financial institution has received the authorisation of the Minister, the financial institution shall—

- (a) immediately cease to carry on business, retaining only the powers necessary to effect an orderly liquidation;
- (b) repay its depositors and other creditors; and
- (c) wind up all operations undertaken prior to the receipt of the authorisation.

#### **Notice to Depositors of voluntary liquidation**

**39.** (1) Within 30 days from the receipt of authorisation referred to in section 37, a notice of voluntary liquidation setting out such information as the Minister, upon the recommendation of the Central Bank may determine, shall be sent by mail to all depositors, other creditors and persons otherwise entitled to the funds or property held by the financial institution as a trustee, lessor of a safe deposit box or bailee.

(2) The notice shall be posted conspicuously on the premises of each office and branch of the financial institution and shall be given such publication as the Minister, upon the recommendation of the Central Bank, shall direct.

(3) The Minister, upon the recommendation of the Central Bank, may exempt the mailing of such notice to specified persons upon a showing of cause therefor by the financial institution.

#### **Rights of depositors and creditors in voluntary liquidation**

**40.** (1) The authorisation to go into voluntary liquidation shall not prejudice the rights of a depositor or other creditor to payment in full of his claim nor the right of an owner of funds or other property held by the financial institution to the return thereof.

(2) All lawful claims shall be paid promptly and all funds and other property held by the financial institution shall be returned to their owners within such maximum period as the Minister, upon the recommendation of the Central Bank, shall by regulations prescribe.

**Distribution of assets**

**41.** (1) When the Minister, after consultation with the Central Bank, is satisfied that the financial institution has discharged all the obligations referred to in section 40, it shall be struck from the list of licensed financial institutions and the remainder of its assets shall be distributed among its shareholders in proportion to their respective rights, but no such distribution shall be made before –

- (a) all claims of depositors and other creditors have been paid or, in the case of a disputed claim, before the financial institution has turned over to the Central Bank as agent for the Minister, sufficient funds to meet any liability that may be determined by a court of competent jurisdiction;
- (b) any funds payable to a depositor or other creditor who has not claimed them have been turned over to the Central Bank, as agent for the Minister;
- (c) any other funds and property held by the financial institution that could not be returned to the owners thereof in accordance with the provisions of section 40 have been transferred, to the Central Bank as agent for the Minister, together with the inventories pertaining thereto.

(2) Any funds or property not claimed within a period of 15 years following a transfer to the Central Bank, as agent for the Minister, shall be presumed to be abandoned property for purposes of section 60.

**Insufficiency of assets in discharge of obligations in voluntary liquidation**

**42.** If the assets of a financial institution whose voluntary liquidation has been authorised, will not be sufficient for the full discharge of all its obligations, or completion of the liquidation is unduly delayed, the Minister, after consultation with the Central Bank, may cause the commencement of proceedings leading to its compulsory liquidation or reorganisation in conformity with the procedures set out in sections 43 to 59.

**Appointment of receiver**

**43.** The Minister, acting upon the recommendation of the Central Bank, may appoint a receiver for any financial institution –

- (a) whose capital is impaired or whose condition is otherwise unsound;
- (b) whose business is being conducted in an unlawful or imprudent manner;
- (c) when the continuation of its activities is detrimental to the interests of its depositors;
- (d) that refuses to submit its accounting records and its operations for examination as provided for in section 19 or has otherwise obstructed such examination;
- (e) whose licence has been revoked in accordance with section 10 or section 21(2); or
- (f) that is carrying on banking business without a licence.

**Notice of appointment of receiver**

**44.** When appointing a receiver, the Minister shall post on the premises of the financial institution a notice announcing the appointment and the time when such appointment shall be deemed to take effect.

This time shall not be earlier than the posting of the notice. A copy of the notice shall be transmitted to the Registrar of the High Court.

#### **Institution of proceedings to have Receiver's appointment lifted**

**45.** Within a period of 10 days after the date on which the Minister has appointed a receiver, the financial institution may institute proceedings in the High Court to have this appointment revoked.

#### **Period of obligation to commence compulsory liquidation or reorganisation**

**46.** (1) Within a period of 60 days counting from the date of the appointment of the receiver, the Minister, after consultation with the Central Bank, shall be obliged to commence proceedings leading to –

- (a) compulsory liquidation in accordance with section 47; or
- (b) reorganisation in accordance with section 52,

of a financial institution for which the Minister has appointed a receiver.

(2) In the event that proceedings under subsection (1) are not commenced within that period, and the Minister has not sooner elected to terminate his appointment, the appointment of the receiver shall immediately terminate.

#### **Compulsory liquidation, reorganization proceedings**

**47.** (1) The Minister, after consultation with the Central Bank, may apply to the High Court to order the compulsory liquidation or reorganisation of the financial institution for which a receiver has been appointed under section 43.

(2) Upon an application under subsection (1), the High Court may make an order requiring the financial institution and any person having an interest in the financial institution or claim against it to show cause, at a time and place specified in the order which must not be less than 30 days after the date of the order, why the financial institution should not be liquidated and dissolved.

(3) A copy of an order made under subsection (2) must be –

- (a) published in at least 2 issues of the *Gazette* and in a newspaper of general circulation in Anguilla as directed in the order before the time appointed for the hearing; and
- (b) served upon each person named in the order.

(4) Publication and service of an order under this section shall be effected by the financial institution or by such other person and in such manner as the High Court may order.

#### **Powers of the High Court**

**48.** (1) The High Court may, make any order it thinks fit, including an order –

- (a) for the compulsory liquidation of the financial institution;
- (b) refusing the compulsory liquidation and terminating the appointment of the receiver; and
- (c) for the reorganisation of the financial institution.

(2) Where the High Court orders either the compulsory liquidation or the reorganisation of a financial institution, it shall upon delivering its decision simultaneously order the appointment of the

receiver to be terminated and appoint an official liquidator who will be responsible to the High Court to direct the compulsory liquidation or, as the case may be, the reorganisation of the financial institution.

(3) As soon as possible after his appointment, the official liquidator shall make an inventory of the assets of the financial institution and transmit a copy thereof to the Registrar of the High Court.

#### **Powers of receiver, official liquidator**

**49.** (1) After his appointment by the Minister, the receiver and, subsequent to his appointment by the High Court, the official liquidator shall be vested with the full and exclusive power of management and control of that financial institution in Anguilla, including the power to –

- (a) continue or discontinue its operations;
- (b) stop or limit the payment of its obligations;
- (c) employ any necessary staff and to terminate their employment;
- (d) execute any instrument in the name of the financial institution;
- (e) initiate, defend and conduct in its name any action or proceeding to which the financial institution may be party;
- (f) restore the financial institution to its board; and
- (g) reorganise or liquidate the financial institution in accordance with the provisions of this Act.

(2) The actions of the receiver or, as the case may be, the official liquidator shall be promptly notified to the Central Bank.

#### **Term extensions and attachment and transfer of assets to be void**

**50.** When the Minister has appointed a receiver for a financial institution in accordance with section 43 and thereafter when the official liquidator has been appointed by the High Court –

- (a) any term, statutory, contractual or otherwise, on the expiration of which a claim or right to the financial institution would expire or be extinguished shall be extended by 6 months from the date of the appointment of the receiver;
- (b) any attachment or lien except a lien registered prior to the appointment of the receiver for the financial institution shall be vacated and no attachment or lien except a lien created by the receiver or the official liquidator in the application of the provisions of this Part shall attach to any of the property or assets of the financial institution so long as such possession continues;
- (c) any transfer of an asset of the financial institution made after or in contemplation of its insolvency or the appointment of the receiver with intent to effect a preference shall be void.

#### **Execution against assets of an official institution**

**51.** No execution shall be returned against the assets of a financial institution for which a receiver or an official liquidator has been appointed except an execution effected pursuant to a judgment rendered

prior to the date of the appointment of the receiver or official liquidator for an amount not exceeding \$1000.

### **Reorganisation proceedings**

**52.** (1) If the High Court decides to reorganise the financial institution, whether pursuant to a request by the Minister after consultation with the Central Bank, or by virtue of its authority under section 48, the official liquidator shall, after granting a hearing to all interested parties, send a copy of the reorganisation plan to all depositors and other creditors who will not receive full payment of their claims under the reorganisation plan.

(2) The copy of the reorganisation plan shall be accompanied by a notice stating that if the reorganisation plan is not refused in writing within a period of 30 days –

- (a) by persons holding at least a  $\frac{1}{3}$  of the aggregate amount of deposit and other liabilities in Anguilla;
- (b) if where the subject of the plan is a local institution, by members of the financial institution owning at least a  $\frac{1}{3}$  of its issued capital, or
- (c) if within the same period of 30 days the High Court does not order a stay of proceedings,

the official liquidator shall proceed to carry out the reorganisation plan.

(3) The official liquidator may, subject to confirmation by the High Court to be obtained before the commencement of the 30 day period, effect service of the reorganisation plan and the notice shall be published in the *Gazette*.

### **Reorganisation provisions**

**53.** The application of any reorganisation plan under the provisions of this Act is subject to the following conditions –

- (a) the reorganisation plan shall be equitable to all classes of depositors, other creditors and shareholders;
- (b) the reorganisation plan shall provide for bringing in new funds so as to establish adequate ratios between -
  - (i) capital and deposits, and
  - (ii) liquid assets and deposits; and
- (c) the reorganisation plan shall provide for the removal of any director, manager, secretary, officer or employee responsible for the circumstances which led to the appointment of a receiver for the financial institution and subsequently of an official liquidator in accordance with sections 43 and 48(2) respectively.

### **Petition for modification or revision of reorganisation**

**54.** When in the course of reorganisation it appears that circumstances render the reorganization plan inequitable or its execution undesirable, the official liquidator may apply to the High Court to –

- (a) modify the reorganization plan; or

- (b) order the compulsory liquidation of the financial institution in accordance with the provisions of section 48.

### **Preferential and other claims**

**55.** (1) Notwithstanding any law to the contrary, in a compulsory liquidation of a financial institution, the following claims shall have priority against the general assets of the financial institution as follows –

- (a) necessary and reasonable expenses incurred by the receiver and subsequently by the official liquidator;
- (b) wages and salaries of officers and employees of the financial institution in liquidation for a 6 months period preceding the date of appointment of the receiver for the financial institution;
- (c) social security and other pension funds contributions for officers and employees due but not paid;
- (d) balances of \$300 and less in saving and time deposits;
- (e) other deposits;
- (f) taxes, rates and deposits owed to the Government of Anguilla and local authorities concerned;
- (g) fees and assessments due to the Central Bank.

(2) After payment of all other claims filed, with interest at a rate to be fixed by the official liquidator with the approval of the High Court, any remaining claims which were not filed within the prescribed time shall be paid.

(3) If the amount available for any class is insufficient to provide payment in full, that amount shall be distributed *pro rata* among the members of the class.

### **Unclaimed funds**

**56.** Unclaimed funds remaining after the final distribution made by the official liquidator which are not subject to other provisions of this Act shall be deposited by the official liquidator in the Central Bank for 15 years, unless claimed by the owner before the expiration of that period, and on the expiration of that period the funds remaining unclaimed shall be presumed to be abandoned property for the purposes of section 60.

### **Shareholders rights on remaining assets**

**57.** Any assets remaining after all claims have been paid shall be distributed among all the shareholders in proportion to their participation.

### **Safe deposits and Unclaimed property**

**58.** Any safe deposit boxes, the contents of which have not been withdrawn before a date specified by the official liquidator, shall be opened by the official liquidator and their contents and any unclaimed property held by the financial institution as bailee, together with inventories pertaining thereto, shall be deposited by the official liquidator in the Central Bank there to be kept for 15 years, unless claimed by the owner before the expiration of that period. On the expiration of that time all funds and property not claimed shall be presumed to be abandoned for the purposes of section 60.

**Receiver's audited accounts, striking the name of the institution and conclusion of liquidation**

**59.** (1) When all assets have been distributed in accordance with the provisions of this Act, the official liquidator shall render an audited account to the High Court.

(2) Upon approval of this account by the High Court, the name of the financial institution shall be struck from the list of financial institutions in Anguilla, the Registrar of the High Court shall be notified and the official liquidator shall be relieved of any liability in connection with the liquidation. The liquidation and dissolution of the financial institution shall then be declared by the High Court and the Registrar of the High Court shall proceed to terminate the judicial existence of the financial institution.

## PART 6

## ABANDONED PROPERTY

**Abandoned Property**

**60.** (1) Subject to subsection (2), the items in paragraphs (a), (b), (c) and (d) which are held or owing by a financial institution shall be presumed to be abandoned—

- (a) any general deposit (demand, savings or matured time deposit) made in Anguilla with a financial institution, together with any interest or dividend, but excluding any lawful charges thereon;
- (b) any funds paid in Anguilla toward the purchase of shares or other interests in a financial institution, together with any interest or dividend, but excluding any lawful charges thereon;
- (c) any sum payable on cheques certified in Anguilla or on written instruments issued in Anguilla on which a financial institution is directly liable;
- (d) any contents of a safe deposit box on which the lease or rental has expired and concerning which notice of the intention of the financial institution to deliver the contents thereof into the custody of the Central Bank has been sent by registered letter to the last known address of the lessee and to which the lessee has failed to respond within 1 year.

(2) The items enumerated in paragraphs (1)(a), (b) and (c) shall not be presumed to be abandoned if the owner has, within 15 years of the date of deposit, payment of funds or issuance of instruments, as the case may be —

- (a) increased or decreased the amount of the deposit or funds or presented the passbook or other record for the crediting of interest or dividends in respect of the items enumerated in paragraph (1) (a) or (b);
- (b) corresponded in writing with the financial institution concerning the items; or
- (c) otherwise indicated an interest in the items as evidenced by a memorandum concerning them written by a financial institution.

**Report, Publication and disposal of abandoned property**

**61.** (1) Every financial institution holding any of the items enumerated in section 60 shall within 90 days after the end of its financial year report such holdings to the Central Bank, and thereafter pay or deliver to the Central Bank all property presumed to be abandoned listed in the report in accordance with Regulations which the Minister, acting on the recommendation of the Central Bank shall make. Upon

paying or delivering such property into the custody of the Central Bank, a financial institution shall be relieved of all liability to the extent of the value of the property for any claim in respect thereof.

(2) Except with the approval of the Minister, acting on the recommendation of the Central Bank, on such terms and conditions as he may prescribe, no reduction in the amount of interest or dividends payable and no charges in excess of those made in respect of comparable active accounts shall be made by a financial institution either during the period of inactivity of the items set out in subsection 60 (1) or at the time payment and delivery of them under subsection (1) is required.

(3) Within 30 days after the end of its financial year but before the filing of the report to the Central Bank required by subsection (1), a financial institution shall publish in the *Gazette*, the name of the owner and particulars concerning the property and shall mail a notice to the owner at his last known address containing particulars concerning the property.

### **Sale and handling of proceeds of sale of abandoned property**

**62.** (1) A financial institution may sell at public sale all property, other than money, presumed to be abandoned after the expiration of 60 days from the later date of publication or mailing required by subsection 61 (3) following such advertisement of the sale as the Minister, acting on the recommendation of the Central Bank, may determine.

(2) Any purchaser shall receive title to the property free from all claims of the owner or prior holder and from all persons claiming through or under him.

(3) A financial institution shall deposit, with the Central Bank, the proceeds of the sale of property in accordance with subsection (1) less all reasonable costs incurred by it in connection with the sale, mailing of notices, and service as it may consider appropriate to assure the prompt payment of claims which may subsequently be made and approved by the Minister, acting on the recommendation of the Central Bank.

(4) Any property remaining unsold shall be delivered to the Central Bank and shall be disposed of by the Central Bank in such manner as the Minister may direct.

### **Claims on abandoned property**

**63.** (1) Any person claiming an interest in any property which has been paid to or delivered into the custody of the Central Bank or in the proceeds from the sale thereof may file a claim thereto with the Central Bank and, after an appropriate hearing, the decision of which shall be communicated to the claimant and made a public record, the Central Bank may deliver up the property or make payment.

(2) Any person aggrieved by a decision of the Central Bank may commence an action in the High Court to establish his claim within 30 days following the decision of the Central Bank.

### **Penalties**

**64.** Any financial institution which wilfully fails to file the report or to pay or deliver property presumed to be abandoned into the custody of the Central Bank in accordance with subsection 61 (1), 62 (3) or (4) commits an offence, and the financial institution and each of its directors are liable on summary conviction to a fine of \$1000 or to imprisonment for a term of 3 months or to both such fine and imprisonment.

## PART 7

## TRANSFER OF BANKING BUSINESS

**Banking business vesting order**

**65.** (1) Where an agreement has been entered into for the acquisition by a financial institution (herein referred to as the "transferee financial institution") of the undertaking of another financial institution, whether or not a financial institution to which the provisions of this Act apply (herein referred to as the "transferor financial institution") the transferor financial institution may, for the purpose of effecting the transfer to, and the vesting in, the transferee financial institution of the undertaking, make a written application to the Minister, notice of which shall be published in the *Gazette* in any case where the Minister so directs.

(2) Upon the making of an application under subsection (1), the Minister shall request the Central Bank to investigate and report on the application including in particular the circumstances leading to the proposed transfer, the ability of the transferee to discharge its obligations under the transfer and the effect, which the transfer is likely to have on the banking services available to the public.

(3) On receipt of the report from the Central Bank, the Minister may, if he thinks fit, make an order (in this Part called a "banking business vesting order") transferring to and vesting in the transferee financial institution the undertaking, as from the date specified therein, and on the making of such an order, all such existing property, rights, liabilities and obligations as are intended by the agreement to be transferred and vested shall, by virtue of this Act, and without further assurance be transferred to, and shall vest in, the transferee financial institution to the intent that such financial institution shall succeed to the whole or such part of the undertaking of the transferor financial institution as is contemplated by the agreement.

(4) No transfer or vesting effected by a banking business vesting order shall –

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

(5) Notwithstanding anything contained in any enactment to the contrary, a banking business vesting order may in the discretion of the Minister for the purposes of corporation tax, contain provisions respecting –

- (a) the carry forward; and
- (b) the set off,

by the transferee financial institution of such of the losses of the transferor financial institution as may be specified in the order as if the undertaking of the transferor financial institution had not been permanently discontinued on the date specified in the order and a new banking business had been then set up and commenced by the transferee financial institution.

**Supplementary provision as to transfers**

**66.** (1) Without prejudice to the generality of section 65, the effect of a banking business vesting order as regards the banking business thereby transferred is that on and from the date of transfer –

- (a) every existing contract to which the transferor financial institution was a party, whether in writing or not, has effect as if –
  - (i) the transferee financial institution had been a party thereto instead of the transferor financial institution,
  - (ii) for any reference (however worded and whether expressed or implied) to the transferor financial institution there were substituted as respects anything falling to be done on or after the date of the transfer, a reference to the transferee financial institution, and
  - (iii) any reference (however worded and whether express or implied) to the directors or to any director, officer, clerk or servant of the transferor financial institution were, as respect anything falling to be done on or after the date of transfer, a reference (as the case may require) to the directors of the transferee financial institution or to such director, officer, clerk or servant as the transferee financial institution may appoint, or in default of appointment, to the director, officer, clerk or servant of the transferee financial institution who corresponds as closely as may be to the first mentioned director, officer, clerk or servant;
- (b) any account between the transferor financial institution and a customer shall become an account between the transferee financial institution and that customer;
- (c) any existing instruction, direction, mandate, power of attorney or consent given to the transferor financial institution shall have effect as if given to the transferee financial institution;
- (d) any negotiable instrument or order for payment of money which is expressed to be drawn on, or given to, or accepted or endorsed by the transferor financial institution, or payable at any of its places of business, shall have effect as if it had been drawn on, or given to or accepted or endorsed by the transferee financial institution, or payable at the same place of business of the transferee financial institution;
- (e) any security transferred to the transferee financial institution by a banking business vesting order that immediately before the date of the transfer was held by the transferor financial institution as security for the payment or discharge of any debt or liability or obligation (whether present or future, actual or contingent) shall be held by, and be available to, the transferee financial institution as security for the payment or discharge of such debt or liability or obligation; and any such security which extends to future advances or liabilities shall, from the date of the transfer, be held by, and be available to, the transferee financial institution as security for future advances by, and future liabilities to, the transferee financial institution, in the same manner and in all respects as future advances by, or liabilities to, the transferor financial institution were secured thereby immediately before the date of the transfer;
- (f) any judgment or award obtained by or against the transferor financial institution and not fully satisfied before the date of the transfer shall be enforceable by or against the transferee financial institution;
- (g) unless the agreement by the parties to the transfer provides to the contrary, any officer, clerk, or servant employed by the transferor financial institution immediately before the date of the transfer shall become an officer, clerk or servant, as the case may be, of the transferee financial institution 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 financial institution respectively shall be deemed, for all purposes, to be a single continuing employment, save that no director, secretary or auditor of the transferor financial institution shall by virtue only of a banking business vesting order become a director, secretary or auditor, as the case may be, of the transferee financial institution.

(2) The provisions of subparagraphs (1)(a)(ii) and (1)(a)(iii) shall apply to –

- (a) any statutory provision;
- (b) any provision of any existing contract to which the transferor financial institution was not a party; and
- (c) any provision of any other existing document (not being a contract but including in particular a will),

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

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

- (a) as trustee or custodian trustee of any trust, deed, settlement, covenant, agreement or will, and whether originally so appointed or not, and whether appointed under hand or seal or by order of any 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 appointed by order of any court; or
- (e) in any other fiduciary capacity whatsoever,

shall, from the date of the transfer, be held by the transferee financial institution whether alone or jointly with such other person, in the same capacity upon the trusts, and with, and subject to, the powers, provisions, liabilities and obligations, applicable thereto respectively.

#### **Transfers to be subject to stamp duty**

**67.** The transfer of, and vesting in, the transferee financial institution of an undertaking by a banking business vesting order shall, unless exempted (either generally or in some particular case) by the banking business vesting order, be subject to the provisions of the Stamp Act, R.S.A. c. S55 as if the banking business vesting order was, in each of the cases in which the duty is imposed on the several instruments specified in the Schedule to the Stamp Act, R.S.A. c. S55 an instrument between party and party within the contemplation of the Stamp Act, R.S.A. c. S55.

## PART 8

## GENERAL

**Non-application of Aliens Land Holding Regulation Act**

**68.** The provisions of the Aliens Land Holding Regulation Act, R.S.A. c. A55 do not apply to financial institutions licensed under this Act.

**Repeal and Savings**

**69.** (1) The Banking Act, R.S.A. c. B10 (hereinafter referred to as “the former Act”) is hereby repealed.

(2) Notwithstanding subsection (1)—

- (a) any regulation or other subsidiary legislation made pursuant to the former Act, shall, if in force at the commencement of this Act, continue in force until replaced by any regulation, order, notice or other subsidiary legislation made under this Act; and
- (b) any act, decision or other matter carried out pursuant to the former Act shall be deemed to have been carried out under this Act;
- (c) any Banking Business Vesting Order made pursuant to the former Act shall be deemed to have been made under this Act.

**Citation and Commencement**

**70.** This Act may be cited as the Banking Act, 2005 and shall come into operation on such day as the Minister may, by notice published in the *Gazette*, appoint.

*Speaker*

Passed by the House of Assembly this 29<sup>th</sup> day of November, 2005

*Clerk of the House of Assembly*

**SCHEDULE 1**

(Section 4)

**DOCUMENTS AND OTHER INFORMATION REQUIRED  
IN ORDER TO OBTAIN A LICENCE UNDER SECTION 4 (1)**

In order to obtain a licence as a financial institution, a person shall submit the following –

- (a) authenticated copies of the instrument under which the applicant is organised;
- (b) a statement of the address of its head office, the name and address of every member of its board of directors;
- (c) a statement of the name, address, qualification and experience of its chief executive officer;
- (d) such financial data as the Minister may require;
- (e) full particulars of the business in which the applicant proposes to do business;
- (f) the locations of the principal and other places of business where the applicant proposes to do business;
- (g) an operating plan and documented internal controls system;
- (h) such other information as the Minister may require.

**SCHEDULE 2**

(Section 1)

**BUSINESS OF A FINANCIAL NATURE**

Business of a financial nature includes the following types of business –

<i>Class</i>	<i>Activities</i>
1. Finance House or Finance Company	
2. Credit Unions	Provision of basic savings (share accounts) for members and making loans to members.
3. Merchant Bank	
4. Mortgage Institutions	Mortgage lending
5. Trust Company	(a) Managing Trust Funds (b) Performing duties of trustees (c) Executor or administrator and attorney (d) Administration of Pension Funds (e) Mortgage lending.
6. Unit Trust	Providing facilities for the participation by persons as beneficiaries under a trust or other scheme, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatever
7. Credit card business	(a) Issuing payment, credit or charge cards and in co-operation with others including other financial institutions, operating a payment, credit or charge card plan.  (b) Providing financial services relating to future and contingent liabilities in relation to foreign exchange and commodities.
9. Securities business	Carrying on, within the meaning of the Securities Act, R.S.A. c. S13, the business of securities exchange, clearing agency, securities depository, securities registry, underwriting, broker-dealer, limited service broker, custodian, an investment adviser, or a management company or trustee or custodian of a collective investment scheme.

10. Insurance business

Carrying on the business of receiving proposals for or the issuing of policies of any class of insurance, or the collection or receipt of premiums on policies and the making of payments due under such policies, re-insurance, insurance underwriting, insurance brokerage, the issuing and carrying out of contracts to pay annuities, the effecting and carrying out of tontines.

**SCHEDULE 3**

(Section 22)

OFFENCES IN RESPECT OF WHICH LIABILITY TO CONVICTION MAY BE DISCHARGED  
BY PAYMENT OF A FIXED PENALTY

COLUMN 1 Section of Act	COLUMN 2 offence	COLUMN 3 Fixed Penalty
12(3)	Failure to maintain minimum Capital requirement	\$10, 000
15(5)	Breach of large exposure limits	\$2,000 for each exposure beyond limit
15(8)	Granting unsecured credit facilities without prior notification to the Central Bank and approval of the board	\$2,000 for each contravention
18(9)	Failure of financial institution to instruct external auditor to carryout additional duties at the request of the Central Bank	\$2000 for each failure
18(10)	Failure to present auditors report to annual shareholders meeting, Minister, and the Central Bank	\$500.00
23(7)	Failure to make returns under section 23 or making returns after the prescribed date	\$1,000 for each contravention

**SCHEDULE 4**

(Section 22)

## FORM 1

## NOTICE OF OPPORTUNITY TO DISCHARGE LIABILITY

The Eastern Caribbean Central Bank has reason to believe that [ insert name of bank ] has committed an offence under section      of the Banking Act, 2005 having [ state particulars of offence]; and hereby gives the [ insert name of bank ] the opportunity to discharge liability for this offence by payment of the sum of [ insert fixed penalty listed in Schedule 3 in words and figures] to the Accountant General on or before the      day of      , 20      and before that date no proceedings in respect of this offence will be taken.

---

Governor

Eastern Caribbean Central Bank