

DRAFT

November 2003

No. [] of [20[]

BANKING ACT
[TERRITORY]

AN ACT TO PROVIDE FOR REGULATING
BANKING BUSINESS

BANKING ACT, [20[]]

No. [] of [20[]]

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BANKING ACT

I Assent

[Governor/Governor-General]

[date]

[TERRITORY]

No. [...] of [20[]

AN ACT to provide for regulating banking business.

[]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly [and the Senate of [territory], and by the authority of the same, as follows:

PRELIMINARY

~~Short title and~~ **1.** ~~This Act may be cited as the Banking Act 20[] and shall~~

~~Commencement.~~ come into operation on such date as the (Minister) may, by Order published

in the *Gazette*, appoint.

~~Interpretation~~ **2.** ~~Interpretation~~ (Continuous)

No. [] of 1983

"Agreement" means the Agreement establishing the Eastern Caribbean Central Bank made on the 5th day of July, 1983, the text of which is set out in the Schedule to the Eastern Caribbean Central Bank Agreement Act, 1983;

"affiliate" in relation to a financial institution ("F") means
a company which is or has at any relevant time been
a holding company or subsidiary of F;
a subsidiary of a holding company of F; or
a holding company of a holding company or a
subsidiary of a subsidiary of F; or
any company over which F has control;
any company over which F and any person associated with F
has control;
any company which has common ownership with F.
any company which has the same beneficial owner and share
common management and interlinked businesses with F;

"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 Order 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 -

- (i) the acceptance of monetary deposits which are repayable on demand or after notice or any similar operation;
- (ii) 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 for the risk of the customer; and

includes -

any other activity recognised by the Central Bank as 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 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;

a company in which the family group indicated in paragraph (a) has control;

a group of companies which is under a common control;

a group of persons in which the credit worthiness, ability to generate funds or the future viability of each, depends on one or other member of the group;

a group of persons in which one member has power directly or indirectly to control the other members;

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 II but does not include banking business;

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

"connected" or "related" means where the interest of two or more persons or groups of persons are so interrelated that they should be considered as a single unit or borrower group;

"control" means the ability of a person to secure, through voting rights or power in a licenced financial institution or other company or by an agreement or other powers conferred by the bye-laws, articles of association or other document regulating the operations of the licenced financial institution or other company, that the business and affairs of the licenced financial institution or other company are conducted in accordance with the wishes of that person;

"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;

"financial group" means in relation to a financial institution, 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 () shall be deemed to be one financial institution;

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

"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 ();

"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 ();

"principal place of business" means, in relation to -

- (a) a local financial institution its principal office in (), and
- (b) a foreign financial institution 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 licenced 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 advances or credit facilities granted without security; or 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.

PART I LICENCES

Requirement of Licence. ~~3. (1) A person shall not carry on banking business in ()~~
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 () shall be deemed to have been granted a licence under section 5.

(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 () shall, before commencing such business, apply for a licence under the provisions of section 5.

(5) Any person who contravenes the provisions of subsections (1) and (4) commits an offence and is liable on summary conviction:

(a) in the case of a **financial institution**, to a fine of five hundred thousand dollars, and in the case of a continuing offence, to a further penalty of five thousand dollars 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 two hundred and fifty thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; and in the case of a continuing offence, to a further penalty of two thousand, five hundred dollars for each day on which the offence is continued after conviction thereof.

Examination of books of person carrying on banking business without a licence.

- 4. (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 subsection (1) or (4) of section 3 is to be found on any premises in (),and the Central Bank after consultation with the Minister lay information on oath to a Magistrate, it shall be lawful for such Magistrate, by special 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 subsection 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.

Provided that any such warrant may authorize the detention of the relevant documents for a period not exceeding 30 days and shall authorize the officer or

officers to make copies of the relevant documents and of the Central Bank to retain copies of the relevant documents.

(2) 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.

(3) 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 not exceeding five thousand dollars or imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(4) Without prejudice to section 3(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 paragraph (f) of section 43.

(5) A person holding funds which the person has obtained by doing 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.

(6) 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 subsection (1) (a) and (b) exist.”

~~Licences~~ ~~5. (1) In order to obtain a licence as a financial institution, a person~~
formalities and shall apply in writing to the Minister and submit the documents and other
considerations. information as specified in Schedule I.

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

- (a) the validity of the documents submitted in accordance with Schedule I;
- (b) the financial condition and history of the applicant;
- (c) the character of the business of the applicant;
- (d) **whether the proposed directors and persons who are to constitute the management of the financial institution are fit and proper in accordance with the criteria under 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 that intends to open a branch or an affiliate within () 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(); and**
- (b) evidence satisfactory to the Central Bank that it is subject to a 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 deems 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 same 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 fulfills the capital requirements specified in section 13.

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

Restriction on use of words “bank”, “financial institution” or their derivatives.

6. (1) 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 (); 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 ();

(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 not exceeding **two hundred fifty** thousand dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment; and in the case of a continuing offence to a further penalty of **two** thousand dollars for each day on which the offence is continued after conviction thereof.

Restrictions of names likely to

~~7. (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~~

mislead.

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) A copy of the certificate of any licence granted under this Act 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.

8. (1) Any licence granted under this Act shall authorise the licensed financial institution to carry on banking business in () 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 () 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 () without having given ninety days prior notification to the Minister and the Central Bank.

(4) No local financial institution shall open a place of business elsewhere than in () 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 () without having given twenty-one days prior notification to the Minister and the Central Bank.

(6) The Minister, acting on the recommendation of the Central Bank, may require 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.

~~Voting~~ ~~9. (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 per cent 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 per cent 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 two 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 five per cent 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 22** 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 not exceeding two thousand dollars or to imprisonment for a term not exceeding three 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 not exceeding five thousand dollars or to imprisonment for a term not exceeding six 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 per cent 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.

10. (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 () 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 13;
- (c) alter its name as set out in its licence;

- (d) enter into a merger or consolidation within (),
and
- (e) in the case of a local financial institution, amend
the instrument or charter under which it is formed
in ().

(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 5 (2).

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Revocation of licence and declaration of discontinuance of service.

11. (1) The Minister acting upon the recommendation of the Central Bank, may revoke any licence to carry on banking business in () if the licenced 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 in accordance with section 22;
- (c) is in breach of any of the provisions of this Act which is applicable thereto;
- (d) ceases to carry on banking business in ();
- (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 fulfill 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 give the financial institution concerned 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 any local newspaper.

(5) If any financial institution is aggrieved by any decision made under subsection (1), that financial institution may appeal to the High Court within fourteen days of such decision, setting forth the grounds of such appeal, and the High Court may revoke or confirm the said decision.

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

Licence fees and
penalty for
default.

12. (1) Every financial institution shall pay such annual licence fee as the Minister, may by Order 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 institution and such fees shall apply uniformly to such classes or categories.

(3) All licence fees paid under this Act shall be payable to the Government and form part of the Consolidated Fund.

(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 commits an offence and is liable upon summary conviction to a fine not exceeding **ten** thousand dollars and in the case of a continuing offence to a further penalty of **one hundred** dollars for each day on which the offence is continued after conviction thereof.

PART II

FINANCIAL REQUIREMENT AND LIMITATIONS

Minimum paid-up
or assigned
capital.

13. (1) Every licensed financial institution shall maintain in () 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 five million dollars;**
- (b) if operating as a credit or other financial institution, the minimum required capital shall be **not less than one million dollars.**

(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 (); or**
- (b) **by notice in a newspaper of general circulation in () or in the *Gazette*;**

increase or vary the minimum amounts of required capital specified in sub-section (1) in respect of all or any appropriate class of financial or credit institution.

In this Act

"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 () in accordance with the Regulations that the Minister after consultation with the Central Bank may prescribe.

(4) ds

Maintenance of
Reserve Fund.

14. (1) Subject to this section 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 twenty per cent of such profits whenever the amount of the reserve fund is less than a hundred per cent 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 13.

(3) Notwithstanding the provisions of subsection (1), **the Minister, acting upon recommendation by the Central Bank may, upon application made by a foreign financial institution, exempt such an institution** from the requirements of this section.

Adequacy of
Capital.

15. (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 licenced financial institution within a financial group.

(3) Where there is a deficiency in the prescribed capital adequacy ratio, the Central Bank shall require the licenced financial institution to present a plan that is satisfactory to the Central Bank to reconstitute its capital adequacy ratio within six months.

(4) Where the financial institution fails to present a satisfactory plan pursuant to subsection (3) within 30 days, or fails to implement such a plan within a stated period, the Central Bank shall, take such remedial action as it deems necessary and in accordance with section 22.

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

“16 (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:

grant to any person, any member of a borrower group or to any borrower group any advances or credit facilities or make any guarantee so that the total value of the advances, credit facilities, or guarantee in respect of such person, member or borrower group, is at any time more than twenty-five per cent 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 or

- guaranteed by the Government or its boards or agencies, or local government bodies;**
- (b) grant any advance against the security of its own shares, the shares of its holding company, or the shares of its affiliates;**
- (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, however, 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 ();**

(ii) hold shares in another company the aggregate value of which does not at any time exceed ten per cent 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: Provided that the total amount of a financial institution's holdings under this paragraph may not exceed sixty per cent of the sum of the unimpaired capital and reserves of the financial institution;

(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 commencement of this Act for purposes other than those referred to herein, it shall be allowed a period of three 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 may acquire such property for resale as soon as possible thereafter, but not later than five years thereafter.

(2) 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 ten per cent of any class of voting securities of the financial institution;**
- (d) any person serving as an auditor under section 19 or conducting an examination under section 20;**
- (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).**

(3) The total of all unsecured advances made to any person within any of the categories described in paragraphs (a) to (d) of subsection (2) shall not exceed five per cent of the sum of the paid-up or, as the case may be, assigned capital and reserves of the financial institution.

(4) Where the total value of advances, extensions or guarantees of credit granted under paragraph (a) of subsection (1) 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 twenty per cent more than the amount of the obligations secured thereby.

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

(6) Any advances, extensions or guarantees of credit made to any person under paragraph (a) of subsection (1) or within any of the categories described in paragraphs (a) to (d) of subsection (2) shall be made on substantially the same terms, including interest rates and collateral, as applicable, as those prevailing for comparable transactions with other persons.

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

(a) acquisition of the shares is likely to prejudice the:

financial condition of the financial institution;

capitalisation of the financial institution;

interest of depositors of the financial institution; or

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

(8) A financial institution shall submit a report quarterly to the Central Bank, in such form as the Central Bank shall determine, on all exposures that equal to or are in excess of ten per cent of the unimpaired capital and reserves of the financial institution.

(9) The aggregate of exposures in excess of ten percent incurred by a financial institution shall not exceed four hundred per cent of its unimpaired capital and reserves, or such other percentage as the Minister on the recommendation of the Central Bank may by Order prescribe.

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

(11) In applying paragraph (a) of subsection (1) and subsection (2), if the Central Bank shall determine that the interests of two or more persons are connected or related, 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 (a) of subsection (1) or subsection (2) 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.

(12) Any financial institution to which subsections (1) and (2) are applicable that, prior to the commencement of this Act, entered into any transactions incompatible with paragraphs (a), (b), (c), (d), or (e) of subsection (1) and subsection (2) shall, within twelve months 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 such transactions, take such action, and within such reasonable time, as shall be determined by the Central Bank.

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

Maintenance of specified assets.

17. (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 Order published in the *Gazette*.

(2) The amount of specified assets so prescribed 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 Order relates, and such percentage shall not be more than forty per cent 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 may after consultation with the Central Bank may by Order 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 Order.

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

- (a) notes and coins which are legal tender in () 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 (.....) 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 at an annual rate not exceeding twice 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
and Financial
Group

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

PART III
AUDIT, INFORMATION AND EXAMINATION

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

19. (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 upon 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 licenced 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, notice, order, guidelines or directions issued under the 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 twenty-five per cent 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 report the matter forthwith to the licensed financial institution and the Central Bank.

(4) The Central Bank may request copies of reports submitted to the board of a licenced 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 licenced 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 four

months of the end of the financial year.

(7) A local financial institution shall within four months of the end of its financial year:

publish in the *Gazette* **and in a local newspaper; and**
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 () **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 four months of the end of its financial year:

(a) publish in the *Gazette* **and in a local newspaper;**
and
exhibit in a conspicuous place in each of its offices,

a true and full yearly statement of its accounts of all its operations in () 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) If any financial institution fails to comply with the requirements of **subsections (6), (7) and (8)** within four months of the end of its financial year, it shall be liable to a penalty of **five** hundred dollars for every day of such default except when an extension to the period has been granted by the Central Bank pursuant to section 25.

(10) 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.

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

(12) No person having an interest in any 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.

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

Central Bank
examination.

20. (1) The Central Bank, shall examine or cause an examination to be made of each licensed financial institution from time to time or whenever in its judgement such examination is necessary or expedient in order to determine that such 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 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 () or **abroad or any of its 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).

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

21. (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**, in () 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 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding three thousand dollars and in the case of a continuing offence to a further penalty of five hundred dollars 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 financial institution or affiliate or both shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars.

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

“22. (1) If in the opinion of the Central Bank an examination authorised under section 20 shows that the financial institution concerned or any affiliate, director, officer, employee, or significant shareholder of the financial institution is:

engaging in unsafe or unsound practices in conducting the business of the institution;

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 in paragraphs (a) and (b) are likely to occur, the Central Bank may take one or more of the following measures:

- (i) issue a written warning as is deemed necessary;**
- (ii) conclude a written agreement with the financial institution providing for a program of remedial action;**
- (iii) issue a cease and desist order that requires the financial institution, the affiliate and/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 deems 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 circumstances specified in paragraphs (a) or (b) of subsection (1) exists, the Central Bank may, after exhausting all the measures under subsection (1), recommend that the Minister:

**restrict or vary any restriction of a licence; or
revoke the licence of the financial institution to
do banking business pursuant to section 11.**

(3) An agreement made under subparagraph (ii) of subsection (1) may require the financial institution to:

**increase the paid-up share capital of its affiliate;
sell or otherwise dispose of the affiliate or part of its
business;
make advances or grant credit facilities to the
affiliate; or
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) a cease or desist order issued under subparagraph (iii) of subsection (1) may require that the financial institution take action to correct the condition resulting from any unsound practices or violation of any law.

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

cease and desist order.

(5) A licenced financial institution, its affiliate, or any director, officer, employee or significant shareholder of a licenced financial institution who fails to comply with any requirement or contravenes any prohibition imposed on the financial institution under this section shall be guilty of an offence and is liable on summary conviction:

in the case of the licenced financial institution or its affiliate, to a fine of one hundred thousand dollars, and in the case of a continuing offence, to a further penalty of ten thousand dollars for each day on which the offence is continued after conviction thereof;

in the case of any individual specified in this section, to a fine of fifty thousand dollars and in the case of a continuing offence, to a further penalty of five thousand dollars for each day on which the offence is continued after conviction thereof.

(6) 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.

Production of
information as
required by
the Central Bank.

23. (1) The Central Bank may from time to time call for any information which it may require for the purposes of this Act from any financial institution about its operations and those of its affiliates in () or from a local financial institution about its operations and those of its affiliates abroad.

(2) 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.

“(2A) “The Central Bank may require a financial institution to disclose the basis for any of its charges and fees”; and

Restriction on advertising likely to mislead the public.

24. (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 thereof;
- (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 not exceeding ten thousand dollars for each contravention.

Extension of period for providing information.

25. 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.

PART IV
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 licenced 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) that 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 fulfill the responsibilities of that position; and**

- (c) whether the interests of depositors or potential depositors of the licenced 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 the foregoing provisions, 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;

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;

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

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:

upon notification by the board of a finding by two-thirds of its members:

of that person's permanent incapacity or serious neglect of, or misconduct in, office; or

that the person is not a fit and proper person in accordance with the criteria specified in section 26; excepting the criteria specified

**in paragraphs (a) and (b) of subsection (3)
of section 26;**

if that person

is or was convicted of an offence under this Act;

**has been declared bankrupt or compounding
with, or suspending payment to, that
person's creditors; or**

**has been convicted in a court of law of any
offence involving fraud, dishonesty, or
violence.**

(2) Any person who:

(a) **has been sentenced for an offence involving a
term of imprisonment of or exceeding six months
or in default of payment of a fine;**

(b) **has been a director or manager of a company
which has been wound-up by a court or has been
placed in receivership;**

(c) **has been a director or manager of, or directly or
indirectly concerned in the management of a
former licenced financial institution, the licence
of which has been revoked, unless such
revocation was due to -**

(i) **its amalgamation with another licenced
financial institution or company; or**

(ii) **its 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 of, or be directly or indirectly concerned in any way in the**

management of any licenced financial institution.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

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 forthwith to all of 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 deemed to be a sufficient declaration of interest in relation to any loan, advance, contract or other transaction so made if:

- (a) it 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 () 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 **the date of commencement in office or possession of 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 subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding **ten** thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Responsibility for
deceiving
statements and
obstruction of
audit or authorised
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;
 - (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 not exceeding fifteen thousand dollars or to imprisonment for a term not exceeding two 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 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 an offence committed under section 24;

commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars or to imprisonment for a term not exceeding two 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 shall be 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 he 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 legal personal representatives; or
- (b) for the purpose of the performance of his duties within the scope of his employment in conformity with the provisions of this Act; or
- (c) when lawfully required to make disclosure by any court of competent jurisdiction within (); or
- (d) under the provisions of any law of () or

agreement among the participating Governments;

Except that nothing herein shall prevent:

- (i) 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;
- (ii) **the Central Bank from -**
 - (a) **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
 - (b) **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 authorities.

Working days of

33. (1) All financial institutions in () shall remain open for

financial
institutions.

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 such 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 notice in the Gazette, declare any day upon 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 (or 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 the Act;
- (c) character of the records to be kept by any financial institution and the form of the report and returns to be made by the financial institution and fixing the times when such reports and returns shall be made;
- (d) forms necessary for the administration of this Act;
- (e) penalties that may be imposed for violations of Orders and Regulations made under this Act and

may also prescribe the penalties to be imposed upon summary conviction, but no such penalty shall exceed a fine of **ten** thousand dollars or imprisonment of a term exceeding twelve 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 the Act, or under any Order or Regulation made under this Act, compound such offence, by accepting from the person a sum of money not exceeding five thousand dollars.

(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 any person for an offence under this Act or under any Order or Regulation made under this Act, it shall be a defence if the person proves that the offence with which **that person** 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;
- treatment of assets and investments;
- treatment of loans and other credit facilities;
- related party transactions;
- corporate governance;
- auditors; and
- (m) disclosure.

-----Section Break (Continuous)-----

PART V

RECEIVERSHIP, LIQUIDATION AND REORGANISATION

Voluntary
liquidation.

37. A voluntary liquidation of a financial institution shall be subject to authorisation by 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 it 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 thirty 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 Order 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 fifteen 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 below.~~

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 inspection as provided for in section 20 or has otherwise obstructed such inspection;
- (e) whose licence has been revoked in accordance with section 11 or **subsection 2 of section 22; 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.

Financial
institution may
Institute proceed-
ings to have
Receiver's
appointment lifted.

45. Within a period of ten 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 sixty 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 terminate forthwith.

Compulsory
liquidation,

47. (1) The Minister, after consultation with the Central Bank, may, by petition, apply to the High Court to order the compulsory liquidation or

reorganisation
proceedings.

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 thirty 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:

- (a) be published in the *Gazette* and in a newspaper published or distributed in () as directed in the order at least twice before the time appointed for the hearing; and
- (b) be 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:~~

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

(2) Where the High Court orders either the compulsory liquidation or the reorganisation of the 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 will 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 (), including the power:

- (a) to continue or discontinue its operations;
- (b) to stop or limit the payment of its obligations;
- (c) to employ any necessary staff and to terminate their employment;
- (d) to execute any instrument in the name of the financial institution;
- (e) to initiate, defend and conduct in its name any action or proceeding to which the financial institution may be party;
- (f) to restore the financial institution to its board; and
- (g) to 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
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 six 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 judgement rendered prior to the date of the appointment of the receiver or Official Liquidator for an amount not exceeding one thousand dollars.

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 **47**(1), 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 thirty days:

- (a) by persons holding at least one third of the aggregate amount of deposit and other liabilities in ();
- (b) if the subject of the plan is a local financial institution, by members of the financial institution owning at least one third of its issued capital; or
- (c) if within the same period of thirty days the High Court does not order a stay of proceedings,

the Official Liquidator will 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 thirty-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 plan inequitable or its execution undesirable, the Official Liquidator may apply to the High Court by petition to:

- modify the plan; or
- 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 the six-month period preceding the appointment of the receiver for the financial institution;
- (c) national insurance contributions for officers and employees due but not paid;
- (d) balances of three hundred dollars and less in saving

and time deposits;

- (e) other deposits;
- (f) taxes, rates and deposits owed to () and local authorities concerned;
- (g) fees and assessments due to the Central Bank.

(2) After payment of all other claims filed, with interest thereon 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, the said 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 fifteen 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 fifteen 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 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 (), 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.

.....Section Break (Continuous).....

PART VI
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 () with a financial institution, together with any interest or dividend, but excluding any lawful charges thereon;
- (b) any funds paid in () 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 () or on written instruments issued in () on which a financial institution is directly liable;
- (d) any contents of a safe deposit box upon 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 one year.

(2) The items enumerated in paragraphs (a), (b) and (c) of subsection (1) shall not be presumed to be abandoned if the owner has, within fifteen 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 paragraphs (a) or (b) of subsection (1);
- (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~~ ~~61. (1) Every financial institution holding any of the items~~ enumerated in section 60 shall within ninety days after the end of its financial year report such holdings to the Central Bank, and thereafter pay

abandoned
property.

or deliver to the Central Bank all property presumed to be abandoned listed in the report in accordance with the 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 section 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 section 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 deem 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 **prescribe**.

Claims on
abandoned
property.

63. (1) Any person claiming an interest in any property which has been **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 willfully 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 section **61** (1) or **62** (3) commits an offence, and it and each of its directors shall be liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.~~

PART VII 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 such an application, 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 thereupon 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.

Section Break (Next Page)

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 may appoint, or in default of appointment, to the director, officer, clerk or servant of the transferee financial institution who corresponds as nearly 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 judgement 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 etc. Act) 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 (Act/Ordinance), an instrument between party and party within the contemplation of the (Act/Ordinance).

**PART VIII
GENERAL**

Non-application of
Aliens (Landhold-
ing Regulation)
Act 20[]

68. The provisions of the Aliens (Landholding Regulation) Act, 20[] do not apply to financial institutions licensed under this Act.

Repeal **and**
Savings.

69. (1) The Banking Act [] is hereby repealed.

(2) Notwithstanding subsection (1), any regulation, notice or other subsidiary legislation made pursuant to the Banking 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.

Passed in the [] this day of , 20[].

Clerk of the []/Speaker

Passed in the Senate this day of 20[].

SCHEDULE I

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 II

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

<i>Class</i>	<i>Activities</i>
1. Finance House or Finance Company	Hire purchase and installment credit
2. Credit Unions	Provision of basic savings (share accounts) for members and making loans to members.
3. Merchant Bank	Floating and underwriting, stocks, Shares, and bonds Loans syndication Dealing in gold Providing consultancy and investment management services and corporate advisory services Acceptance credit Project Development Lease financing Foreign exchange dealing Inter-bank financing.

- | | |
|---------------------------------|--|
| 4. Mortgage Institutions | Mortgage lending |
| 5. Trust Company | Managing Trust Funds
Performing duties of trustees
Executor or administrator and attorney
Administration of Pension Funds
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 | Issuing payment, credit or charge cards and in co-operation with others including other financial institutions, operating a payment, credit or charge card plan. |
| 8. Financial Services | 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 2001, 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.

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BANKING ACT
[TERRITORY]

**AN ACT TO PROVIDE FOR REGULATING
BANKING BUSINESS**

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ANTIGUA AND BARBUDA

BANKING ACT 2004

BANKING ACT, [20[]

BANKING ACT, [20[]

No. [] of [20[]

ARRANGEMENT OF SECTIONS

Section

1. Short Title and Commencement.
2. Interpretation.

**PART I
LICENCES**

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

PART II
FINANCIAL REQUIREMENT AND LIMITATIONS

13. Minimum paid-up or assigned capital.
14. Maintenance of Reserve Fund.
15. Adequacy of Capital.
16. Restriction on certain activities of licensed financial institutions and affiliates.

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ANTIGUA AND BARBUDA

NO. OF 2004

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BANKING ACT

I Assent

[Governor/Governor-General]

[date]

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AN ACT to provide for regulating banking business.

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Parliament of Antigua and Barbuda as follows

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Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly [and the Senate of [territory], and by the authority of the same, as follows

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Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly [and the Senate of [territory], and by the authority of the same, as follows:

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PRELIMINARY

~~Short title and~~ ~~1. This Act may be cited as the Banking Act, 2004.~~ and
Commencement. shall come into operation on such date as the (Minister) may, by Order published in the *Gazette*, appoint.

~~Interpretation~~ ~~2. In this Act (Continuous)~~
"Agreement" means the Agreement establishing the Eastern Caribbean Central Bank made on the 5th day of July, 1983, the text of which is set out in the Schedule to the Eastern Caribbean Central Bank Agreement Act No. of 1983;

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

- (a) a company which is or has at any relevant time been
 - . a holding company or subsidiary of F;
 - . a subsidiary of a holding company of F; or
 - . a holding company of a holding company or a subsidiary of a subsidiary of F; or
- (a) any company over which F has control;
- (a) any company over which F and any person associated with F has control;
- (a) any company which has common ownership with F.
- (a) 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 Antigua and Barbuda () 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 Order 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 -

- (i) the acceptance of monetary deposits which are repayable on demand or after notice or any similar operation;
- (ii) 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 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;
- (a) a company in which the family group indicated in paragraph (a) has control;
- (a) a group of companies which is under a common control;

- (a) a group of persons in which the credit worthiness, ability to generate funds or the future viability of each, depends on one or other member of the group;
- (a) a group of persons in which one member has power directly or indirectly to control the other members;
- (a) 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 II but does not include banking business;

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

"connected" or "related" means where the interest of two or more persons or groups of persons are so interrelated that they should be considered as a single unit or borrower group;

"control" means the ability of a person to secure, through voting rights or power in a licenced financial institution or other company or by an agreement or other powers conferred by the bye-laws, articles of association or other document regulating the operations of the licenced financial institution or other company, that the business and affairs of the licenced financial institution or other company are conducted in accordance with the wishes of that person;

"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" means in relation to a financial institution, 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 Antigua and Barbuda shall () shall be deemed to be one financial institution;

"foreign financial institution" means a financial institution formed under the laws of a country other than Antigua and Barbuda which () which carries on banking business in Antigua and Barbuda();

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

“international financial institutions” refers to the International Monetary Fund, the International Bank for Reconstruction and Development, the International Development Bank, and the International Finance Corporation.

"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 Antigua and Barbuda();

"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 Antigua and Barbuda();

"principal place of business" means, in relation to -

- (a) a local financial institution its principal office in Antigua and Barbuda(), and
- (b) a foreign financial institution 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 more than 20% of the voting rights at any general meeting of the licensed financial institution or another company of which the licenced 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
- (a) 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.

PART I LICENCES

Requirement for Licence. ~~3. (1) A person shall not carry on banking business or hold himself out as carrying on banking business in Antigua and Barbuda with (.....) 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 Antigua and Barbuda () shall be deemed to have been granted a licence under section 5.

(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 Antigua and Barbuda shall, in () shall, before commencing such business, apply for a licence under the provisions of section 5.

(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 five hundred thousand dollars, and in the case of a continuing offence, to a further penalty of five thousand dollars 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 two hundred and fifty thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; and in the case of a continuing offence, to a further penalty of two thousand, five hundred dollars for each day on which the offence is continued after conviction thereof.

Examination of books of person carrying on banking business without a licence.

4. (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 subsection (1) section 3 is to be found on any premises in Antigua and Barbuda (),

and the Central Bank 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 subsection 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:

- (a) the Central Bank to detain the relevant documents for a period not exceeding 30 days
- (b) the officer or officers to make copies of the relevant documents; and
- (c) the 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 not exceeding five thousand dollars or imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(5) Without prejudice to section 3(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 paragraph (f) of section 43.

(6) A person holding funds which the person has obtained by doing 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 subsection (1) (a) and (b) exist.

~~Application for licence~~ ~~5. (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 I.

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

- (a) the validity of the documents submitted in accordance with Schedule I;
- (b) the financial condition and history of the applicant;
- (c) the character of the business of the applicant;
- (d) whether the proposed directors and persons who are to constitute the management of the financial institution are fit and proper in accordance with the criteria under 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 that intends to open a branch or an affiliate within Antigua and Barbuda () 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 Antigua and Barbuda(); and
- (b) evidence satisfactory to the Central Bank that it is subject to a 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 deems 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 fulfills the capital requirements specified in section 13.

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

Restricted words,
names, and
practices

6. (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) Except with the written consent of the Minister after consultation with the Central Bank, no person other than a licensed financial institution shall 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 Antigua and Barbuda(); 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 Antigua and Barbuda; (); 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.

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

(a) 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;

(b) in any manner whatsoever solicit or receive deposits from the public, or any employee of that person;

(4) Any person who contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine not exceeding two hundred fifty thousand dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment; and in the case of a continuing offence to a further penalty of two thousand dollars for each day on which the offence is continued after conviction thereof.

~~Display of licence certificate~~ ~~7. A copy of the certificate of any licence granted under this Act~~
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.

8. (1) Any licence granted under this Act shall authorise the licensed financial institution to carry on banking business in Antigua and Barbuda () 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 Antigua and Barbuda () 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 Antigua and Barbuda () without having given ninety days

prior notification to the Minister and the Central Bank.

(4) No local financial institution shall open a place of business elsewhere than in Antigua and Barbuda() 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 Antigua and Barbuda wf () without having given twenty-one 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) (a) No financial institution may establish or change the location of an electronic banking system in a place other than an a place of business approved under sub-section (2) of this section, without having given thirty days prior notification to the Minister and the Central Bank.

(b) 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
of
business such financial institution shall notify the Central Bank of the location of all such electronic banking systems within sixty days of the date of commencement of this Act.

(8) Any person who contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine not exceeding two hundred fifty thousand dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment; and in the case of a continuing offence to a further penalty of two thousand dollars for each day on which the offence is continued after conviction thereof.

~~Voting. 9. (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 per cent 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 per cent 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 two 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 five per cent 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 22 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 not exceeding two thousand dollars or to imprisonment for a term not exceeding three 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 not exceeding five thousand dollars or to imprisonment for a term not exceeding six 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 per cent 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.

10. (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 Antigua and Barbuda () 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 13;

- (c) alter its name as set out in its licence;
- (d) enter into a merger or consolidation within Antigua and Barbudan (), and
- (e) in the case of a local financial institution, amend the instrument or charter under which it is formed in Antigua and Barbuda().

(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 5 (2)

Revocation of licence and declaration of discontinuance of service.

11. (1) The Minister acting upon the recommendation of the Central Bank, may revoke any licence to carry on banking business in Antigua and Barbuda () if the **licenced 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 in accordance with section 22;
- (c) is in breach of any of the provisions of this Act which is applicable thereto;
- (d) ceases to carry on banking business in Antigua and Barbuda ();
- (e) is conducting its affairs in a manner detrimental to the national interest or to the interest of its depositors;
- (f) (f) fails to maintain sufficient capital or

liquidity to

meet its liabilities;

(g) has

(g) has not fulfilled or is unlikely to fulfill the

minimum criteria for licensing under this Act; or

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(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 give the financial institution concerned 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 any local newspaper.

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

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

Licence fees and
penalty for
default.

12. (1) Every financial institution shall pay such annual licence fee as the Minister, may by Order 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 institution and such fees shall apply uniformly to such classes or categories.

(3) All licence fees paid under this Act shall be payable to the Government and form part of the Consolidated Fund.

(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 commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars and in the case of a continuing offence to a further penalty of one hundred dollars for each day on which the offence is continued after conviction thereof.

PART II

FINANCIAL REQUIREMENT AND LIMITATIONS

Minimum paid-up or assigned capital.

13. (1) Every licensed financial institution shall maintain in Antigua and Barbuda () 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 five million dollars;
- (b) if operating as a credit or other financial institution, the minimum required capital shall be not less than one million dollars.

(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 Antigua and Barbuda(); or
- (b) by notice in a newspaper of general circulation in Antigua and Barbuda () or in the *Gazette*;

increase or vary the minimum amounts of required capital specified in sub-section (1) in respect of all or any appropriate class of financial or credit institution.

(3) Any financial institution which contravenes sub-section (1) commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars.

Maintenance of Reserve Fund.

14. (1) Subject to this section 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 twenty per cent of such profits whenever the amount of the reserve fund is less than a hundred per cent 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 13.

(3) Notwithstanding the provisions of subsection (1), 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.

15. (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 licenced financial institution within a financial group.

(3) Where there is a deficiency in the prescribed capital adequacy ratio, the Central Bank shall require the licenced financial institution to present a plan that is satisfactory to the Central Bank to reconstitute its capital adequacy ratio within thirty days or such longer period as may be determined by the Central Bank.

(4) Where the financial institution

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

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

the Central Bank shall take such remedial action as it deems necessary and in accordance with section 22.

Restriction on certain activities of licensed financial institutions and affiliates.

16. (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 respect of such person, member or borrower group, is at any time more than twenty-five per cent 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 the 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 ();
 - (ii) hold shares in another company the aggregate value of which does not at any time exceed ten per cent 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 sixty per cent of the sum of the unimpaired capital and reserves of the financial institution;
- (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 commencement of this Act for purposes other than those referred to herein, it shall be allowed a period of three 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 may acquire such property for resale as soon as possible thereafter, but not later than five years thereafter.

(2) (a) Where the total value of exposures granted under paragraph (a) of subsection (1) is at any time more than fifteen per cent 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 twenty per cent more than the amount of the obligations secured thereby.

(b) The aggregate of exposures in excess of ten percent incurred by a financial institution shall not exceed four hundred per cent of its unimpaired capital and reserves, or such other percentage as the Minister on the recommendation of the Central Bank may by Order prescribe.

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

(3) Any financial institution which contravenes the provisions of subsection (1)(a), (1)(e), (1)(f), or subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding ten

thousand dollars for each contravention.

(4) 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 ten per cent of any class of voting securities of the financial institution;
- (d) any person serving as an auditor under section 19 or conducting an examination under section 20;
- (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);

(5) The total of all unsecured advances made to any person within any of the categories described in paragraphs (a) to (d) of subsection (4) shall not exceed five per cent of the sum of the paid-up or, as the case may be, assigned capital and reserves of the financial institution.

(6) Any financial institution which contravenes the provisions of subsection (4) or (5) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars for each contravention.

(7) Any advances, extensions or guarantees of credit made to any person under paragraph (a) of subsection (1) or within any of the categories described in subsection (4) shall be made on substantially the same terms, including interest rates and collateral, as applicable, as those prevailing for comparable transactions with other persons.

(8) In determining whether any approval referred to in paragraph (e) of subsection (1) 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;
- (i) capitalisation of the financial institution;
- (i) interest of depositors of the financial institution; or

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

(9) 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 at such times as the Central Bank shall specify.

(10) In applying paragraph (a) of subsection (1) and subsection (4), if the Central Bank shall determine that the interests of two or more persons are connected or related, 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 (a) of subsection (1) or subsection (4) 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.

(11) Any financial institution to which subsection (1) and (4) are applicable that, prior to the commencement of this Act, entered into any transactions incompatible with paragraphs (a), (b), (c), (d), or (e) of subsection (1) or subsection (4) shall, within twelve months 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 such transactions, take such action within such reasonable time as shall be determined by the Central Bank.

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

17. (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 Order

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 Order relates, and such percentage shall not be more than forty per cent 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 may after consultation with the Central Bank may by Order 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 Order.

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

- (a) notes and coins which are legal tender in Antigua and Barbuda() 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 Antigua and Barbuda(.....) 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 at an annual rate not exceeding twice 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

18. The Minister may, after consultation with the Central Bank, by Order 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 Order to any credit institution, class of credit institution or financial group.

PART III
AUDIT, INFORMATION AND EXAMINATION

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

19. (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 licenced 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, notice, order, guidelines or directions

issued under the 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 twenty-five per cent 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 licenced 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 licenced 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 four months of the end of the financial year.

(7) A local financial institution shall within four months of the end of its financial year:

- (a) publish in the *Gazette* and in a local newspaper; and
- (a) 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 Antigua and Barbuda() 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 four months of the end of its financial year:

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

a true and full yearly statement of its accounts of all its operations in Antigua and Barbuda () 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 subsection (1)(b) is guilty of an offence and is liable on summary conviction to fine not exceeding ten thousand dollars for each such failure.

(10) If any financial institution fails to comply with the requirements of subsection (6), (7) and (8) within four months of the end of its financial year, it shall be liable to a penalty of five hundred dollars 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 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), (5) of this section or any other request for information by the Central Bank.

(14) (a) No person having an interest in any 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.

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

Central Bank
examination.

20. (1) The Central Bank, shall examine or cause an examination to be made of each licensed financial institution from time to time or whenever in its judgement such examination is necessary or expedient in order to determine that such 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 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 Antigua and Barbuda() or abroad or any of its 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 subsection (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.

21. (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

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars and in the case of a continuing offence to a further penalty of one thousand dollars 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 financial institution or affiliate or both shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars.

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

“22. (1) If in the opinion of the Central Bank an examination authorised under section 20 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;
- (a) 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 in paragraphs (a) and (b) are likely to occur, the Central Bank may take one or more of the following measures:

- (i) issue a written warning as is deemed necessary;
- (ii) conclude a written agreement with the financial institution providing for a program of remedial action;
- (iii) issue a cease and desist order that requires the financial institution, the affiliate and/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 deems 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 circumstances specified in paragraphs (a) or (b) of subsection (1) exists, the Central Bank may, after exhausting all the measures under subsection (1), recommend that the Minister:

(a) restrict or vary any restriction of a licence; or

(a) revoke the licence of the financial institution to do banking business pursuant to section 11.

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

(a) increase the paid-up share capital of an affiliate;

(a) sell or otherwise dispose of an affiliate or part of its business;

(a) make advances or grant credit facilities to an affiliate; or

(a) 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) a cease or desist order issued under subparagraph (iii) of subsection (1) may require that the financial institution take action to correct the condition

resulting from any unsound practices or violation of any law.

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

(5) A licenced financial institution, its affiliate, or any director, officer, employee or significant shareholder of a licenced 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 licenced financial institution or its affiliate, to a fine of one hundred thousand dollars, and in the case of a continuing offence, to a further penalty of ten thousand dollars for each day on which the offence is continued after conviction thereof;
- (a) in the case of any individual specified in this section, to a fine of fifty thousand dollars and in the case of a continuing offence, to a further penalty of five thousand dollars for each day on which the offence is continued after conviction thereof.

(6) 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.

(7) (a) This sub-section shall apply to an offence specified in Schedule III.

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

(c) 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 fifteen days following the date of the notice referred to in paragraph (b) of this subsection 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.

(d) 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 fifteen days following the date of the notice or such longer period (if any) as may have been specified therein.

(e) Payment of a fixed penalty under this subsection 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.

(f) A notice under paragraph (b) of this subsection shall –

(i) specify the offence alleged;

- (ii) give such particulars of the offence as are necessary for giving reasonable information of the allegation; and
- (iii) state the period (whether fifteen days or a longer period) during which, by virtue of paragraph (d) of this subsection proceedings will not be taken for the offence.

(g) the fixed penalty for the offences specified in Schedule III shall be the penalty specified therein in relation to such offences.

(h) 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.

(i) In this subsection “proceedings” means any criminal proceedings in respect of the act or omission constituting the offence specified in the notice under paragraph (b) of this subsection and “convicted” shall be construed in like manner.

(j) the Minister may, by order, make provision as to any matter incidental to the operation of this section, and in particular, any such order may-

- (i) prescribe the nature of the information to be furnished to the Accountant General along with any payment;

- (ii) 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;

(iii) amend Schedule III;

(iv) amend Schedule IV.

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 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 fourteen 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 fourteen 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 fourteen 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 ten per cent 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) hereof and any data or information submitted by a financial institution under subsection (1) or (2) hereof, shall be regarded by the Bank as secret; provided that-

- (a) the Central Bank may 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) the Central Bank may 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 Bank shall arrange for that Government to be supplied with a copy of any statement or return furnished by a financial institution under paragraph (2) in relation to its operation in the territory of that Government and all statements and returns so supplied shall be regarded by the 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 which it may require for the purposes of this Act from any financial institution about its operations and those of its affiliates in () 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 shall be liable on summary conviction to a fine not exceeding five thousand dollars 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 not exceeding fifty thousand dollars for each contravention.

PART IV MISCELLANEOUS

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Minimum criteria
for determining
whether a person is
fit and proper

26. (1) Every person who is, or is likely to be a director, significant shareholder, or manager of the licenced 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) that 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 fulfill the responsibilities of that position; and
- (c) whether the interests of depositors or potential depositors of the licenced 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 the foregoing provisions, 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;
- (a) 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;
- (a) 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
- (a) 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 two-thirds of its members:

- () of that person's permanent incapacity or serious neglect of, or misconduct in, office; or
- () that the person is not a fit and proper person in accordance with the criteria specified in paragraphs (a) and (b) of subsection (3) of section 26.

(a) if that person

- () is or was convicted of an offence under this Act;
- () has been declared bankrupt or is compounding with, or suspending payment to, that person's creditors; or
- () has been convicted in a court of law of any offence involving fraud, dishonesty, or violence.

(2) Any person who:

- (a) has been sentenced for an offence involving a term of imprisonment of or exceeding six months or in default of payment of a fine;
- (b) has been a director or manager of a company which has been wound-up by a court or has been placed in receivership;
- (a) (c) has been a director or manager of, or directly or indirectly concerned in the management of a former licenced financial institution, the licence of which has been revoked, unless such revocation was

due to -

- (i) its amalgamation with another licenced financial institution or company; or
- (ii) its 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 of, or be directly or indirectly concerned in any way in the management of any licenced financial institution.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and in the case of a continuing offence to a further penalty of five hundred dollars 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 of 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 deemed to be a sufficient declaration of interest in relation to any loan, advance, contract or other transaction so made if:

- (a) it 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 Antigua and Barbuda() 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 the date of commencement in office or possession of 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 subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Responsibility for
deceiving
statements and
obstruction of
audit or authorised
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;
 - (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 not exceeding fifteen thousand dollars or to imprisonment for a term not exceeding two 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 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 an offence committed under section 25;

commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars or to imprisonment for a term not exceeding two 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 shall be 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 he 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 legal personal representatives; or
- (b) for the purpose of the performance of his duties within the scope of his employment in conformity with the provisions of this Act; or
- (c) when lawfully required to make disclosure by any court of competent jurisdiction within Antigua and Barbuda(); or
- (d) under the provisions of any law of Antigua and Barbuda () or agreement among the participating Governments;

Except that nothing herein shall prevent:

- (i) 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;
- (ii) the Central Bank from -
 - (a) 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

- (b) 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 authorities.

Working days of financial institutions.

33. (1) All financial institutions in Antigua and Barbuda () 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 such 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 notice 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 (or upon the recommendation of the Central Bank~~
34. The Minister 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 the Act;
- (c) character of the records to be kept by any financial institution and the form of the report and returns to be made by the financial institution and fixing the times when such reports and returns shall be made;
- (d) forms necessary for the administration of this Act;
- (e) penalties that may be imposed for violations of Orders and 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 ten thousand dollars or imprisonment of a term exceeding twelve 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 the Act, or under any Order or Regulation made under this Act, compound such offence, by accepting from the person a sum of money not exceeding five thousand dollars.~~

Central Bank may, if the Minister is satisfied that any person has committed an offence under the Act, or under any Order or Regulation made under this Act, compound such offence, by accepting from the person a sum of money not exceeding five thousand dollars.

(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 any person for an offence under this Act or under any Order or Regulation made under this Act, it shall be a defence if the person proves that the offence with which

that person 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.

.....Section Break (Continuous).....

PART V
RECEIVERSHIP, LIQUIDATION AND REORGANISATION

Voluntary
liquidation.

37. A voluntary liquidation of a financial institution shall be subject to authorisation by 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 it 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.

.....Section Break (Continuous).....

Notice to
depositors
of voluntary
liquidation.

39. (1) Within thirty 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 Order 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 fifteen 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 below.~~

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 20 or has otherwise obstructed such examination;
- (e) whose licence has been revoked in accordance with section 11 or subsection 2 of section 22; 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 ten 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 sixty 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, reorganisation proceedings. **47.** (1) The Minister, after consultation with the Central Bank, may, by petition, 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 thirty 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 the *Gazette* and in a newspaper published or distributed in Antigua and Barbuda () as directed in the order at least twice 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~~
Powers of the High Court. 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 re-organisation of the 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 re-organisation 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 Antigua and Barbuda(), 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 transfer of assets to be void.~~ **50.** ~~Section 43~~ ~~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 six 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 judgement rendered prior to the date of the appointment of the receiver or Official Liquidator for an amount not exceeding one thousand dollars.

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 487(1), 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 re-organisation plan shall be accompanied by a notice stating that if the re-organisation plan is not refused in writing within a period of thirty days:

- (a) by persons holding at least one third of the aggregate amount of deposit and other liabilities in Antigua and Barbuda ();
- (b) if the subject of the plan is a local financial institution, by members of the financial institution owning at least one third of its issued capital; or

- (c) if within the same period of thirty days the High Court does not order a stay of proceedings,

the Official Liquidator will 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 thirty-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 plan inequitable or its execution undesirable, the Official Liquidator may apply to the High Court by petition to:

- (a) modify the plan; or

- (a) 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 the six-month period preceding the appointment of the receiver for the financial institution;
- (c) national insurance contributions for officers and employees due but not paid;
- (d) balances of three hundred dollars and less in saving and time deposits;
- (e) other deposits;
- (f) taxes, rates and deposits owed to Antigua and Barbuda() 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, the said 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 fifteen 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 fifteen 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 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 Antigua and Barbuda (), 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.

Section Break (Continuous)

PART VI

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 Antigua and Barbuda () with a financial institution, together with any interest or dividend, but excluding any lawful charges thereon;
- (b) any funds paid in Antigua and Barbuda() 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 Antigua and Barbuda() or on written instruments issued in Antigua and Barbuda () 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 one year.

(2) The items enumerated in paragraphs (a), (b) and (c) of subsection (1) shall not be presumed to be abandoned if the owner has, within fifteen 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 paragraphs (a) or (b) of subsection (1);
- (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 ninety 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 the 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 section 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 section 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 deem 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 prescribe.

Claims on
abandoned

63. (1) Any person claiming an interest in any property which has been paid or delivered into the custody of the Central Bank or in the

property.

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 willfully 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 section 61 (1), 62 (3) or 62(4) commits an offence, and it and each of its directors is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

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PART VII

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 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.

.....Section Break (Next Page).....

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 may appoint, or in default of appointment, to the director, officer, clerk or servant of the transferee financial institution who corresponds as ready 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 judgement 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 etc. Act) 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 (Act/Ordinance), an instrument between party and party within the contemplation of the (Act/Ordinance).

**PART VIII
GENERAL**

Non-application of Aliens (Landholding Regulation) Act, Cap 293 20[]].

68. The provisions of the Aliens (Landholding Regulation) Act, Cap. 29320[] do not apply to financial institutions licensed under this Act.

Repeal and Savings.

69. (1) The Banking Act, Cap. 40 [] is hereby repealed.

(2) Notwithstanding subsection (1):

- (a) any regulation, notice or other subsidiary legislation made pursuant to the Banking Act Cap[] 40, 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 Banking Act Cap 40[] shall be deemed to have been carried out under this Act.

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Speaker

President

Clerk to the House of Representatives

Clerk to the Senate

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President/Clerk to the Senate

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SCHEDULE I

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.

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SCHEDULE II

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

<i>Class</i>	<i>Activities</i>
1. Finance House or Finance Company	Hire purchase and installment credit
2. Credit Unions	Provision of basic savings (share accounts) for members and making loans to members.
3. Merchant Bank	Floating and underwriting, stocks, Shares, and bonds

- Loans syndication
 - Dealing in gold
 - Providing consultancy and investment management services and corporate advisory services
 - Acceptance credit
 - Project Development
 - Lease financing
 - Foreign exchange dealing
 - Inter-bank financing.
4. **Mortgage Institutions** **Mortgage lending**
5. **Trust Company** **Managing Trust Funds**
Performing duties of trustees
Executor or administrator and attorney
Administration of Pension Funds
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** **Issuing payment, credit or charge cards and in co-operation with others including other financial institutions, operating a payment, credit or charge card plan.**
8. **Financial Services** **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 2001, 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.

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SCHEDULE III

Section 22(7)

*Offences in respect of which liability to conviction may be discharged
by payment of a fixed penalty*

Offence Penalty	Section	Fixed
1. Failure to maintain minimum capital requirement	13(3)	10000.00
2. Breach of large exposure for limits beyond limit	16(3)	2000.00 <i>each exposure</i>

3. Granting unsecured credit facilities without prior notification <i>contravention</i> to the Central Bank and approval of the board	16(6)	2000.00 <i>for each</i>
4. Failure of financial institution to instruct external auditor to carry out additional duties at the request of the Central Bank	19(9)	2000.00 <i>for each failure</i>
5. Failure to present auditors report to annual shareholders meeting, Minister, and the Central Bank	19(10)	500.00
6. Failure to make returns under section 23 or making returns <i>contravention</i> after the prescribed date	23(7)	1000.00 <i>for each</i>

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SCHEDULE IV

NOTICE OF OPPORTUNITY TO DISCHARGE LIABILITY

The Eastern Caribbean Central Bank has reason to believe that [name of bank] has committed an offence under section of the Banking Act having [particulars of offence] and hereby gives the [name of bank] the opportunity to discharge liability for this offence by payment of the sum of [insert fixed penalty listed in Schedule III 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

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President/Clerk to the Senate

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EXPLANATORY MEMORANDUM

A. INTRODUCTION

- 1.0 This paper addresses those proposals submitted for amending the Banking Act, 1983. It is based on a review of the Banking Act against the Basle Committee on Banking Supervisions *25 Core Principles for Effective Banking Supervision, the Good Practices for Monetary and Financial Transparency*, and a comparative study of other countries' banking legislation, as well as gaps identified by the Eastern Caribbean Central Bank (ECCB) in attempting to execute the provisions of the Act in a dynamic financial system.
- 1.0 The Banking Act was drafted when the financial system in the Eastern Caribbean Currency Union was relatively unsophisticated. The main reason for the current changes is to address the need for more effective and efficient supervision of financial institutions to ensure the soundness of the financial system.
- 1.0 Recent developments, mergers and acquisitions, the establishment of bank holding companies, the expansion of banks and insurance companies into new products, new information technology, the globalisation of commerce as well as developments in the international regulatory environment (e.g. Core Banking Principles) all require the reshaping of regulatory and supervisory infrastructure at a local level. The movement towards a single financial space characterized by harmonized laws, an efficient payments system, similar tax regimes for financial entities, and functional integration of financial institutions are also influencing factors.
- 1.0 With the advent of these changes, the major objective of regulatory activities in the ECCU is to minimize risk and promote the safety and soundness of

financial institutions and financial systems. The recent financial crisis in Jamaica is a reminder of what can happen if banks are not made safer and stronger.

- 1.0 A typical financial crisis has no single cause, but is usually the outcome of many factors working in parallel. These include allowing banks to be set up by persons with little expertise and even less capital, weak supervision, inadequate rules governing accounting and bankruptcy, dire economic management, weak underwriting standards and macroeconomic volatility.
- 1.0 Banking legislation does not deal with macroeconomic policies that are tied to a great extent with fiscal policies of government. It is important that the Central Bank is given adequate powers to ensure that banks and other non-bank financial institutions licensed under the Banking Act are fundamentally very sound and can withstand adverse trends even in a fragile economy.
- 1.0 The proposed amendments to the Banking Act seek to address major deficiencies in legislation and to tighten the supervisory and regulatory framework. The proposals establish certain prudential requirements that must be adhered to by all financial institutions and gives the Minister of Finance the power to make regulations to effect the provisions of the Banking Act, upon the recommendation of the ECCB.
- 1.0 Due to these several proposed amendments, it is recommended that the current Uniform Banking Act be repealed and a new Act, incorporating the amendments, be enacted. The new Act will have more comprehensive provisions to regulate banks.
- 1.0 The amendments presented benefited from a first draft by an IMF legal consultant, various discussions by committees within the Central Bank, and the

Financial Secretaries. The draft amendments were circulated to commercial banks for their comments and the concerns raised were discussed at the Banking Committee Meeting. The Banking Committee endorsed the recommendations to address the major shortcomings identified in the Act.

A. PROPOSALS

1. Arrangement of Sections

- 0.1 Section 11, *Rights of Central Bank to examine books of banking business without a valid licence* has been incorporated under Section 3, *Requirement for licence*.

- 1.0 Section 16, *Restriction on certain activities of licensed financial institutions*, was renamed *Restriction on certain activities of licensed financial institutions and affiliates* to capture the activities of affiliates of financial institutions which are now being restricted to enable effective supervision of the licensed entity.

- 1.0 Section 18, *Credit Institution*, has been revised to *Credit Institution, Class of Credit Institution and Financial Group* to incorporate entities within the same structure as the licensed banking institution.

- 1.0 Section 21, *Disclosure and access to books and records by Central Bank examiner for Inspection*, was reworded to replace the word *Inspection* with *Examination* to avoid misinterpretation arising from the use of both terms in the Act. The Bank Supervision Department refers to the exercise as an examination and not an inspection.

- 1.0 Section 33A, *Compounding of Offences*, was renumbered as Section 35 and a new section, *Section 36 – Prudential Guidelines* was added. Accordingly, the former Section 34, *Voluntary Liquidation*, becomes Section 37 and every Section thereafter falls back in numbering accordingly.

- 1.0 An additional Schedule has been added to the Act as Schedule II, to define *business of a financial nature*. Schedule I remains with amendments.

3. Interpretation

Section 2

- 1.0 The term *affiliate* was added to define entities within and outside of a conglomerate structure whose activities would be subject to review by the Supervisory Authority under consolidated supervision.

- 1.0 For clarity, the word *auditor* was amended to read *external auditor* to differentiate between an internal auditor of the financial institution.

- 1.0 The term *borrower group* was introduced to capture the linkage between individual borrowers and their related interests when transacting credit facilities with financial institutions.

- 1.0 The term *business of a financial nature* was introduced to give clarity to the type of businesses in which institutions that may comprise a financial group are engaged and hence covered under the provisions of this Act. The institutions to be included hereunder are set out in Schedule II of the Act.

- 1.0 The terms *connected* or *related* were included to enable the ECCB to determine the relationship between two individual borrowers, either an individual or a company, for the purposes of establishing concentration in the lending activities of financial institutions.
- 1.0 The term *control* was included to enable the Central Bank, the Council or the Minister in determining 3.3 and 3.5 above.
- 1.0 The definition of the term *Credit Institution* was expanded to capture all aspects of credit granting.
- 1.0 The term *Financial Group* was included to assist in the identification of entities that conduct business of a financial nature and are related to the licensed financial institution.
- 1.0 The term *Holding Company* was introduced to capture new and complex structures that may be brought under the Act and has a common meaning as laid out in the various Companies Acts in the member territories.
- 1.0 The term *significant shareholder* was introduced to differentiate ownership of shares by an individual or entity that warrant approval of the Central Bank from ownership of sums that would only require periodic and routine reporting to the Central Bank.
- 1.0 The term *subsidiary* was introduced to capture entities owned in whole or in part by the licensed banking institution, holding company or financial institution. It has a common meaning as laid out in the various Companies Acts in the member territories.

- 1.0 The definition of the term *unsecured* was broken down into two parts for clarity. However the content of the definition remains unchanged.

Part I - Licences

4. Requirements for Licence

Section 3

Rationale for Amendment

- 1.0 Provisional licences have been granted, in the past, to institutions suspected of carrying on banking business, but whose operations grandfathered the Banking Act. The word *provisional* means temporary and such licences were, in the past, granted to institutions pending an on-site examination by the ECCB. Such examinations would either conclude that a licence be granted or that the financial condition of the entity was such that it not be allowed to continue to operate.
- 1.0 It has been determined that this function would be better facilitated by making provision for the Central Bank to conduct an examination of any entity suspected of conducting banking business, and to take the necessary action to licence or remove the entity from the system. As illustrated below in paragraph 5 of this Explanatory Memorandum, the subsequent Section 4 provides for this, including and expanding the provisions of the former Section 11. Accordingly, an amendment is necessary under Section 3 to reflect the removal of Provisional Licences.

Proposal for Amendment

- 1.0 To amend subsection (2) to remove *bank* and replace it with *financial institution* to capture non-banks that have been issued a licence.

- 1.0 To remove subsections 4, 5 and 6 of the old Act to remove the requirement for a provisional licence.
- 1.0 To renumber Section 3(7) which requires all financial institutions to be licensed within the jurisdiction as Section 4(4)
- 1.0 To renumber subsection (8) as section (5) with modifications to separate the fines and terms of imprisonment for breach of subsections 1 and 4 that are applied to the institution from those applicable to the directors and managers.

5. Examination of books of person carrying on banking business without a licence.

Section 4

Rationale for Amendment

- 1.0 The repositioning of this section was appropriate as it now directly follows the section prohibiting the carrying on of banking business without a licence. The purpose of the section is to ascertain whether the person is in fact carrying on banking business. The process will now be done through the Magistrate's Court, and, where necessary, entry to premises will be with the assistance of a police officer. This provision was framed in a similar manner as in the Financial Institutions Act of Jamaica to effect swift resolution to such unlawful practices.
- 1.0 Previously the Central Bank would have to apply to the High Court, after consultation with the Minister, for an order to examine the books. This was a lengthy process during which time the safety and soundness of the institution, the system as well as depositors' funds were being further threatened. To effectively circumscribe the actions of such persons the Central Bank needs the authority to close down the unlicensed business if necessary. Accordingly, a

provision is inserted to allow the Central Bank to recommend to the Minister that a receiver be appointed for the business.

Proposal for Amendment

- 1.0 To amend subsection (1) to remove the proceedings to the Magistrate’s Court, allowing the Magistrate to issue a special warrant authorizing the Central Bank to enter an entity suspected of conducting banking business unlawfully and to collect such evidence as deemed necessary to substantiate its suspicions.
- 1.0 To insert a new subsection (3) to allow a police officer to use force to gain entry to the premises in respect of which the special warrant is granted.
- 1.0 To reposition the former Section 11(2) as Section 4(4)
- 1.0 To insert a new subsection (5) to empower the Central Bank to recommend to the Minister that the business be placed in receivership, in the event that, having exercised its rights under subsection (6), the Central Bank determines that a licence should not be granted.
- 1.0 To transpose subsections (3) and (4) of the former section 11 as a new subsections (6) and (7) of Section 4 and for clarity the words, “where the Minister has reasonable cause to suspect that the conditions in subsection (1) (a) and (b) exist,” were added to subsection 7.

1. Licences – Application for Licence

Section 5

Rationale for Amendment

- 1.0 Where an applicant has duly submitted an application for a banking licence, the licensing authority should have established criteria for assessing the proposal. To lend some degree of transparency to the process and to ensure that only high

integrity applicants are licensed, the criteria for approval should be outlined in the legislation.

- 1.0 Banks, unlike other companies are opaque. The nature of their operations is such that they garner public funds, which are then invested into assets of varying risk. The need to meet shareholder expectations of maximum rewards invites moral hazard on the part of managers. The lack of public disclosure requirements to invoke market discipline thickens the veil over banking operations. Accordingly, the criteria for entry and the scope under which ongoing monitoring would be effected requires tightening.
- 1.0 The proposed amendments address the administrative procedures for the processing of applications for licenses by the licensing authority, incorporating the requirements of Basle Core Principle 3.

Proposal for Amendment

- 6.5.1 To retain subsection (2), paragraphs (a), (b) and (c), without amendment.
- 6.5.2 To amend paragraph (d) to incorporate a more thorough assessment of the directors and management of the proposed banking institution including a fit and proper test as outlined in Schedule I of the Act. This is similar to the requirements the Trinidad and Tobago and Jamaica Banking Act.
- 6.5.3 To insert the word *the* before *capital structure* in paragraph (e).
- 6.5.4 To retain paragraphs (f) and (g) without amendment.
- 1.0.0 To insert a new paragraph (h) to provide for the assessment of any significant

shareholders as defined under the Act.

- 1.0.0 To insert a new paragraph (i) which provides for the assessment of the ownership structure in line with Basle Core Principle 4.
- 1.0.0 To insert a new paragraph (j), which provides for the assessment of the source of capital funds in line with the Basle Core Principle 6.
- 6.5.8 To insert a new paragraph (k), which provides for the assessment of the legal and managerial structure in line with the Basle Core Principle 4.
- 0.0 To insert a new subsection (3) to address issues relating to a foreign bank applying for a license to establish branch operations in the ECCB Member States. The subsection requires certification from the home country supervisor that its approval has been granted and documented evidence to be presented to the Central Bank to assess the quality of supervision.
- 1.7 To renumber the existing Section 4(3) as subsection (4) of this section.
- 1.0 To retain subsection (5) of the former Section 4 and renumber it as subsection (6) of this section.
- 1.0 To retain subsection (6) of the former Section 4 and renumber it as subsection (7) of this section, and pluralize the word *Schedule* to reflect the addition of a new Schedule to the Act.

7. Restricted words, names and practices.

Section 6

Rationale for Amendment

- 7.0 Basle Core Principle 2 requires that the permissible activities of institutions that are licensed and subject to supervision as banks must be clearly defined, and the use of the word “bank” in names should be controlled as far as possible. This is provided for in the existing Act, however, the provisions is strengthened by increasing the fine for contravention of this section, to discourage this practice and ensure that the banking public is not misled.

Proposal for Amendment

- 7.0 To amend subsection (2) of the former section 5 now section 6 (4) to increase the fine from one hundred thousand dollars to two hundred and fifty thousand dollars and the penalty from one thousand dollars to five thousand dollars for unlawful use of the words “bank”, “financial institutions”, or their derivatives in their name.

- 1.0 The former section 5 and 6 have been substantively merged to form the proposed
section 6 and the former section 6 (2) is the proposed section 7.

8. Authorisation of location and approval of new business premises

Section 8

Rationale for Amendment

- 8.1 A component of the licensing process is the proposed location of the licensee. Accordingly, the approval of the location of the business is part of the overall application review and approval process and the establishment of new offices forms part of ongoing supervision of existing institutions. Overseas offices of local financial institutions can pose significant risks to the operations of the banks, if these offices are not managed or regulated prudently. Accordingly, the regulator should have the authority to require a local financial institution to

close a branch where the quality of supervision of that branch is inadequate when compared to the risks the branch poses to the entire bank.

Proposal for Amendment

- 8.0 To divide subsection (2) of the former Section 7 into subsections (2) and (3).
- 8.0 To reposition the former subsection (3) of Section 7 as subsection (4) .
- 8.0 To reposition the former sub-section (4) of Section 7, as subsection (5).
- 8.0 To insert a new Subsection (6) to enable the Minister on the recommendation of the Central Bank, to require a locally incorporated financial institution to close its place of business outside the ECCU Area or impose limitations on its activities if it is dissatisfied with the quality of host country supervision.

9. Voting

Section 9

Rationale for Amendment

- 9.0 Core Principle 4 requires that banking supervisors have the authority to review and reject proposals to transfer significant ownership or controlling interests in existing banks to other parties. Significant ownership and controlling interest in banks may be transferred by transferring voting shares or by transferring assets. The Core Principles Methodology requires supervisory approval of a change in ownership or exercise of voting rights over a particular threshold. Sections 9(1) and 10(1)(a) of the Banking Act (formerly sections 8(1) and 9(1)(a) address ownership and the transfer of the whole or any substantial part of an institutions' assets or liabilities without the approval of the Minister.

- 9.0 Supervisory approval is required at the licensing stage for the individuals and or companies that are deemed to be significant shareholders in a financial institution to ensure that banking institutions are only owned by credible individuals or as in the case of companies, that the structure is not so complex as to inhibit effective supervision. The beneficial owner of the banking institution, as well as of each entity within the financial group, must be known to the supervisor. It becomes necessary therefore for supervisory approval to be sought on an ongoing basis, particularly with the advent of the ECSE, for the acquisition of significant holdings in a banking institution and for the transfer of a significant portion of the business to another entity or individual. The supervisory authority must at all times be able to make a determination as to the risk exposure and potential threat to the financial stability of the bank. To enable the Supervisor to make an informed assessment of the ownership of a financial institution, a three-tiered approach is being proposed in the amendments.
- 9.0 The first tier is supervisory authority to review and reject proposals to transfer ownership. This position is similar to that in Trinidad and Tobago and Jamaica. However, in these jurisdictions the Minister may require a local bank to transmit to the Minister information as to whether that shareholder holds any voting shares in the bank as beneficial owner or as trustee. The second is reporting of significant shareholdings to the supervisory authority, and the third is the ability of the supervisor to order divestment.

Proposal for Amendment

- 9.0 To reposition the existing Section 8(2) as subsection (2) of this Section and replace the words “so interrelated that they should be considered as a single unit” with the words ***connected or related*** as defined in Section 3, which is outline above.

- 9.0 To insert a new subsection (3) to require quarterly reporting by financial institutions of share ownership in excess of 5 per cent of the total voting rights of the institution to the Central Bank as part of the ongoing supervision.
- 9.0 To retain subsections (3) through (5) renumbering as subsections (4) through (6).
- 9.0 To amend sub-section 3 to give the Central Bank the authority to use its powers to prevent adverse consequences under Section 22 (discussed below) to require divestment of interests acquired in violation of this section.
- 9.0 To amend sub-section 4 to refer to the Central Bank only.
- 9.0 To renumber subsection (6) as subsection (7).

10. Revocation of licence and declaration of discontinuance of service.

Section 11

Rationale for Amendment

10.0 Core Principle 22 requires that banking supervisors have at their disposal adequate supervisory measures to bring about timely corrective action when banks fail to meet prudential requirements (such as minimum capital adequacy ratios), when there are regulatory violations, or where depositors are threatened in any other way. In extreme circumstances, this should include the ability to revoke the banking license or recommend its revocation. The proposed amendment expands the ground for revocation to include circumstances directly related to the prudent operation of the financial institution

Proposal for Amendment

- 10.0 To include in subsection (1) additional paragraphs to address specific conditions under which the Minister, acting on the recommendation of the Central Bank can revoke a licence. Paragraph (f) was included to address inadequacies in capital and liquidity; paragraph (g) to address ongoing fulfilment of the criteria applied at the licensing stage; and paragraph (h) to address instances where the licensed entity is taken over by another licensed entity rendering one of the licences unnecessary. Paragraph (h) would be applicable in cases such as FirstCaribbean International Bank Limited.
- 10.0 To amend sub-section (2) to explicitly provide that a licensee's statement of objections to a decision must be in writing.
- 10.0 To insert a new sub-section (3) to provide a statement of reasons for a decision to revoke.
- 10.0 To renumber the existing sub-sections (3), (4), and (5) as sub-sections (4), (5), and (6).

Part II - Financial Requirement and Limitations

11. Minimum paid-up or assigned capital

Section 13

Rationale for Amendment

- 11.0 Core Principle 6 requires that banking supervisors set minimum capital adequacy requirements for banks that reflect the risks that the bank undertakes, and define the components of capital, bearing in mind its ability to absorb losses. For internationally active banks, these requirements must not be less than those established in the Basle Capital Accord. Sections 13,14 and 15 of the Banking Act set minimum capital adequacy requirements, however the test of capital adequacy prescribed by the banking supervisors of the Basle

Committee which have been accepted internationally is to relate own funds (described as Tier I capital and or Tier II Capital reserves) to total assets and off- balance sheet items, risk adjusted and to establish a minimum level that should be maintained.

11.0 To ensure that banks are sufficiently capitalized to protect against losses while utilizing criterion for assessment and benchmarks that are internationally recognized, the supervisory authority must be able to set the requisite criteria, determine how the criteria would be applied and make adjustments as trends in the financial world dictate. The supervisory authority must also be able to apply the capital adequacy criteria to conglomerates in a similar manner as is applied to the banking entity to ensure that the risk of contagion is adequately mitigated.

11.0 In addition to establishing criterion for assessment, the supervisory authority must be able to determine the components that qualify for inclusion in Tier I and Tier II capital and set the appropriate risk weightings, which in both instances must be equal to or exceed that required under the Basle Capital Accord.

Proposal for Amendment

11.0 To amend Section 13 to establish absolute minimum amounts for banks, credit institutions and other financial institutions and to allow for the Minister, on the recommendation of the Central Bank, to increase the minimum so established either through written notice sent to the main office of each financial institution or published in the local newspapers or the Gazette.

11.0 To amend subsection (1) paragraph (a) to fix the amount of five million dollars for all banks whether existing or newly licensed, and paragraph (b) to

establish a minimum of one million dollars for credit institutions and other financial institutions.

- 11.0 To replace the old subsection (3) with a new subsection to create an offence for breach of sub-section 1

12. Maintenance of Reserve Fund

Section 14

Proposal for Amendment

- 12.1 To reword subsection (3) which provides for the submission of an application for exemption by a foreign financial institution from this section of the Act, to explicitly state the procedure for exemption.

13. Adequacy of Capital

Section 15

Proposal for Amendment

- 13.0 To reword the existing section 15, to allow the Minister, acting on the recommendation of the Central Bank to prescribe the percentage of risk adjusted assets that must be maintained by various classes of financial institutions, and the manner of computation of this ratio.
- 13.0 To replace subsection (2) with a new subsection allowing the Central Bank to determine capital adequacy ratios to be applied to all or any class of financial institution, and to expand the capital adequacy standards to include entities within a financial group (defined).

- 13.0 To replace the original subsection (3) with a new subsection that requires any financial institution that does not meet the capital adequacy requirements to submit a plan for addressing the deficiency, establishing a timeframe within which to have it addressed.
- 13.0 To replace subsection (4) with a new subsection to allow the Central Bank to take action against the institution in accordance with section 22 of the Banking Act for failure to satisfactorily comply with subsection (3)

14. Restriction on Certain activities of licensed Financial Institutions and Affiliates *Amendment of Section 16 of the Act*

14A. Lending Activities

Rationale for Amendment

- 1.0 Core Principle 9 requires that Banking Supervisors be satisfied that banks have management information systems that enable management to identify concentrations within the portfolio and Supervisors must set prudential limits to restrict bank exposures to single borrowers or groups of related borrowers.
- 1.0 In 1995 the Central Bank sought to augment the requirements under section 16 (1) of the BA, which refers to large credit exposures, by issuing Prudential Guidelines limiting large credit exposures to 25 per cent of Tier I Capital per individual borrower. Experience has shown that this is generally not adhered to. Empirical evidence demonstrates that bank failures generally stem from poor credit quality, which in turn creates liquidity problems.
- 1.0 In order to achieve effective supervision, Core Principle 10 requires that Banking Supervisors have in place requirements that banks lend to related companies and individuals on an arms-length basis that such extensions of credit

are effectively monitored, and that other appropriate steps are taken to control or mitigate the risks. The proposed amendment that introduces a new subsection (10) seeks to address this Principle. In addition to the restriction on lending to individuals, it restricts lending to members of a borrower group that would push the financial institution's exposure to the borrower group as a whole over the statutory limit.

Proposal for Amendment

1.0 To repeal section 16 and substitute with a new section 16.

1.0 To make provisions to amend existing section 16(1)(a) to-

1.0.0 tighten the reference to related parties to which a financial institution's exposure is limited under this section by combining these parties into a *borrower group*, and change the reference to making advances, to incurring exposures so as to capture all types of exposures e.g. letters of credit and futures agreements. The amendment also seeks to cap the exposure to such a group or party therein to 25 per cent of Tier I Capital as agreed to by the Caribbean Banking Supervisors and to retain only one exception, the Government or debts secured by Government.

1.0.0 remove all the exemptions outlined in the existing subparagraphs (i),(ii) and (iii)

1.0 To expand the existing subsection (1)(b) to additionally prohibit the extension of credit against shares of any entity within the financial group to which the licensed institution belongs, as well as the shares of a borrower company. This

improves upon the existing provision, which only refers to the shares of the bank.

1.0 To reposition the existing paragraph (1)(c) as subsection (4), and renumber subsections (1)(d-g) as subsections (1)(c-f).

1.0 To amend subsection (1)(c) as renumbered (existing subsection (1)(d)) to remove the exemptions contained therein.

1.0 The amendments to subsections (1)(e) and (1)(f) as renumbered (existing paragraphs (f) and (g)) will be addressed under **Investment Activities**.

1.0 To insert a new subsection (2), paragraph (a) of which provides that obligations incurred under subsection (1) which are in excess of 15% of the financial institution's unimpaired capital and reserves must be secured by insurance with a value of at least twenty percent more than the amount of the obligations secured thereby. Paragraph (b) limits the combined exposure of 10 per cent of Tier I Capital to 400 percent or 4 times the financial institution's Tier I capital, and paragraph (c) allows the Central Bank to vary or suspend any of the limits prescribed under subsection (1).

1.0 To insert a new subsection (3) creating an offence for breaches of subsections (1)(a), (1)(c), (1)(f), or (2).

1.0 To reposition the existing subsection (1)(c) but renumbering it as subsection (4).

1.0 To renumber subsection (2) as subsection (5) and to reduce the percentage of the exposure outlined in subsection (2) to 5 per cent of the financial institution's Tier I Capital. The amendment also requires the references in this section to be altered, to reflect the change in position of Section 16(1)(c), to stand as Section 16(2).

- 1.0 To insert a new subsection (6) creating an offence for breaches of subsections (4) or (5).
- 1.0 To reposition the existing subsection (3) as subsection (7) and make the relevant amendments to reference the appropriate subsections.
- 1.0 To insert a new subsection (8), which will be addressed under **Investment Activities**.
- 1.0 To insert a new subsection (9) that mandates financial institutions to maintain information systems that facilitate the capturing of connected lending.
- 1.0 To amend the references made in subsection (10), existing subsection (4), and to capture connected or related borrowers.
- 1.0 To amend subsection (11), existing subsection (5), to insert amendments to the sections referenced under this section.
- 1.0 To insert a new subsection (12) that limits the activities of a financial group to banking business or business of a financial nature to enable effective consolidated supervision and regulation of all entities that could impact the soundness of the licensed institution.

15. B Investment Activities

Rationale for Amendment

- 1.0 Core Principle 5 requires that banking supervisors have the authority to establish criteria for reviewing major acquisitions or investments by a bank and ensuring that corporate affiliations or structures do not expose the bank to undue risks or hinder effective supervision.

- 1.0 The existing section 16(1)(f) of the Banking Act now section 16(1)(e), contains certain statutory limitations on the ability of a financial institution (including a bank) to acquire or continue in the acquisition of any ownership interest in any financial, commercial, agricultural, industrial or other undertaking. The limitations are related to the capital and reserves of the financial institution. The provision does not, however, contain a global limitation on such holdings.
- 1.0 These limitations do not extend to the range of activities that affiliates may conduct. As such a bank can choose to be affiliated with non-financial unregulated entities that the supervisors do not have either the expertise or the legal authority to supervise.
- 1.0 The existing Section 16(1)(g) now section 16(1)(f), contains certain statutory limitations on the purchase and acquisition of real estate other than for expansion and sets out a time frame for disposal.
- 1.0 The provisions under the Banking Act while limiting the holdings of a financial institution in another company to 10 per cent of its capital and reserves does not preclude ownership in several companies to such an extent that the entire capital and reserves of the financial institution is tied up in other companies. Where the investments by a financial institution results in the formation of a group or conglomerate, under the existing Banking Act the ECCB cannot effectively supervise the activities of the group with a view to determining the potential threat to overall financial stability of the banking entity as some entities are outside its reach.
- 1.0 The proposed amendment should be viewed in conjunction with the amendments to Sections (6) and (15) of the existing Banking Act.

- 1.0 To re-letter section 16(1)(f) as section 16(1)(e) and section 16(1)(g) as section 16(1)(f).
- 1.0 To amend existing subsection (e) by expanding subparagraph (ii) with a proviso that limits the global holdings by a financial institution in other companies to 60 per cent of the financial institution's Tier I Capital.
- 1.0 To amend existing subparagraph (ii) of paragraph (f) to permit financial institutions to hold other real estate for a maximum period of five years before disposal.
- 1.0 To insert a new subsection (8), which was introduced in light of the requirements under Core Principle 4 and embodies criteria to determine the suitability of a proposed shareholding.

15. Credit Institutions, Class of Credit Institution and Financial Group

Section 18

Rationale for Amendment

- 15.0 The activities engaged in by any member of a financial or other group impacts the performance, credibility and viability of all members. The Supervisor must be aware of the risk attendant in each segment of the group if the supervision of the financial institution is to be effective.
- 15.0 Core Principle 23 requires that Banking Supervisors practice global consolidated supervision over their internationally active banking organizations, adequately monitoring and applying appropriate prudential norms to all aspects of the business conducted by these banking organizations worldwide, primarily at their foreign branches, joint ventures and subsidiaries.

- 15.0 Whenever a financial institution is part of a group, the Central Bank will need to conduct consolidated supervision. Consolidation will include the preparation of consolidated returns covering the group or part of the group. Consolidation will also take into account the activities of group entities, which are not included in consolidated returns because of the nature of their assets, which cannot be meaningfully included. It is not intended to conduct full supervision of all the members in the group but only to supervise the financial institution as part of its group.
- 15.0 The requirements of Core Principle 23 are also applicable to Sections 18,20,21,22,23,31 and 35 of the Banking Act. These sections will be addressed subsequently.

Proposal for Amendment

- 15.0 To amend section 18, enabling the Minister in consultation with the Central Bank to apply the provisions of the Act to members of a financial group as defined in the interpretations section with such modifications as are deemed appropriate. In so doing the Central Bank is better placed to comply with the requirements of Core Principle 23.

Part III – Audit, Information and Examination

16. Annual Audit, report and publication of financial statements and results.

Section 19

Rationale for Amendment

- 16.0 Core Principle 19 requires that supervisors have a means of independent validation of supervisory information whether by onsite examination or use of external auditors. Significant emphasis is placed on the work of the external auditors in the acquiring information on the performance of the financial

institution and in advising such institutions of prudent courses of action to be taken with respect to accounting practices and procedures.

- 16.0 Essential criteria for compliance with this Principle include the Supervisor having the authority to directly appoint external auditors to conduct supervisory tasks, and to oppose the appointment of an external auditor that is deemed to have inappropriate expertise and or independence.

Proposal for Amendment

- 16.0 To amend subsection (1) to specifically detail the duties of the external auditor.
- 16.0 To insert a new subsection (2) to address the remuneration of the auditor.
- 16.0 To insert a new subsection (3) to mandate the auditor to immediately report on matters of concern arising out of the audit of the institution to the financial institution and the Central Bank. The matters that must be immediately reported are outlined in paragraphs (a) to (e) under this subsection.
- 16.0 To insert a new subsection (4) to enable the Central Bank to request the reports submitted to the board of the financial institution by its internal and external auditors.
- 16.0 To insert a new subsection (5) to address further areas on which the auditor is expected to inform the Central Bank.
- 16.0 The insertion of the above subsections resulted in a renumbering of existing subsections.

- 16.0 To amend subsection (6), formerly subsection (2) to require the auditor to present its findings directly to the board of the financial institution.
- 16.0 To amend subsection (7), formerly subsection (3) to require any locally incorporated bank to publish and exhibit copies of audited statements, on a solo and consolidated basis for local and foreign operations.
- 16.0 To amend subsection (8), formerly subsection (4), to require the foreign branch banks to publish statements of its local operations.
- 16.0 To insert a new subsection (9) creating an offence for failing to carry out additional duties at the request of the Central Bank.
- 16.0 To amend subsection (9), formerly subsection (5) to reflect the increased fines applicable to violations under subsections (6), (7) and (8) under this section from one hundred dollars to five hundred dollars.
- 16.0 To amend subsection (11), formerly subsection 6, to replace the phrase *shall have the power to* with the word *may* in relation to the appointment of an auditor by the Central Bank.
- 16.0 To insert a new subsection (10) that enables the Central Bank to commission a special audit of a financial institution.
- 16.0 To insert a new subsection (12) relieving auditors of liability for disclosure of information to the Central Bank.
- 16.0 To reposition the former subsections 7 and 8 as subsections 13(a) and (b).
- 16.0 To amend Subsection (13), formerly Subsection (8) to exclude certain persons from remaining as auditors of the financial institution.

1. Central Bank Examination

Section 20

Rationale for Amendment

0.1 Core Principle 16 requires that an effective banking supervisory system consist of some form of offsite and on-site supervision. In addition, Core Principle 20 requires that the banking supervisor have the ability to supervise the banking group on a consolidated basis. In line with this Section 20 allows the examination of the affiliates of a financial institution. However, since affiliates located abroad may pose considerable risk to a financial institution (see paragraph 15 above), it is necessary to expand this section to provide for supervision of overseas as well as local affiliates.

Proposal for Amendment

- 17.0 To amend subsection (2) to effect an examination of the offices of locally incorporated banks that are outside the jurisdiction.

- 17.0 To reposition the existing section 23(2) as subsection (3) of this section. To amend subsection (2) by removing the word *Inspection* and replacing it with *Examination* to address inconsistencies arising from the use of both terms in the Act.

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

Section 21

Proposal for Amendment

18.1 To amend subsection (1) to change the word *Inspection* to *Examination* and to extend Central Bank's examinations to the affiliates of licensed

financial institutions. This is to address inconsistencies arising from the use of both terms in the Act.

19. Central Bank's Powers and Measures for Preventing Adverse Consequences

Section 22

Rationale for Amendment

- 19.1 Core Principle 22 requires that banking supervisors have at their disposal adequate supervisory measures to bring about timely corrective action when a bank fails to meet prudential requirements, when there are regulatory violations, or where depositors are threatened in any other way. In extreme circumstances this should include the ability to revoke the banking license or recommend its revocation.

Proposal for Amendment

- 19.0 To amend section 22 to outline the specific courses of action at the disposal of the Central Bank and the basis for such action by the Central Bank. The courses of action outlined are on gradation that commences with written warnings, and includes the payment of a monetary sum to the Comptroller of Inland Revenue, where the Central Bank notifies the institution of a breach of certain sections of the Banking Act and the institution admits such breach. The ultimate sanction is the revocation of licenses by the Minister. With regard to monetary penalties due regard has been paid to constitutional limitations to ensure that the amendment does not allow the ECCB to impose fine, or a discretionary penalty. This ensures that the ECCB does not act in the nature of a judicial or legislative body.
- 19.0 To expand subsection (1) to take into account the actions of affiliates, directors, officers, employees or significant shareholders in undertaking remedial action, and to detail in order of severity the remedial action measures available to the Central Bank.

- 19.0 To insert a new subsection (2) which authorizes the Minister on the recommendation of the Central Bank, to restrict or vary any restriction of a licence or to revoke a licence pursuant to section 11 under the Act where there is evidence of unsafe or unsound practices in the managing of the financial institution, or a violation of any law, regulation, or Central Bank guideline to which the financial institution is subject.
- 19.0 To insert a new subsection (3) which outlines the remedial actions that can be the subject of a written agreement concluded between the Central Bank and the financial institution as a remedial measure.
- 19.0 To insert a new subsection (4) that allows a cease and desist order issued under subsection (1) subparagraph (iii) of this section to include corrective action to be taken by the financial institution.
- 19.0 To insert a new subsection (5) that makes it an offence liable to summary conviction to fail to comply with the provisions of this section. The subsection also outlines the applicable fines that may be charged to directors/managers and to the financial institution. The financial institution is liable to be fined one hundred thousand dollars, with an additional fine of ten thousand dollars for each day on which he offence is continued after conviction. The individual is fined fifty thousand and five thousand dollars respectively.
- 19.0 To introduce a new subsection (6) specifying the manner of setting the effective date of remedial measures directed by the Central Bank.
- 19.0 To introduce a new subsection (7) instituting a regime for the payment of a monetary sum for admitted breaches of certain sections of the Banking Act by

a licensed financial institution. The provision contains protection from liability for prosecution after admission and payment of the monetary sum to the Comptroller of Inland Revenue.

1. Submission of returns and production of information as required by the Central Bank

Section 23

Rationale for Amendment

20.1 In addition to the production of information upon the request of the Central Bank the submission of prudential returns containing important data is a key part of the supervisory process. These returns form the bulk of information used for offsite surveillance of licensed financial institutions. The provisions for making returns appear in the Eastern Caribbean Central Bank Agreement, which predated the Banking Act. The proposed amendments regularises the process by importing the provisions into the Banking Act where most other obligations of commercial banks towards the supervisor are to be found.

Proposal for Amendment

- 1.0 To modify and renumber the existing subsection (1) as subsection (6).
- 1.0 To insert a new subsection (2) to provide for the submission of returns, including a quarterly report to the Central Bank on exposures that exceed 10 per cent of the Tier I capital.
- 1.0 To insert a new subsection (3) to provide for the confidential treatment of such returns, but for the exchange of information with other financial supervisory institutions with adequate arrangements for preserving their confidentiality.

- 1.0 To insert a new subsection (4) to allow for copies of returns to be provided to a Participating Government at its request.
- 1.0 To insert a new subsection (5) enabling the Central Bank to require a financial institution to disclose the basis for any of its fees and charges.
- 1.0 To reposition subsection (1) as subsection (6) expanding it to refer to data described in subsections (2) or (5).
- 1.0 To insert a new subsection (7) creating an offence for breaches of subsection (2) or (6).

Part IV – Miscellaneous

1. Minimum Criteria for determining whether a person is Fit and Proper

Section 26

Rationale for Amendment

21.0 It is necessary that certain minimum standards of performance be set for directors so that each director will know what is required, when serving on the board of a financial institution. The standards are embodied in the fit and proper criteria. There is an ongoing need to ensure that Directors continue to meet these criteria given their critical role in ensuring the financial soundness of the institution.

21.0 This amendment is critical in light of the fact that banks and other financial institutions hold the wealth of the member states, as custodians of the funds of individual depositors. The law must ensure that the rights of the owners of this property that is held by financial institutions are protected. The democratic right of shareholders to elect the persons they wish to manage

their company, is preserved as shareholders would be aware of the criteria, allowing them to elect their directors within the bounds of the law.

21.0 The criteria set out in the Act would be one of the tools used in the offsite surveillance and onsite examinations to assess directors' performance and conduct in office.

Proposal for Amendment

21.0 To insert a new section containing the minimum standards of performance for directors, controlling shareholders or managers of financial institutions.

1. Removal and disqualification of Director

Section 27

Rationale for Amendment

22.1 Good corporate governance requires directors, managers and controlling shareholders to meet the minimum standards of performance outlined in section 26. To strengthen the existing criteria it was necessary to include additional provisions for disqualification upon notification by a special majority of the financial institutions board, automatic disqualification, and provisions that allow for discretion in instances where the failure or revocation of the licence of a financial institution was not directly attributable to the performance of the director or manager.

Proposal for Amendment

22.2 To renumber the existing Section 26 as Section 27 and amend subsection (1) by renumbering subsections (b), (c) as subparagraphs (b)(ii), (iii) and inserting a new subparagraph (i) to include conviction of an offence under this Act as an additional reason for disqualification.

- 22.3 To amend subsection (2) dividing it into three paragraphs, to include the former sub-paragraph (1)(d) as sub-paragraph (2)(a), to include a new paragraph (b) to cover association with companies which have been wound-up by the court or placed in receivership, and to modify the existing sub-section placing it as paragraph (c) adding an exception in the event that the licence was revoked due to amalgamation or voluntary winding-up, to this provision which results in disqualification for association with any financial institution whose licence was revoked,.
- 22.4 To remove the words “*his*” and “*his being*” replacing them with *has been*, throughout the Section.

**23. Declaration and registration of related interest and
Conflict of interest by Director**

Section 28

Proposal for Amendment

- 23.1 To renumber the existing Section 27 as Section 28, and amend subsection (2) to remove the word “*his*” and replacing it with *the director*.
- 23.2 To amend paragraphs (a) and (b) of subsection (2) to reflect the removal of the words “*his interest*”, replacing it with the phrase *the interest of the director*.
- 23.3 To amend paragraphs (a) and (b) of subsection (3) to reflect the removal of the word “*he*”, replacing it with the phrase *assuming office* in subparagraph (a) and *the date of commencement in office or possession of the property* in subparagraph (b).
- 23.4 Subsection (4) is retained without amendment.

23.5 To amend subsection (5) to increase the fine applicable to this section.

24. Responsibility for deceiving statements and obstruction of audit or authorized examination

Section 29

This former Section 28 is renumbered, and the content retained without amendment

25. Management's duty of compliance with requirements of the laws

Section 30

This former Section 29 is renumbered, and the content is retained without amendment.

26. Liability of directors, officers and partners

Section 31

This former Section 30 is renumbered, and the content is retained without amendment

27. Secrecy of Information

Section 32

Rationale for Amendment

27.0 At present the ECCB regulates branches of First Caribbean International Bank. The head office of these branches is located in Barbados. The Act is making provision for consolidated supervision, but this would be impossible under the current arrangements where the ECCB would be prohibited from exchanging information with the Central Bank of Barbados. As required by Core Principle 24, in order to effectively perform consolidated supervision, the ECCB as supervisor must establish contact and exchange of information with the other supervisors of the regulated entity.

27.0 Home country supervisor should establish informal or formal arrangements with host country supervisors for appropriate information sharing on the financial condition and performance of overseas operations of its banks in the host countries. The information referred to is prudential and other relevant information relevant to financial stability. Information on individuals will not be disclosed. The information shared will be done so on the basis that it is not to be used for purposes other than financial supervision. Such excluded purposes are for provision to criminal or taxation authorities for the purpose of preventing money-laundering or tax evasion.

Proposal for Amendment

27.0 To renumber the existing Section 31 as Section 32, and expand the proviso to subsection (1) to include provisions granting authority to the Central Bank to make arrangements with home supervisors of foreign financial institutions and host supervisors of local financial institutions that have established offices overseas for the sharing of information for the purpose of ensuring safety and soundness, subject to a Memorandum of Understanding, and provided that appropriate measures are instituted for the confidential use of the information.

28. Working days of financial institutions

Section 33

28.1 This former Section 32 is renumbered, and the content is retained without amendment.

29. Regulations

Section 34

Rationale for Amendment

34.0 There is a general theme throughout the Core Principles that requires the banking supervisor to have the capacity to issue standards, guidelines or regulations to effect varying operational aspects of risk management. Such standards, guidelines and regulations are in relation to market, country, transfer and credit risk, loan classification and provisioning, capital adequacy, funds management and know-your-customer procedures.

Proposal for Amendment

34.0 To renumber the existing Section 33 as Section 34, and insert a new subsection (f) that gives the Minister the authority to make regulation regarding capital adequacy requirements.

30. Compounding of Offences

Section 35

Proposal for Amendment

30.1 To renumber section 33A as section 35 and to change the word “*he*” to *The Minister*.

31. Prudential Guidelines

Section 36

Rationale for Amendment

1.0 The supervisor should have at its disposal the ability to issue Prudential Guidelines to strengthen the supervisory process within its jurisdiction. The proposed amendment seeks to explicitly state in the Act the authority of the Central Bank to issue Prudential Guidelines and thereby give them legal effect.

Proposal for Amendment

- 1.0 To insert a new section 36 which authorises the Central Bank to issue Prudential Guidelines on a range of detailed matters, for the effective administration of the banking laws.

Part V – Receivership, Liquidation and Reorganisation

32. Voluntary Liquidation

Section 37

Proposal for Amendment

- 32.1 To renumber section 34 as section 37.

1. Cessation of business operations

Section 38

Proposal for Amendment

- 33.1. To renumber section 35 as section 38.

34. Notice to depositors of voluntary liquidation

Section 39

Proposal for Amendment

- 1.0 To renumber section 36 as section 39.

- 1.0 To amend subsection (1) to remove the word “*prescribe*” and replace it with the word *determine*.

35. Rights of Depositors and Creditors in Voluntary Liquidation

Section 40

Proposal for Amendment

- 1.0 To renumber section 37 as section 40.

1. Distribution of assets

Section 41

Proposal for Amendment

- 1.0 To renumber section 38 as section 41, and amend references to prior sections, in accordance with the renumbering of the sections.

37. Insufficiency of assets in discharge of obligations in voluntary liquidation

Section 42

Proposal for Amendment

- 1.0 To renumber section 39 as section 42.

1. Appointment of Receiver

Section 43

Proposal for Amendment

- 1.0 To renumber section 40 as section 43.

- 1.0 To replace the word “*shall*” with ***may***. The replacement is to allow the exercise of discretion where the conditions of paragraphs (a) & (b) exist, namely impairment of capital or unsound condition, or conduct of business in an unlawful or imprudent manner. It is possible for these circumstances to be corrected by remedial measures, before the financial institution arrives at a point where the appointment of a receiver is necessary.

- 1.0 To amend paragraph (d) to remove the word “*inspection*” and replace it with the word ***examination***.

- 1.0 To amend the reference in paragraph (e) from section 10 to section 11 and to replace the reference to Section 22 with subsection (2) of Section 22 to reflect the changes in Section 22.

1.0 To insert a new paragraph (f) to authorise compulsory liquidation where persons are conducting banking business without a licence.

1. Notice of Appointment of Receiver

Section 44

Proposal for Amendment

39.1 To renumber section 41 as section 44.

1. Institution of proceedings to have Receiver's appointment lifted.

Section 45

Proposal for Amendment

40.1 To renumber section 42 as section 45

1. Period of Obligation to Commence Compulsory Liquidation or Reorganisation

Section 46

Proposal for Amendment

41.0 To renumber the section 43 as section 46.

41.0 To amend paragraph (a) to replace the reference to section 44 to section 47

41.0 To amend paragraph (b) to replace the reference to section 49 to section 52

1. Compulsory Liquidation, Reorganisation Proceedings

Section 47

Proposal for Amendment

42.1 To renumber section 44 as section 47.

1. Powers of the High Court

Section 48

43.1 To renumber section 45 as section 48.

1. Powers of receiver, official liquidator

Section 49

Proposal for Amendment

44.2 To renumber section 46 as section 49.

1. Term extensions and attachment transfer of assets to be void

Section 50

Proposal for Amendment

1.0 To renumber section 47 as section 50.

1.0 To amend subsection (1) to change the reference to section 40 to refer to section 43.

1. Execution against assets of an official institution

Section 51

1.0 To renumber section 48 as section 51.

1. Reorganisation Proceedings

Section 52

Proposal for Amendment

1.0 To renumber section 49 as section 52.

1.0 To amend subsection (1) to change the reference to Section 45 (1) to Section 48 (1).

48. Reorganisation Provisions

Section 53

Proposal for Amendment

48.1 To renumber section 50 as section 53.

1.0 To amend the reference to Sections 40 and 45(2) under Subsection (c) of Section 5 to Sections 43 and 48(2) respectively.

49. Petition for Modification or revision of reorganisation

Section 54

49.1 To renumber section 51 as section 54.

50. Preferential and Other Claims

Section 55

1.0 To renumber section 52 as section 55.

51. Unclaimed Funds

Section 56

51.1 To renumber section 53 as section 56

51.2 To amend the reference to Section 57 to Section 60.

52. Shareholders Rights on Remaining Assets

Section 57

52.1 To renumber section 54 as section 57.

53. Safe Deposits and Unclaimed Property

Section 58

53.1 To renumber section 55 as section 58.

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

Section 59

54.1 To renumber section 56 as section 59.

Part VI – Abandoned Property

55. Abandoned Property

Section 60

55.1 To renumber section 57 as section 60.

56. Report, Publication and Disposal of Abandoned Property

Section 61

61.0 To renumber section 58 as section 61.

1.0 To amend subsection (1) to change the reference to section 57, to refer to section 60.

56.3 To amend subsection (2) to change the reference to section 57(1) to section 60(1).

1. Sale and Handling of Proceeds of Sale of Abandoned Property

Section 62

Proposal for Amendment

1.0 To renumber section 59 as section 62.

1.0 To make further amendment to Subsection (1) to change the reference to Section 58(3) to Section 61(3).

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58. Claims on abandoned property

Section 63

Rationale for Amendment

63.0 The proposed amendment is being made to clarify the role of the Central Bank under this provision. The term *paid to* connotes that the property so transferred becomes the property of the Central Bank rather than merely being placed in the custody of the Central Bank for safekeeping.

Proposal for Amendment

1.0 To renumber section 60 as section 63.

58.3 To amend subsection (1) to add the word ***delivered*** to reflect the custodial arrangement referred to above.

1. Penalties

Section 64

Proposal for Amendment

1.0 To renumber section 61 as section 64.

1.0 To amend the reference to sections 58(1) and 59(3) and replace them with Sections 61(1) and 62(3) respectively.

Part VII – Transfer of Banking Business

1. Banking Business Vesting Order

Section 65

60.1 To renumber section 62 as section 65.

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1. Supplementary Provision as to Transfers

Section 66

61.1 To renumber section 63 as section 66.

1. Transfer to be Subject to Stamp Duty

Section 67

62.1 To renumber section 64 as section 67.

Part IX – General

1. Non-application of Aliens (Landholding Regulation) Act

Section 68

63.1 To renumber Section 65 as Section 68.

1. Repeal and Saving

Section 69

Proposal for Amendment

64.0 To make provisions for repealing the existing Banking Act in subsection (1).

64.0 A new subsection (2) is included to preserve any regulation, notice or other subsidiary legislation that was made pursuant to the Banking Act that is in force at the commencement of this Act.

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