

[L. S.]

I Assent,

B. T. Carrott,
Governor-General's Deputy.

26th May, 1993.

ANTIGUA AND BARBUDA

No. 21 of 1993.

AN ACT to amend the Banking Act, 1991 (No. 17 of 1991).

[10th June, 1993]

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. This Act may be cited as the Banking (Amendment) Act, 1993.

Short title.
(No. 17 of 1991)

2. Section 2 of the Banking Act, 1991 (hereinafter referred to as the principal Act) is amended —

section 2 of Act
No. 17 of 1991
amended.

(a) by repealing the definition of "banking business" and substituting the following:

"banking business" means —

- (i) the business of receiving funds through the acceptance of monetary deposits which are repayable on demand or after notice or any similar operation;
- (ii) the business of receiving funds through the sale or placement of bonds, certificates, notes or other securities;

(iii) the use of such funds, either in whole or in part, for loans or investment for the risk of the customer; and

(iv) any other activity recognised by the Central Bank as banking practice and which a financial institution may additionally be authorised to do;"; and

(b) in the definition of the word "unsecured" by inserting after the word "facilities" occurring in the third line of following:

"against security, any part of such advances and credit facilities."

Section 3 of Act
No. 17 of 1991
repealed and
replaced.

3. Section 3 of the principal Act is repealed and replaced by the following:

"Requirement of
Licence.

3. (1) A person shall not carry on banking business in Antigua and Barbuda without a licence granted by the Minister.

(2) A bank 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 4.

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

(4) Notwithstanding the provisions of subsection (1), the Minister, on the recommendation of the Central Bank shall grant a provisional licence, with effect from the commencement of this Act, to a person, other than a bank, who is carrying on banking business in Antigua and Barbuda.

(5) A person, who has been granted a **provisional** licence under this section, shall, within one hundred and twenty days from the date of the grant of the provisional licence, apply for a licence under the provisions of section 4.

(6) If a person fails to apply for a licence within the period specified in subsection (5) the provisional licence granted to that person shall be deemed to have been revoked.

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

~~(8) Any person who contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of five years or to both such fine and imprisonment; 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."~~

4. Section 4 of the principal Act is amended by inserting after subsection (5) the following subsection —

Section 4 of Act
NO. 17 of 1991
amended.

"(6) The Minister may, after consultation with the Central Bank, and by Order published in the Gazette, amend Schedule 1."

5. Section 5 of the principal Act is repealed and replaced by the following:

Section 5 of Act
NO. 17 of 1991
repealed and
replaced.

"Restriction on
use of words
"Bank", "Financial
institution" or
their derivatives.

5. (1) No person other than a licensed financial institution shall. **except** with the written consent of the Minister and 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 indicated 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 or continue to 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;

(b) make or continue to make representation in any billhead, letter, letterhead, circular, paper, notice, advertisement or in any other manner whatsoever that such person is carrying on banking business;

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

(2) Any person who contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of five years or to both such fine and imprisonment; 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."

Section 13 of Act
No. 17 of 1991
amended.

6. Section 13 of the principal Act is amended —

(a) in subsection (1), by inserting after the word "credit" occurring in line one of paragraph (b) the words "or other financial"; and

(b) in subsection (2), by inserting after the word

"increased" occurring in line two the words "or varied".

7. Section 14 of the principal Act is amended —

Section 14 of Act
No. 17 of 1991
amended.

(a) in subsection (1), by deleting the word **and** figure "subsection (2)" occurring in line one, and substituting the words "this section"; and

(b) by inserting after subsection (2) the following subsection:

"(3) Notwithstanding the provisions of subsection (1), a foreign financial institution may apply to the Minister to be exempted from the requirements of this section."

8. Section 16 of the principal Act is amended —

Section 16 of Act
No. 17 of 1991
amended.

(a) in subsection (1), by inserting the words "or to any group of companies or of persons which group is under the control or influence of one and the same person or body of persons" after the word "person" occurring in line one of paragraph (a) and the words "or group of companies of persons" after the word "person" where it last occurs in that paragraph after the words "in respect of such";

(b) in subsection (2), by substituting the word "unsecured" for the word "secured" occurring in line one; and

(c) by repealing and replacing subsection (5) by the following:

"(5) Any financial institution to which subsection (1) is applicable that, prior to the commencement of this Act, entered into any transactions incompatible with paragraphs (a), (b), (c), (d), (e) or (f) of subsection (1) shall, within twelve months after the commencement of this Act, or within such further period as the Minister, after consultation with

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."

Section 17 of Act
No. 17 of 1991
amended.

9. Section 17 of the principal Act is amended —

(a) by repealing subsection (5) and replacing it by the following —

"(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."

(b) in subsection (7), by substituting the figures "**180**" for the figures "**186**" occurring in the last line of paragraph (g); and

(c) by renumbering subsections (4) and (5) occurring after subsection (7) as subsections (8) and (9) respectively.

Section 24 of Act
No. 17 of 1991
amended.

10. Section 24 of the principal Act is amended by repealing subsection (2) and by inserting after subsection (1) the following—

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

"(3) Any financial institution which contravenes subsection (1) or an order issued under subsection (2) commits an offence and is liable on summary conviction to a fine of five thousand dollars for each contravention."

Section 30(1) of
Act NO. 17 of
1991 amended.

11. Subsection (1) of section 30 of the principal Act is amended in paragraph (a), by inserting after the word "offence" occurring in the last line, the following:

"and shall be liable to be proceeded against and punished accordingly".

12. Section 33 of the principal Act is repealed and replaced by the following:

Section 33 of Act
No. 17 of 1991
repealed and
replaced.

"Regulations.

33. The Minister may upon the recommendation of the Central Bank, 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 —

- (a) the reports or other information to be supplied by persons to whom licences have been granted and any other matter associated with their use;
- (b) the 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) the 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) the forms necessary for the administration of this Act; and
- (e) the 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 five thousand dollars or imprisonment of a term of twelve months."

ANTIGUA AND BARBUDA 8 The Banking (Amendment) Act, 1993. No. 21 of 1993.

New Section 33A inserted in Act No. 17 of 1991. 13. The principal Act is amended by inserting after section 33 the following section:

"Compounding of offences. **33A** (1) Subject to this section, the Minister may upon consultation with the Central Bank, if he 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 he is charged has been compounded under this section.

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

Section 38(2) of Act NO. 17 of 1991 amended. 14. Subsection (2) of section 38 of the principal Act is amended —

(a) by substituting for the word "Mnisiter" occurring in the penultimate line the word "Minister"; and

(b) by substituting for the figures "56" occurring in the last line the figure "57".

Section 47 of Act No. 17 of 1991 amended. 15. Section 47 of the principal Act is amended —

(a) in paragraph (b), by substituting for the word 'Offical' occurring in line four, the word 'Official'; and

- (b) in paragraph (c), by substituting for the word "voided" occurring in the last line, the word "void."

16. Section 48 of the principal Act is amended —

Section 48 of Act
No. 17 of 1991
amended.

- (a) by substituting for the word "exception" occurring in line one, the word "execution";
- (b) by substituting for the word "Offical" wherever it occurs, the word "Official"; and
- (c) by **inserting** the word "prior" after the word "rendered."

17. Section 49 of the principal Act is amended —

Section 49 of Act
No. 17 of 1991
amended.

- (a) by **repealing** and replacing subsection (2) by the following:

"(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 deposits 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,

ANTIGUA
AND
BARBUDA

10 *The Banking (Amendment) Act, 1993.* No. 21 of 1993.

the Official Liquidator will proceed to carry out the reorganisation plan."; and

(b) in subsection (3), by inserting the words "shall be" after the word "notice" occurring in the last line.

Passed in the House of Representatives
this 29th day of April, 1993.

C. L. Murray,
Speaker.

L. A. Dowe,
Clerk to the House of Representatives.

Passed the Senate this 17th
day of May, 1993.

William A. Robinson,
Vice-President.

L. A. Dowe,
Clerk to the Senate.

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