

CHAPTER 40

THE BANKING ACT

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BANKING

An Act to regulate the banking business and to make provision for other matters connected therewith.

() 17/1991.

Preliminary

1. This Act may be cited as the Banking Act. **Short title.**
2. In this Act— **Interpretation.**

"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 Act; **Cap. 142.**

"auditor" means

(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

- (a) the business of receiving funds through—
 - (i) the acceptance of monetary deposits which are payable 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 either in whole or in part for loans or investment for the risk of the customer; and

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

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

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

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

"credit institution" means any financial institution other than a bank whose business is that of money lending;

"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 institution" includes any person doing banking business and all offices and branches of a financial institution in Antigua and Barbuda 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 carries on banking business in Antigua and Barbuda;

"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;

"unsecured" in relation to advances or credit facilities, means advances or credit facilities granted without security, or in the case of advances and 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

3. (1) A financial institution shall not carry on banking business in Antigua and Barbuda without a licence granted by the Minister. **Requirements of licence.**

(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 4 pending compliance with subsection (3).

(3) Where the financial institution referred to in subsection (2) agrees, within **90** days of the commencement of this Act, to comply with the provisions of this Act and so notifies the Minister, the Minister shall, within **180** days

of the commencement of this Act or within such further period as the Minister, after consultation with the Central Bank, may determine, issue to such financial institution a new licence certificate under this Act.

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

(5) Any person who contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two 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.

Licences—
formalities and
considerations.

(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 the Schedule.

(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 the Schedule,

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

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

(d) the experience of the person or persons who are to constitute its management,

(e) the adequacy of its capital structure,

(f) the earning prospects of the applicant; and

(g) the convenience and needs of the community to be served by the granting of the licence.

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

(4) Within 30 days of the receipt of the recommendations of the Central Bank the Minister shall either grant 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.

(5) A financial institution shall not be granted a licence under this section unless it fulfils the capital requirements specified in section 13.

5. (1) No person other than a licensed financial institution shall, except with the written consent of the Minister after consultation with the Central Bank, use the words "bank", "financial institution", "savings" and "loan", or any of their derivatives, in any language, or 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.

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

(2) Nothing in subsection (1) shall prevent a person from using the words set out in subsection (1) or any of their derivatives in any language, when it is for the sole purpose of organizing a company in order to apply for a licence under the provisions of this Act.

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.

Restrictions of names likely to mislead.

(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.

7. (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 and 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.

(3) 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.

(4) No local financial institution shall close a place of business outside of Antigua and Barbuda without having given twenty-one days prior notification to the Minister and the Central Bank.

Voting.

8. (1) Subject to subsection (6), except with the approval of the Minister acting on the recommendation 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 so interrelated that they should be considered

as a single unit, the total holdings of that group shall be combined and deemed to be the holdings of a single member.

(3) In the event that the Minister, acting upon the recommendation of the Central Bank, determines that the provisions of subsection (1) have been violated, he may issue an order requiring divestment of so much of the offending interest as is necessary to secure compliance with the provisions of subsection (1).

(4) 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 Minister and to the Central Bank commits an offence and is liable on summary conviction to a fine of two thousand dollars or to imprisonment for a term of three months.

(5) Any person who knowingly acquires an interest in violation of subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of six months.

(6) 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 Minister acting on the recommendation of the Central Bank, acquire any additional shares which shall have the effect of increasing his percentage of the voting rights.

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

**Actions of
fundamental
change requiring
approval.**

(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 Barbuda; 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 sixty days of such amendment.

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

Revocation of
licence and
declaration of
discontinuance of
service.

10. (1) The Minister, acting upon the recommendation of the Central Bank, may revoke any licence to carry on banking business in Antigua and Barbuda if the licensee:

(a) fails to commence operations within a period of twelve months following the granting of the licence; or

(b) fails to comply with the conditions of the licence or the measures required by the Central Bank in accordance with section 22; or

(c) is in breach of any of the provisions of this Act which are applicable to the licence;

(d) ceases to carry on banking business in Antigua and Barbuda; or

(e) is conducting his affairs in a manner detrimental to the national interest or to the interest of depositors.

(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 thirty days, a statement of objections to the making of the revocation and thereafter the Minister shall advise the financial institution of his decision.

(3) 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.

(4) 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.

(5) 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 are deemed by him to be necessary to inform the public of such revocation.

11. (1) Whenever the Central Bank has reason to believe that any person is carrying on banking business without a valid licence, it may, after consultation with the Minister, apply to the High Court for an order to examine the books, accounts and records of such person in order to ascertain whether such person is carrying on banking business without a valid licence.

Rights of Central Bank to examine books of banking business without valid licence.

(2) A person refusing to make available for examination any books, accounts and records having been requested to do so by the Central Bank commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of six months or to both such fine and imprisonment.

(3) A person holding funds which he 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.

(4) The Minister may request the Central Bank to undertake the actions under subsection (1).

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

Licence fees and penalty for default.

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

(3) All licence fees 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 of five thousand dollars and in the case of a continuing offence to a further penalty of fifty dollars for each day on which the offence is continued after conviction thereof.

PART II

Financial Requirements 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 but where a financial institution is at the commencement of this Act operating as a bank under a valid licence such financial institution shall be required to maintain capital and reserves as provided in section 15.

(b) if operating as a credit institution, the minimum required capital shall be not less than such an amount as the Minister, after consultation with the Central Bank, may by Order prescribe.

(2) The minimum amounts specified in subsection (1) may be increased by the Minister, after consultation with the Central Bank, by Order in respect of all or any appropriate class of institution.

(3) 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 Antigua and Barbuda in accordance with the Regulations that the Minister after consultation with the Central Bank may prescribe.

14. (1) Subject to subsection (2) 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, as the case may be, assigned capital of the financial institution.

Maintenance of Reserve Fund.

(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.

15. (1) Every financial institution shall maintain paid-up, or as the case may be, assigned capital and reserves at not-less than five per cent of its liabilities.

Adequacy of Capital.

(2) The percentage specified in subsection (1) may be varied by the Minister, after consultation with the Central Bank, by Order in respect of all or any appropriate class of financial institution.

(3) Where the paid-up or as the case may be, assigned capital and reserves of a financial institution are deficient in terms of subsection (1) or (2), the Minister, after consultation with the Central Bank, may from time to time, grant to the financial institution in writing such period of time as he considers reasonable to enable the financial institution to make good the deficiency.

(4) In this section—

"liabilities" means deposits and such other liabilities as may from time to time be specified by the Central Bank by notice published in the *Gazette*.

Restriction on certain activities of licensed financial institution.

16. (1) A financial institution shall not directly or indirectly, except with the approval of and subject to such terms and conditions as the Minister, after consultation with the Central Bank, may by Order prescribe—

(a) grant to any person any advances or credit facilities or make any guarantees so that the total value of the advances, credit facilities or guarantees in respect of such person is at any time more than fifteen per cent of the aggregate amount of the financial institution's unimpaired capital and reserves; but the limitation upon the foregoing transactions shall not apply in respect thereof if such transactions:

- (i) are upon, or with respect to, drafts, bills of exchange drawn in good faith against existing assets, or upon bank's acceptance, or bills of exchange of the kinds and maturities authorised by Regulations made by the Minister after consultation with the Central Bank or upon commercial or business paper actually owned by the person discounting or selling the same with or to such financial institution and endorsed without limitation or guaranteed by such person; or
- (ii) are secured by collateral, fully covered by insurance, having an ascertainable market value, or otherwise having such a value as collateral as found in good faith by an officer of such financial institution, of at least twenty per cent more than the amount of obligations secured thereby; or
- (iii) 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;

(c) grant or permit to be outstanding unsecured advances unless such have been approved by its board and the Central Bank has been notified thereof in advance

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- (i) to the members of its board whether such advances are obtained by them jointly or severally;
 - (ii) to 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;
 - (iii) to 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;
 - (iv) to any person serving as an auditor under section 19 or as an examiner under section 20;
 - (v) to any person, whose relationship to another financial institution in which a correspondent account is maintained, is within any of the categories described in subparagraphs (i) to (iv);

(d) grant or permit 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;

(e) 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;

(f) 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;

(g) (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 Antigua and Barbuda;

(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;

(h) 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.

(2) The total of all secured advances made to any person within any of the categories described in subparagraphs (i) to (v) of paragraph (c) of subsection (1) shall not exceed fifteen per cent of the sum of the paid-up or, as the case may be, assigned capital and reserves of the financial institution.

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

(4) In applying paragraphs (a) and (c) of subsection (1), if the Central Bank shall determine that the interests of a group of two or more persons are so interrelated that they

should be considered as a single unit, the total indebtedness of that group shall be combined and deemed to be the indebtedness of a single person; and a financial institution shall not be deemed to have violated paragraphs (a) or (c) of subsection (1) solely by reason of the fact that the combined indebtedness exceeds the limitation within such reasonable time as shall be determined by the Central Bank.

(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 submit a statement thereof to the Central Bank and shall liquidate all such transactions within such reasonable time as shall be determined by the Central Bank.

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.

Maintenance of specified assets.

(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 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 and credit 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 encumbrances 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 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 one hundred and eighty-six 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 investments 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.

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, shall apply with such modifications, adaptations, qualifications and exceptions as may be specified in the Order to any credit institution or class of credit institution.

Credit institutions.

PART III

Audit, Information and Inspection

19. (1) A financial institution shall appoint annually an auditor satisfactory to the Central Bank whose duties shall be to examine the books and records and to make a report

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

upon the annual financial statements and financial position, and in every such report the auditor shall state whether in his 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.

(2) 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 or other owners 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.

(3) A local financial institution shall within four months of the end of its financial year publish in the *Gazette* a true and full yearly statement of its accounts of all its operations as certified by its auditor. Such statements 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.

(4) A foreign financial institution shall within four months of the end of its financial year publish in the *Gazette* a true and full yearly statement of its account of all its operation in Antigua and Barbuda. This Statement shall be signed by the Manager or 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 such financial institution.

(5) If any financial institution fails to comply with the requirements of subsections (2), (3) or (4) within four months of the end of its financial year, it shall be liable to a penalty of a 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.

(6) If a financial institution fails to appoint an auditor satisfactory to the Central Bank, the Central Bank shall have the power to appoint an auditor for such financial institu-

tion. The remuneration of the auditor so appointed shall be determined by the Central Bank and paid by the financial institution.

(7) 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.

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

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 judgment 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;

Central Bank examination.

(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 of its affiliates in Antigua and Barbuda, 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).

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 in Antigua and Barbuda, as requested by the examiner for the purpose of this Act.

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

(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. If in the opinion of the Central Bank an examination authorised under section 20 show that the financial institution concerned is conducting its business in an unlawful or unsound manner or that it is otherwise in an unsound condition, the Central Bank may:

(a) require that the financial institution forthwith take all such measures as the Central Bank may consider necessary to rectify the matter; or

(b) advise the Minister to revoke the licence of the financial institution.

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 Antigua and Barbuda 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 summaries of reports on the results of any inspection to the Minister and the financial institution.

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

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.

Extension of period for providing information.

PART IV

Miscellaneous

26. (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:

Removal and disqualification of director, etc.

(a) notification by the board of a finding by two-thirds of its members of his permanent incapacity or serious neglect of, or misconduct in, office; or

(b) his being declared bankrupt or compounding with, or suspending payment to, his creditors; or

(c) his conviction in a court of law of any offence involving fraud or dishonesty; or

(d) his being sentenced for an offence involving a term of imprisonment of or exceeding six months or in default of a payment of a fine.

(2) No person who has been a director of, or directly or indirectly concerned in, the management of a financial institution the licence of which has been revoked shall, without the approval of the Central Bank, act or continue to act as a director, or be directly or indirectly concerned in the management of any financial institution.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year or to both such fine and imprisonment.

Declaration and registration of related interest and conflict of interest by director.

27. (1) Every director of a financial institution who is in any manner whatsoever, whether 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 he 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 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 his interest; and

(b) his interest 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 he becomes a director of the financial institution; or

(b) if already a director, after he commences to hold office or to possess the property.

(4) Every director of a financial institution who qualifies as an interested director under the provisions of this section shall cause to be brought up and read any declaration made under subsection (1) or (3) at the next meeting of the board

after it is given, and shall cause to be recorded any declaration made under this section in the minutes of the meeting at which it was made or at which it was brought up or read.

(5) A director who contravenes subsection (1) or subsection (3) commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of one year or to both such fine and imprisonment.

28. Any director, manager, secretary, employee or agent of a financial institution who,

Responsibility for deceiving statements and obstruction of audit or authorised examination.

- (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 of fifteen thousand dollars or to imprisonment for a term of two years or to both such fine and imprisonment.

29. Any director, manager, secretary or other officer concerned in the management of a financial institution who:

Duty of compliance with the requirements of the law.

- (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 of fifteen thousand dollars or to imprisonment for a term of two years or to both such fine and imprisonment.

Liability of directors, managers, officers and partners.

30. (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;

(a) 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.

31. (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 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 disclosures 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;

but nothing herein shall prevent a financial institution from providing to a person, upon legitimate business request, a general credit rating, a summary of which will be provided to the depositor or customer upon request.

(2) Every person who contravenes the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars or to imprisonment for a term of two years or to both such fine and imprisonment.

32. (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. Working days of financial institutions.

(2) Any obligations 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.

33. The Minister, upon the recommendation of the Central Bank, may make such Regulations as may be required from time to time for giving effect to the provisions of this Act. Regulations.

PART V

Receivership, Liquidation and Reorganisation

34. 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— Liquidation.

(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.

35. 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.

36. (1) Within thirty days from the receipt of the authorisation referred to in section 34 a notice of voluntary liquidation, setting out such information as the Minister, upon the recommendation of the Central Bank, may by Order prescribe, 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.

37. (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.

38. (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 37, 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:

Distribution of assets.

(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;

(6) 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 37 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 the purposes of section 56.

39. 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.

Insufficiency of assets in discharge of obligations in liquidation.

40. The Minister, acting upon the recommendation of the Central Bank, shall appoint a receiver for any financial institution:

Appointment of receiver.

(a) whose capital is impaired or whose condition is otherwise unsound;

(6) 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 21 or has otherwise obstructed such inspection.

(e) whose licence has been revoked in accordance with section 10 or 22.

Notice of appointment of receiver.

41. 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 proceedings to have receiver's appointment lifted.

42. 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 proceedings.

43. (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 44, or

(b) reorganisation, in accordance with section 49, of a financial institution for which he 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.

44. (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 40.

Compulsory
liquidation and
reorganisation
proceedin^g.

(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 Antigua and Barbuda 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.

45. (1) The High Court may make any order it thinks fit, including,

Powers of the
High Court.

(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 and
Official
Liquidator.

46. (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:

- (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
and transfer of
assets to be void.

47. When the Minister has appointed a receiver for a financial institution in accordance with section 40 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 voided.

48. No execution shall be returned against the assets of a financial institution for which a receiver or an Official Liquidator has been appointed except an execution effected pursuant to a judgment rendered to the date of the appointment of the receiver or Official Liquidator for an amount not exceeding one thousand dollars.

Execution against assets of a financial institution.

49. (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 45 (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.

Reorganisation proceedings.

(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 Antigua and Barbuda; or

(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 published in the Gazette.

Reorganisation provisions.

50. 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 40 and 45 (2), respectively.

Petition for modification or revision of reorganisation.

51. 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:

(i) modify the plan, or

(ii) order the compulsory liquidation of the financial institution in accordance with the provisions of section 45.

Preferential and other claims.

52. (1) Notwithstanding any law to the contrary, in 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) contributions to the Social Security Board of Control and the Medical Benefits Scheme 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 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.

53. 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 and shall be kept by 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 57. **Unclaimed funds.**

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

55. 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 **Safe deposits and unclaimed property.**

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 57.

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

56. (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 off 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 be then declared by the High Court and the Registrar of the High Court shall proceed to terminate the judicial existence of the financial institution.

PART VI

Abandoned Property

Abandoned property.

57. (1) Subject to subsection (2) the items listed 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 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 paragraph (a) or (b) of subsection (1);

(b) correspond 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.

58. (1) Every financial institution holding any of the items enumerated in section 57 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.

**Report,
publication and
disposal of
abandoned
property.**

(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 57 (1) or at the time when 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 concerning the property.

Sale and handling of proceeds of sale of abandoned property.

59. (1) A financial institution may sell at public sale all property other than money presumed to be abandoned after the expiration of sixty days from the later date of publication or mailing required by section 58 (3) following such advertisement of the sale as the Minister, acting on the recommendation of the Central Bank, may prescribe.

(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 services 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 direct.

Claims on abandoned property.

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

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

61. Any financial institution which wilfully fails to file the report or to pay or deliver property presumed to be abandoned into the custody of the Central Bank in accordance with section 58 (1) or 59 (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. **Penalties.**

PART VII

Transfer of Banking Business

62. (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 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. **Banking Business Vesting Order.**

(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 set up and commenced by the transferee financial institution.

Supplementary provision as to transfers.

63. (1) Without prejudice to the generality of section 62, 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 respect 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 expressed or implied) to the directors or to any director, officer, clerk or servant of the transferor financial institution were, as respect anything falling to be done on or after the date of transfer, a reference (as the case may require) to the directors of the transferee financial institution or to such director, officer, clerk or servant as the transferee financial institution may appoint, or in default of appointment, to the director, officer, clerk or servant of the transferee financial institution who corresponds as 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 transfer;

(f) any judgment or award obtained by or against the transferor financial institution and not fully satisfied before the date of the transfer shall be enforceable by or against the transferee financial institution;

(g) unless the agreement by the parties to the transfer provides to the contrary, any officer, clerk, or servant employed by the transferor financial institution immediately before the date of the transfer shall become an officer, clerk or servant, as the case may be, of the transferee financial institution on terms and conditions no less favourable than those on which he was so employed immediately before the date of the transfer, and such employment with the transferor, and transferee financial institution respectively shall be deemed, for all purposes, to be a single continuing employment, save that no director, secretary or auditor of the transferor financial institution shall by virtue only of a Banking Business Vesting Order become a director, secretary or auditor, as the case may be, of the transferee financial institution.

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

(a) any statutory provisions;

(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 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 person, in the same capacity upon the trusts, and with, and subject to, the powers, provisions, liabilities and obligations, applicable thereto respectively.

64. The transfer of, and vesting in, the transferee financial institution of an undertaking by a Banking Business Vesting Order shall, unless exempted (either generally or in some particular case) by the Banking Business Vesting Order, be subject to the provisions of the Stamp Act 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, as instrument between party and party within the contemplation of the Act.

Transfers to be subject to stamp duty.

Cap. 410.

PART VIII

General

65. The provisions of the Non-Citizens Land Holding Regulation Act do not apply to financial institutions licensed under this Act.

NO application of Non-Citizens Land Holding Regulation Act. Cap. 293.

SCHEDULE

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) such other information as the Minister may require.
