

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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**BERMUDA  
1999 : 40**

### **BANKS AND DEPOSIT COMPANIES ACT 1999**

[Date of Assent 23 September 1999]

[Operative Date 1 January 2000]

#### ARRANGEMENT OF SECTIONS

	PRELIMINARY	9	Authority's statement of principles
1	Short title and commencement	10	Minister to issue directions to Authority
2	Interpretation		LICENSING
3	Meaning of "deposit"	11	Restriction on carrying on deposit-taking business
4	Meaning of "deposit-taking business"	12	Exempted persons
5	Power to amend definitions of "deposit" and deposit-taking business	13	Applications for licences
6	Meaning of "related company"	14	Grant and refusal of licences
7	Meaning of "director", "controller", "senior executive" and "associate"	15	Form, display and registration
8	Functions of Bermuda Monetary Authority	16	Fees
		17	Restriction of licence
		18	Revocation of licence

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

---

19	Winding up on petition from Authority	39	Power to obtain information and reports
20	Notice of restriction or revocation of licence	40	Power to require production of documents
21	Restriction in cases of urgency	41	Right of entry to obtain information and documents
22	Directions to protect interests of depositors		INVESTIGATIONS
23	Notification and confirmation of directions	42	Investigations on behalf of the Authority
24	Surrender of licence	43	Investigation of suspected contraventions
	OBJECTIONS TO CONTROLLERS	44	Powers of entry in cases of suspected contraventions
25	Notification of new or increased control	45	Obstruction of investigations
26	Objection to new or increased control		FINANCIAL STATEMENTS AND AUDIT
27	Objection to existing shareholder controller	46	Appointment of auditors
28	Contraventions by controller	47	Duty to audit etc.
29	Restriction on and sale of shares	48	Auditor's report
30	Rights of appeal	49	Communication by auditor, etc. with Authority
31	Constitution of tribunals		RESTRICTION ON INSTITUTIONS ACTIVITIES
32	Determination of appeals	50	Restriction on advances on institution shares
33	Costs, procedure and evidence	51	Restriction on commercial activities of institutions
34	Further appeals on a point of law		RESTRICTION ON DISCLOSURE OF INFORMATION
	INFORMATION	52	Restricted information
35	Notification of change of director, controller or senior executive	53	Disclosure for facilitating the discharge of functions of the Authority
36	Notification of acquisition of significant shareholding		
37	Annual returns		
38	Reports of large exposures		

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

---

54	Disclosure for facilitating the discharge of functions by other authorities	58	Notices
55	Information supplied to the Authority by relevant overseas authority	59	Service of notice on Authority
	MISCELLANEOUS AND SUPPLEMENTAL	60	Regulations
56	Offences by companies	61	Repeals
57	Restriction on use of word "bank"	62	Consequential amendments
		63	Transitional
		64	Savings
			FIRST SCHEDULE
			SECOND SCHEDULE

WHEREAS it is expedient to make new provision for regulating deposit-taking business; for protecting depositors; and for purposes connected with those matters:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

### PRELIMINARY

#### **Short title and commencement**

1 This Act may be cited as the Banks and Deposit Companies Act 1999, and shall come into operation on such day as the Minister may appoint by notice published in the Gazette.

#### **Interpretation**

2 In this Act—

"associate", has the meaning given in section 7(9);

"the Authority" means the Bermuda Monetary Authority established by the Bermuda Monetary Authority Act 1969;

"available capital" means such capital as is determined by the Authority pursuant to section 38(7) to be available capital;

"company" means a body corporate wherever incorporated;

"controller" has the meaning given in section 7(3);

"court" means the Supreme Court;

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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- "day" means any day on which institutions in Bermuda are open for business;
- "debenture" has the same meaning as in the Companies Act 1981;
- "deposit" has the meaning given in section 3;
- "deposit-taking business" has the meaning given in section 4;
- "director" has the meaning given in section 7(2);
- "documents" includes information recorded in any form; and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;
- "financial statements" in relation to the business of an institution means the statements specified in subsection (1)(a) and the notes specified in subsection (1A) of section 84 of the Companies Act 1981;
- "financial year", in relation to an institution, means the period not exceeding fifty-three weeks at the end of which the balance of the accounts is struck or, if no such balance is struck or a period of more than fifty-three weeks is employed for that purpose, means a calendar year;
- "holding company" has the same meaning as in the Companies Act 1981;
- "institution" means a company licensed under this Act as a bank or deposit company;
- "licence" means a licence granted under section 14;
- "the Minister" means the Minister of Finance;
- "related company" has the meaning given in section 6;
- "senior executive" has the meaning given in section 7(7);
- "share" has the same meaning as in the Companies Act 1981;
- "shareholder controller" has the meaning given in section 7(5);
- "significant shareholder" has the meaning given in section 36(2);

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

---

"subsidiary" has the same meaning as in the Companies Act 1981.

### **Meaning of "deposit"**

3 (1) Subject to the provisions of this section, in this Act "deposit" means a sum of money paid on terms —

- (a) under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
- (b) which are not referable to the provision of property or services or the giving of security;

and references in this Act to money deposited and to the making of a deposit shall be construed accordingly.

(2) For the purposes of subsection (1)(b)—

- (a) money is paid on terms which are referable to the provision of property or services if, and only if it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is not or are not in fact sold, hired or otherwise provided;
- (b) money is paid on terms which are referable to the giving of security if, and only if —
  - (i) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
  - (ii) without prejudice to paragraph (i), it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

(3) Except so far as any provision of this Act otherwise provides, in this Act "deposit" does not include—

- (a) a sum which is paid by one company to another at a time when one is a subsidiary of the other or both are subsidiaries of another company or the same individual holds 50 per cent or more of the shares in both of them; or

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

---

(b) a sum which is paid by a person who, at the time when it is paid, is a close relative of the person receiving it or who is, or is a close relative of, a director, controller or senior executive of that person.

(4) In subsection (3)(b), "close relative", in relation to any person, means—

(a) his spouse;

(b) his children and step children, his parents and step-parents, his brothers and sisters and step-brothers and step-sisters; and

(c) the spouse of any person within paragraph (b).

### **Meaning of "deposit-taking business"**

4 (1) Subject to the provisions of this section, a person carries on deposit-taking business for the purposes of this Act if —

(a) in the course of the business, he lends money received by way of deposit to others; or

(b) he finances any other activity of the business wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.

(2) For the purposes of subsection (1), all the activities which a person carries on by way of business shall be regarded as a single business carried on by him.

### **Power to amend definitions of "deposit" and "deposit-taking business"**

5 (1) The Minister acting on the advice of the Authority may by order amend the meaning of deposit or deposit-taking business for the purposes of all or any provisions of this Act.

(2) An order under subsection (1) may contain such transitional provisions as the Minister acting on the advice of the Authority thinks necessary or expedient.

(3) An order made under this section shall be subject to affirmative resolution procedure.

### **Meaning of "related company"**

6 (1) In this Act a "related company" in relation to an institution or the parent company of an institution, means a company (other than a subsidiary company) in which the institution or parent company holds a qualifying capital interest.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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(2) A qualifying capital interest means an interest in relevant shares of the company which the institution or parent company holds on a long term basis for the purpose of securing a contribution to its own activities by the exercise of control or influence arising from that interest.

(3) A holding of 20 per cent or more of the nominal value of the relevant shares of a company shall be presumed to be a qualifying capital interest unless the contrary is shown.

(4) Relevant shares means shares comprised in the equity share capital of the company of a class carrying rights to vote in all circumstances at general meetings of the company.

(5) Equity share capital means the issued share capital of a company excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

### **Meaning of "director", "controller", "senior executive" and "associate"**

7 (1) In this Act, "director", "controller", "senior executive" and "associate" shall be construed in accordance with the provisions of this section.

(2) "Director", in relation to an institution, includes any person who occupies the position of director, by whatever name called.

(3) "Controller", in relation to an institution, means —

(a) a managing director of the institution or of another company of which it is a subsidiary;

(b) a chief executive of the institution or of another company of which it is a subsidiary;

(c) a person who satisfies the requirements of this paragraph; and

(d) a person in accordance with whose directions or instructions the directors of the institution or of another company of which it is a subsidiary or persons who are controllers of the institution by virtue of paragraph (c) (or any of them) are accustomed to act.

(4) A person satisfies the requirements of subsection (3)(c) in relation to an institution if, either alone or with any associate or associates—

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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- (a) he holds 10 per cent or more of the shares in the institution or another company of which it is a subsidiary company;
- (b) he is entitled to exercise, or control the exercise of 10 per cent or more of the voting power at any general meeting of the institution or another company of which it is such a subsidiary; or
- (c) he is able to exercise a significant influence over the management of the institution or another company of which it is such a subsidiary by virtue of—
  - (i) a holding of shares in; or
  - (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of,the institution, or as the case may be, the other company concerned.

(5) A person who is a controller of an institution by virtue of subsection (3)(c) is in this Act referred to as a "shareholder controller" of the institution; and in this Act—

- (a) a "10 per cent shareholder controller" means a shareholder controller in whose case the percentage referred to in the relevant paragraph is 10 or more but less than 20;
- (b) a "20 per cent shareholder controller" means a shareholder controller in whose case that percentage is 20 or more but less than 30;
- (c) a "30 per cent shareholder controller" means a shareholder controller in whose case that percentage is 30 or more but less than 40;
- (d) a "40 per cent shareholder controller" means a shareholder controller in whose case that percentage is 40 or more but less than 50;
- (e) a "50 per cent shareholder controller" means a shareholder controller in whose case that percentage is 50 or more but less than 60;
- (f) a "60 per cent shareholder controller" means a shareholder controller in whose case that percentage is 60 or more but less than 75; and



## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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(g) a "principal shareholder controller" means a shareholder controller in whose case that percentage is 75 or more.

(6) In subsection (5), "the relevant paragraph" in relation to a shareholder controller means whichever of paragraphs (a) and (b) of subsection (4) gives the greater percentage in his case.

(7) "Senior executive", in relation to an institution, means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the institution—

(a) exercises managerial functions; or

(b) is responsible for maintaining accounts or other records of the institution.

(8) In this section "chief executive", in relation to an institution, means a person who, either alone or jointly with one or more persons, is responsible under the immediate authority of the directors for the conduct of the business of the institution.

(9) In this Act "associate" in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, a company, means—

(a) if that person is an individual—

(i) the spouse, child, step-child or parent of that person;

(ii) the trustees of any settlement under which that person has a life interest in possession;

(iii) any company of which that person is a director;

(iv) any person who is an employee or partner of that person;

(b) if that person is a company —

(i) any director of that company;

(ii) any subsidiary of that company ;

(iii) any director or employee of any such subsidiary company;

(c) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that company or under which they undertake to act together in exercising their voting power in relation to it, that other person.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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(10) For the purposes of subsection (9), "settlement" includes any disposition or arrangement under which property is held in trust.

### **Functions of Bermuda Monetary Authority**

8 (1) The Authority shall have the powers conferred on it by this Act and the duty generally to supervise the institutions licensed by it in the exercise of those powers.

(2) It shall also be the duty of the Authority to keep under review the operation of this Act and developments in the field of deposit-taking which appear to it to be relevant to the exercise of its powers and the discharge of its duties.

(3) The Authority shall as soon as practicable after the end of each of its financial years, make to the Minister and publish in such manner as it thinks appropriate a report on its activities under this Act in that year.

(4) Neither the Authority nor any person who is, or is acting as, an officer or servant of the Authority shall be liable in damages for anything done or omitted in the discharge or purported discharge of the functions of the Authority under this Act unless it is shown that the act or omission was in bad faith.

### **Authority's statement of principles**

9 (1) The Authority shall as soon as practicable after the coming into force of this Act, publish in such manner as it thinks fit a statement of principles in accordance with which it is acting or proposing to act—

- (a) in interpreting the criteria specified in the Second Schedule and the grounds for revocation specified in section 18;
- (b) in exercising its power to grant, revoke or restrict a licence; and
- (c) in exercising its power to obtain information, reports and to require production of documents.

(2) If the Authority makes a material change to the principles it shall publish a statement of the change or the revised statement of principles in the same manner as it published the statement under subsection (1).

### **Minister to issue directions to Authority**

10 The Minister may from time to time give to the Authority general policy directions, not inconsistent with the provisions of this Act, as to

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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the performance of its functions under this Act and the Authority shall give effect to such directions.

### LICENSING

#### **Restriction on carrying on deposit-taking business**

11 (1) Subject to the provisions of section 12, no person shall carry on a deposit-taking business in or from within Bermuda unless that person is a company incorporated in Bermuda and is for the time being licensed by the Authority under this Act.

(2) A person who contravenes this section is guilty of an offence and liable—

(a) on summary conviction, to a fine of \$100,000 or to imprisonment for a period of two years or to both;

(b) on conviction on indictment, to a fine of \$250,000 or to imprisonment for a period of five years or to both.

#### **Exempted persons**

12 (1) Section 11 shall not apply to the carrying on of a deposit-taking business in or from within Bermuda by the persons for the time being specified in the First Schedule to this Act.

(2) The exemption of a person specified in the First Schedule shall be subject to any restrictions there specified in respect of that person.

(3) The Minister acting on the advice of the Authority may by order amend the First Schedule —

(a) by adding any person or class of persons or relaxing any restriction ; or

(b) by removing any person or class of persons for the time being specified in it or imposing or extending any restriction.

(4) Any order made under subsection (1) shall be subject to affirmative resolution procedure.

#### **Applications for licences**

13 (1) A company incorporated in Bermuda may make application for a licence to the Authority in such manner as the Authority may direct and such application shall be accompanied with —

(a) a business plan setting out the nature and scale of the deposit-taking business which the applicant intends to

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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carry on, any plans of the applicant for the future development of that business and particulars of the applicant's arrangements for the management of the business;

- (b) such fee as may be prescribed under the Government Fees Act 1965; and
- (c) such other information, documents or reports as the Authority may reasonably require for the purposes of determining the application.

(2) An application may be withdrawn by notice in writing to the Authority at any time before it is granted or refused, but in any such case no application fee shall be refunded to the applicant.

### **Grant and refusal of licences**

14 (1) Subject to this section, the Authority may grant or refuse the application for a licence.

(2) The Authority shall not grant a licence unless it is satisfied that—

- (a) the minimum criteria specified in the Second Schedule are fulfilled with respect to the applicant; and
- (b) the Minister has advised the Authority that he is satisfied that the grant of the licence is in accordance with the economic and financial policy of the government.

(3) The Minister acting on the advice of the Authority may by order amend the Second Schedule by adding new criteria or by amending or deleting the criteria for the time being specified in the Second Schedule.

(4) An order made under subsection (3) shall be subject to negative resolution procedure.

(5) The Authority may grant licences of the following classes—

- (a) a banking licence, which requires the institution to provide the following minimum services to the public in Bermuda—
  - (i) current accounts in Bermuda dollars on terms which require repayment on demand;
  - (ii) the payment and collection of cheques, drafts and orders;

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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- (iii) savings, deposit or other similar accounts in Bermuda dollars;
  - (iv) overdraft and other loan facilities in Bermuda dollars;
  - (v) either directly or indirectly, loans in Bermuda dollars secured on the mortgage of real property in Bermuda;
  - (vi) foreign exchange services; and
  - (vii) either directly or indirectly, credit card or debit card facilities;
- (b) a deposit company licence, which does not authorise the institution to accept deposits of money on current account or otherwise on terms which require repayment on demand, and which requires the institution to provide the following minimum services to the public in Bermuda—
- (i) savings, deposit or other similar accounts in Bermuda dollars on terms which require repayment on notice;
  - (ii) loans in Bermuda dollars secured on the mortgage of real property in Bermuda whereby not less than the prescribed minimum percentage of total assets of the institution shall at all times be invested in loans secured to the full amount of the outstanding balance owed to the institution under such mortgages .

(6) For the purposes of subsection (5), "prescribed minimum percentage" means such percentage as the Minister acting on the advice of the Authority prescribes by Order.

(7) An order made under subsection (6) shall be subject to negative resolution procedure.

### **Form, display and registration**

15 (1) A licence shall be in such form as may be prescribed.

(2) An institution shall, at all times, keep the licence on display at its principal place of business in Bermuda.

(3) The Authority shall cause a notice to be published in the Gazette of every grant of a licence.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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(4) The Authority shall compile and maintain in such manner as it thinks fit a register containing, in respect of each licence, such particulars as may be prescribed; and the register shall, at all reasonable times, be available for inspection at the offices of the Authority by any person upon payment of the fee prescribed under the Government Fees Act 1965.

### **Fees**

16 (1) An institution shall pay such fee as may be prescribed under the Government Fees Act 1965—

- (a) on the grant of its licence; and
- (b) on or before 31 January in every year after the year in which the licence was granted.

(2) Notwithstanding section 4(1) of the Government Fees Act 1965, all fees payable under this Act shall be paid to the Authority.

### **Restriction of licence**

17 (1) The Authority may restrict a licence—

- (a) if it is satisfied of the matters specified in paragraphs (a), (b), (d) or (e) of section 18 but it appears to it that the circumstances are not such as to justify revocation;
- (b) if it is satisfied that a person has become a controller of an institution in contravention of section 25 or has become or remains a controller after being given a notice of objection pursuant to section 26 or 27; or
- (c) in connection with the revocation of a licence—
  - (i) when giving the institution notice that it proposes to revoke its licence; or
  - (ii) at any time after such notice has been given to the institution; or
- (d) at any time after the institution has served a notice surrendering its licence with effect from a later date.

(2) The Authority may restrict a licence by imposing such conditions as it thinks desirable for the protection of the institution's depositors or potential depositors, and for safeguarding its assets or otherwise, and may in particular—

- (a) require the institution to take certain steps or to refrain from adopting or pursuing a particular course of action

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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or to restrict the scope of its business in a particular way;

- (b) impose limitations on the acceptance of deposits, the granting of credit or the making of investments;
- (c) prohibit the institution from soliciting deposits, either generally or from persons who are not already depositors;
- (d) prohibit the institution from entering into any other transactions or class of transactions;
- (e) require the removal of any director, controller or senior executive;
- (f) specify requirements to be fulfilled otherwise than by action taken by the institution.

(3) Any condition imposed under this section may be varied or withdrawn by the Authority.

(4) The Authority may on the application of an institution vary any condition imposed on its licence.

(5) An institution which fails to comply with any requirement or contravenes any prohibition imposed on it by a condition under this section shall be guilty of an offence and liable on summary conviction to a fine of \$50,000 and on conviction on indictment to a fine of \$150,000.

(6) The fact that a condition imposed under this section has not been complied with (whether or not constituting an offence under subsection (5)) shall, where the restriction has been imposed pursuant to paragraphs (a) or (b) of subsection (1), be a ground for the revocation of the licence in question but shall not invalidate any transaction.

### **Revocation of licence**

18 Subject to section 20, the Authority may revoke the licence of an institution if the Authority is satisfied that—

- (a) the criteria specified in the Second Schedule are not or have not been fulfilled, or may not be or may not have been fulfilled, in respect of the institution;
- (b) the institution has failed to comply with any obligation imposed on it by or under this Act;
- (c) a person has become a 50 per cent, 60 per cent or a principal shareholder controller of the institution in contravention of section 25 or has become or remains

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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such a controller after being given a notice of objection pursuant to section 26 or 27;

- (d) the Authority has been provided with false, misleading or inaccurate information by or on behalf of the institution or, in connection with an application for a licence, by or on behalf of a person who is or is to be a director, controller or senior executive of the institution; or
- (e) the interests of the depositors or potential depositors of the institution are in any way threatened, whether by the manner in which the institution is conducting or proposes to conduct its affairs or for any other reason.

### **Winding up on petition from the Authority**

19 (1) On a petition presented by the Authority by virtue of this section, the court may wind up an institution in respect of which a licence is revoked, if the court is of the opinion that it is just and equitable that the institution be wound up.

(2) Part XIII (Winding Up) of the Companies Act 1981 shall apply to the winding up of an institution under this section.

### **Notice of restriction or revocation of licence**

20 (1) Where the Authority proposes to —

- (a) restrict a licence under section 17(1);
- (b) vary a restriction imposed on a licence otherwise than with the agreement of institution concerned; or
- (c) revoke a licence under section 18,

the Authority shall give to the institution concerned written notice of its intention to do so.

(2) If the proposed action is within subsection 1(a) or 1(b), the notice under that subsection shall specify the proposed restriction or, as the case may be, the proposed variation.

(3) A notice under subsection (1) shall state the ground or grounds on which the Authority intends to act and give particulars of the institution's rights under subsection (5).

(4) Where—

- (a) the ground for a proposal to impose or vary a restriction or for a proposed revocation is that it appears to the Authority that the criterion in paragraph 1 of the Second



## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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Schedule is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person; or

- (b) a proposed restriction consists of or includes a condition requiring the removal of any person as a director, controller or senior executive,

the Authority shall give that person a copy of the notice mentioned in subsection (1), together with a statement of his rights under subsection (5).

(5) An institution which is given notice under subsection (1) and a person who is given a copy of it under subsection (4) may make representations in writing to the Authority within the period of fourteen days beginning with the day on which the notice was given (or such other longer period as the Authority may allow).

(6) After giving a notice under subsection (1) and taking into account any representations made under subsection (5), the Authority shall decide whether—

- (a) to proceed with the action proposed in the notice;
- (b) to take no further action;
- (c) if the proposed action was to revoke the institution's licence, to restrict its licence instead; or
- (d) if the proposed action was to restrict the institution's licence or to vary the restrictions on a licence, to restrict it or to vary the restrictions in a different manner.

(7) The Authority shall give the institution and any such person as is mentioned in subsection (4), written notice of its decision and, except where the decision is to take no further action, the notice shall state the reasons for the decision and give particulars of the rights conferred by subsection (9) and section 30.

(8) A notice under subsection (7) of a decision to restrict a licence, to vary the restrictions on a licence or to revoke a licence shall, subject to sections 30(4) and (5), have the effect of restricting the licence or varying the restriction in the manner specified in the notice or revoking the licence.

(9) Where the decision notified under subsection (7) is to restrict the licence or to vary the restrictions on a licence otherwise than as stated in the notice given under subsection (1), the institution may within the period of seven days beginning with the day on which the notice was given under subsection (7) make written representations to

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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the Authority with respect to the restrictions and the Authority may, after taking those representations into account, alter the restrictions.

(10) A notice under subsection (7) shall be given within the period of twenty-eight days beginning with the day on which the notice under subsection (1) was given; and if no notice under subsection (7) is given within that period, the Authority shall be treated as having at the end of that period given a notice under that subsection to the effect that no further action is to be taken.

(11) Where the Authority varies a restriction on an institution's licence with its agreement or withdraws a restriction consisting of a condition the variation or withdrawal shall be effected by written notice to the institution.

(12) The Authority may omit from the copy given to a person under subsection (4) and from a notice given to him under subsection (7) any matter which does not relate to him.

(13) The Authority shall publish in the Gazette, in such form as it thinks fit, notice of every revocation of a licence under this Act.

### **Restriction in cases of urgency**

21 (1) No notice need be given under section 20 in respect of the imposition or variation of a restriction on an institution's licence in any case in which the Authority considers that the restriction should be imposed or varied as a matter of urgency.

(2) In any such case the Authority may by written notice to the institution impose or vary the restriction.

(3) Any such notice shall state the reason for which the Authority has acted and particulars of the rights conferred by subsection (5) and section 30.

(4) Section 20(4) shall apply to a notice under subsection (2) imposing or varying a restriction as it applies to a notice under section 20(1) in respect of a proposal to impose or vary a restriction; but the Authority may omit from a copy given to a person by virtue of this subsection any matter which does not relate to him.

(5) An institution to which a notice is given under this section of the imposition or variation of a restriction and a person who is given a copy of it by virtue of subsection (4) may within the period of fourteen days beginning with the day on which the notice was given make representations to the Authority.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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(6) After giving a notice under subsection (2) imposing or varying a restriction and taking into account any representations made in accordance with subsection (5) the Authority shall decide whether —

- (a) to confirm or rescind its original decision; or
- (b) to impose a different restriction or to vary the restriction in a different manner.

(7) The Authority shall within the period of twenty-eight days beginning with the day on which the notice was given under subsection (2) give the institution concerned written notice of its decision under subsection (6) and, except where the decision is to rescind the original decision, the notice shall state the reason for the decision.

(8) Where the notice under subsection (7) is of a decision to take the action specified in subsection (6)(b), the notice under subsection (7) shall have the effect of imposing the restriction or making the variation specified in the notice and with effect from the date on which it is given.

### **Directions to protect interests of depositors**

22 (1) The Authority may give an institution directions under this section at any time after its licence is revoked or surrendered.

(2) Directions under this section shall be such as appear to the Authority to be desirable for safeguarding the interests of the institution's depositors.

(3) No direction shall be given to an institution under this section after it has ceased to have any liability in respect of deposits for which it had a liability at a time when it was licensed; and any such direction which is in force with respect to an institution shall cease to have effect when the institution ceases to have any such liability.

(4) An institution which fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section shall be guilty of an offence and liable —

- (a) on summary conviction to a fine of \$50,000;
- (b) on conviction on indictment to a fine of \$150,000.

### **Notification and confirmation of directions**

23 (1) A direction under section 22 shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the Authority by a notice in writing to the institution concerned.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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(2) A direction under section 22, except one varying a previous direction with the agreement of the institution concerned—

- (a) shall state the reasons for which it is given and give particulars of the institution's rights under subsection (3) and section 30; and
- (b) without prejudice to section 22(3) shall cease to have effect at the end of the period of twenty-eight days beginning with the day on which it is given unless before the end of that period it is confirmed by a further written notice given by the Authority to the institution concerned.

(3) An institution to which a direction is given which requires confirmation under subsection (2) may, within the period of fourteen days beginning with the day on which the direction is given, make written representations to the Authority; and the Authority shall take any such representations into account in deciding whether to confirm the direction.

### **Surrender of licence**

24 (1) An institution may surrender its licence by written notice to the Authority.

(2) A surrender shall take effect on the giving of the notice or, if a later date is specified in it, on that date; and where a later date is specified in the notice the institution may by further written notice to the Authority substitute an earlier date, not being earlier than that on which the first notice was given.

(3) The surrender of a licence shall be irrevocable unless it is expressed to take effect at a later date and before that date the Authority by notice in writing allows it to be withdrawn.

## OBJECTIONS TO CONTROLLERS

### **Notification of new or increased control**

25 (1) No person shall become a 10 per cent, 20 per cent, 30 per cent, 40 per cent, 50 per cent, 60 per cent or principal shareholder controller of an institution unless —

- (a) he has served on the Authority a written notice stating that he intends to become such a controller of the institution; and
- (b) either the Authority has, before the end of the period of three months beginning with the date of service of that

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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notice, notified him in writing that there is no objection to his becoming such a controller of the institution, or that period has elapsed without the Authority having served him under section 26 or 27 a written notice of objection to his becoming such a controller of the institution.

(2) A notice under subsection (1)(a) shall contain such information as the Authority may direct and the Authority may after receiving such a notice from any person, by notice in writing require him to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve notice of objection.

(3) Where additional information or documents are required from any person by a notice under subsection (2) the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (1)(b).

### **Objection to new or increased control**

26 (1) The Authority may serve a notice of objection under this section on a person who has given notice under section 25 unless it is satisfied—

- (a) that the person concerned is a fit and proper person to become a controller of the description in question of the institution;
- (b) that the interests of depositors and potential depositors of the institution would not be in any other manner threatened by that person becoming a controller of that description of the institution; and
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the institution as a controller of the description in question the criteria in the Second Schedule would continue to be fulfilled in the case of the institution or, if any of those criteria is not fulfilled, that the person is likely to undertake adequate remedial action.

(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice—

- (a) shall specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and,

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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subject to subsection (5), the reasons for which it is not satisfied; and

(b) shall give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall—

(a) specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and, subject to subsection (5), the reasons for which it is not satisfied; and

(b) give particulars of the rights conferred by section 30.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

(6) Where a person required to give a notice under section 25 in relation to becoming a controller of any description becomes a controller of that description without having given the notice, the Authority may serve him with notice of objection under this section at any time within three months after becoming aware of his having done so and may, for the purpose of deciding whether to serve him with such a notice, require him by notice in writing to provide such information or documents as the Authority may reasonably require.

(7) The period mentioned in section 25(1)(b) (with any extension under subsection (3) of that section) and the period mentioned in subsection (6) shall not expire, if it would otherwise do so, until fourteen days after the end of the period within which representations can be made under subsection (3).

### **Objection to existing shareholder controller**

27 (1) Where it appears to the Authority that a person who is a shareholder controller of any description of an institution is not or is no longer a fit and proper person to be such a controller of the institution it may serve him with a written notice of objection to his being such a controller of the institution.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice shall —

- (a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and
- (b) give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall—

- (a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and
- (b) give particulars of the rights conferred by section 30.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

### **Contraventions by controller**

28 (1) Subject to subsection (2), any person who contravenes section 25 by—

- (a) failing to give the notice required by subsection (1)(a) of that section; or
- (b) becoming a controller of any description to which that section applies before the end of the period mentioned in subsection (1)(b) of that section in a case where the Authority has not served him with a preliminary notice under section 26(2),

shall be guilty of an offence.

(2) A person shall not be guilty of an offence under subsection (1) if he shows that he did not know of the acts or circumstances by virtue of which he became a controller of the relevant description; but

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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where any person becomes a controller of any such description without such knowledge and subsequently becomes aware of the fact that he has become such a controller he shall be guilty of an offence unless he gives the Authority written notice of the fact that he has become such a controller within fourteen days of becoming aware of the fact.

- (3) Any person who —
- (a) before the end of the period mentioned in section 25 (1)(b), becomes a controller of any description to which that subsection applies after being served with a preliminary notice under section 26(2);
  - (b) contravenes section 25 by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description; or
  - (c) having become a controller of any description in contravention of that section (whether before or after being served with such notice of objection) continues to be such a controller after such a notice has been served on him,

shall be guilty of an offence.

(4) A person guilty of an offence under subsection (1) or (2) shall be liable on summary conviction to a fine of \$50,000.

(5) A person guilty of an offence under subsection (3) shall be liable—

- (a) on summary conviction to a fine of \$50,000 and in respect of an offence under paragraph (c) of that subsection, to a fine of \$500 for each day on which the offence has continued;
- (b) on conviction on indictment to a fine of \$100,000 to imprisonment for two year or to both.

### **Restriction on and sale of shares**

29 (1) The powers conferred by this section shall be exercisable where a person —

- (a) has contravened section 25 by becoming a shareholder controller of any description after being served with a notice of objection to his becoming a controller of that description;



## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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- (b) having become a shareholder controller of any description in contravention of that section continues to be one after such a notice has been served on him; or
- (c) continues to be a shareholder controller of any description after being served under section 27 with notice of objection to his being a controller of that description.

(2) The Authority may by notice in writing served on the person concerned direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions—

- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of or an agreement to transfer the right to be issued with them, shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;
- (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder; or
- (d) except in liquidation no payment shall be made of any sums due from the institution on the shares, whether in respect of capital or otherwise.

(3) The court may, on the application of the Authority, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions.

(4) No order shall be made under subsection (3) in a case where the notice of objection was served under section 26 or 27 —

- (a) until the end of the period within which an appeal can be brought against the notice of objection;
- (b) if such an appeal is brought, until it has been determined or withdrawn.

(5) Where an order has been made under subsection (3) the court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.

(6) Where shares are sold in pursuance of an order under this section the proceeds of sale, less the costs of the sale, shall be paid into court for the benefit of the persons beneficially interested in them; and

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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any such person may apply to the court for the whole or part of the proceeds to be paid to him.

(7) This section applies—

- (a) to all the shares in the institution of which the person in question is a shareholder controller of the relevant description which are held by him or any associate of his and were not so held immediately before he became such a controller of the institution; and
- (b) where the person in question became a shareholder controller of the relevant description as a result of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held before he became such a controller of that institution.

(8) A copy of the notice served on the person concerned under subsection (2) shall be served on the institution or company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.

### **Rights of appeal**

30 (1) An institution which is aggrieved by a decision of the Authority —

- (a) to restrict its licence, to restrict it in a particular manner or to vary any restrictions of its licence; or
- (b) to revoke its licence,

may appeal against the decision to a tribunal constituted in accordance with section 31.

(2) Where —

- (a) the ground or a ground for a decision within subsection (1)(a) or (b) is that mentioned in section 20(4)(a); or
- (b) the effect of a decision within subsection (1)(a) is to require the removal of a person as a controller or senior executive of an institution,

the controller or senior executive to whom the ground relates or whose removal is required may appeal to a tribunal constituted as aforesaid against the finding that there is such a ground for the decision or, as the case may be, against the decision to require his removal.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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(3) Any person on whom notice of objection is served under section 26 or 27 may appeal to a tribunal constituted as aforesaid against the decision of the Authority to serve the notice; but this subsection does not apply to a person in any case in which he has failed to give a notice or become or continued to be a controller in circumstances in which his doing so constitutes an offence under section 28(1), (2) or (3).

(4) The tribunal may suspend the operation of a restriction or a variation of a restriction pending the determination of an appeal in respect of the decision imposing or varying the restriction.

(5) The revocation of an institution's licence pursuant to a decision against which there is a right of appeal under this section shall not have effect—

- (a) until the end of the period within which the appeal can be brought; and
- (b) if such an appeal is brought, until it is determined or withdrawn.

### **Constitution of tribunals**

31 (1) Where an appeal is brought under section 30 a tribunal to determine the appeal shall be constituted in accordance with this section.

(2) The tribunal shall consist of a chairman, or, in his absence, a deputy chairman and two other members.

(3) The chairman and the deputy chairman shall be appointed by the Minister for a term not exceeding three years, and shall be barristers and attorneys of at least seven years' standing.

(4) The two other members of the tribunal shall be selected by the chairman, or, in his absence, the deputy chairman, from a panel of members appointed by the Minister, who shall be persons appearing to the chairman or, as the case may be, the deputy chairman, to have respectively experience of accountancy and experience of banking.

(5) The Minister shall appoint a panel of not less than nine persons with experience in accountancy and banking to serve as members of appeal tribunals.

(6) A person shall not be eligible for appointment as chairman, deputy chairman or member of the tribunal if he is or has at any time during the period of three years ending with the date of his appointment been an officer, servant or agent of the Authority or of any institution.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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(7) In Part B of the First Schedule to the Government Authorities Fees Act 1971, in its appropriate alphabetical order there shall be inserted—

"appeal tribunal - constituted in accordance with section 31 of the Banks and Deposit Companies Act 1999."

### **Determination of appeals**

32 (1) On an appeal under section 30(1) and (2) the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.

(2) On any such appeal the tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except that—

(a) where the decision was to impose or vary any restriction the tribunal may direct the Authority to impose different restrictions or to vary them in a different way; or

(b) where the decision was to revoke a licence the tribunal may direct the Authority to restrict it instead.

(3) Notice of a tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Authority; and, unless the tribunal otherwise directs, the determination shall come into operation when the notice is given to the appellant and to the Authority.

### **Costs, procedure and evidence**

33 (1) A tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.

(2) The Minister may make regulations with respect to appeals and those regulations may in particular make provision—

(a) as to the period within which and the manner in which such appeals are to be brought;

(b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private and as to the persons entitled to appear on behalf of the parties;

(c) as to the procedure to be adopted where appeals are brought both by an institution and by a person who is to be a controller or senior executive of an institution,

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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including provision for the hearing of the appeals together and for the mutual disclosure of information;

- (d) for requiring an appellant or the Authority to disclose or allow the inspection of documents in his or its custody or under his or its control;
- (e) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;
- (f) for enabling an appellant to withdraw an appeal or the Authority to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
- (g) for taxing or otherwise settling any costs or expenses which the tribunal directs to be paid and for the enforcement of any such direction;
- (h) for enabling any preliminary or incidental functions in relation to an appeal to be discharged by the chairman or, as the case may be, the deputy chairman of the tribunal; and
- (i) as to any other matter connected with such appeals.

(3) Regulations made under subsection (2) shall be subject to negative resolution procedure.

(4) A person who, having been required in accordance with regulations made under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence, shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

(5) A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, shall be guilty of an offence and liable—

- (a) on summary conviction to a fine of \$50,000 or to imprisonment for six months or to both; and
- (b) on conviction on indictment to a fine of \$100,000 or to imprisonment for two years or to both.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

---

### **Further appeals on a point of law**

34 (1) An institution or other person who has appealed to a tribunal may appeal to the court on any question of law arising from the decision of the appeal by the tribunal and an appeal on any such question shall also lie at the instance of the Authority; and if the court is of the opinion that the decision was erroneous in point of law it shall remit the matter to the tribunal for re-hearing and determination by it.

(2) No appeal to the Court of Appeal shall be brought from a decision under subsection (1) except with leave of that court.

### **INFORMATION**

#### **Notification of change of director, controller or senior executive**

35 (1) An institution shall give written notice to the Authority of the fact that any person has become or ceased to be a director, controller or senior executive of the institution.

(2) A notice required to be given under subsection (1) shall be given before the end of the period of fourteen days beginning with the day on which the institution becomes aware of the relevant facts.

(3) An institution which fails to give a notice required by this section shall be guilty of an offence and liable on summary conviction to a fine of \$50,000.

#### **Notification of acquisition of significant shareholding**

36 (1) A person who becomes a significant shareholder in relation to an institution shall within seven days thereof give written notice of that fact to the Authority.

(2) For the purposes of this section "a significant shareholder", in relation to an institution, means a person who is not a shareholder controller but who, either alone or with any associate or associates—

(a) holds five per cent or more of the shares in the institution or another company of which it is a subsidiary company; or

(b) is entitled to exercise, or control the exercise of, five per cent or more of the voting power at any general meeting of the institution or of another company of which it is such a subsidiary.

(3) Subject to subsection (4), any person who contravenes subsection (1) shall be guilty of an offence.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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(4) A person shall not be guilty of an offence under subsection (3) if he shows that he did not know of the acts or circumstances by virtue of which he became a significant shareholder in relation to the institution; but where any person becomes such a shareholder without such knowledge and subsequently becomes aware of the fact that he has become such a shareholder he shall be guilty of an offence unless he gives the Authority written notice of the fact that he has become such a shareholder within fourteen days of becoming aware of that fact.

(5) A person guilty of an offence under this section shall be liable on summary conviction to a fine of \$1000.

### **Annual returns**

37 (1) Every institution shall deliver to the Authority a return, signed by a director or secretary of the institution, made up to 31 December of each year.

(2) Each return shall contain the following information—

(a) the name and address of every person who —

- (i) is a director or member of the institution on the date to which the return was made up; or
- (ii) has ceased to be a director or member of the institution since the date to which the last return was made up (or, in the case of a first return, since the incorporation of the institution);

(b) the return shall also state—

- (i) the name and address of each person who is a member of the institution and the number of shares of each class held by him at the date to which the return is made;
- (ii) the name and address of each person who has ceased to be a member and the number of shares of each class transferred since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the institution) by each such person and the dates of registration of the transfers.

(3) If an institution fails to deliver an annual return in accordance with this section before the end of the period of 28 days after the return date, the institution shall be guilty of an offence and liable on

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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summary conviction to a fine of \$10,000 and in the case of a continued offence to a daily default fine of \$1000.

### **Reports of large exposures**

38 (1) An institution shall make a report to the Authority if—

- (a) it has entered into a transaction or transactions relating to any one person as a result of which it is exposed to the risk of incurring losses in excess of 10 per cent of its available capital resources; or
- (b) it proposes to enter into a transaction or transactions relating to any one person which, either alone or together with a previous transaction or previous transactions entered into by it in relation to that person, would result in its being exposed to the risk of incurring losses in excess of 25 per cent of those resources.

(2) Subsection (1) applies also where the transaction or transactions relate to different persons if they are connected in such a way that the financial soundness of any of them may affect the financial soundness of the other or others or the same factors may affect the financial soundness of both or all of them.

(3) If an institution to which subsection (1) applies has one or more subsidiaries which are not licensed under this Act the Authority may by notice in writing to that institution direct that that subsection shall apply to it as if the transactions and available capital resources of the subsidiary or subsidiaries, or such of them as are specified in the notice, were included in those of the institution.

(4) The reports required to be made by an institution under subsection (1) shall be made, in a case within paragraph (a) of that subsection, in respect of such period or periods and, in a case within paragraph (b) of that subsection, at such time before the transaction or transactions are entered into, as may be specified by notice in writing given to the institution by the Authority; and those reports shall be in such form and contain such particulars as the Authority may reasonably require.

(5) For the purposes of this section a transaction entered into by an institution relates to a person if it is—

- (a) a transaction under which that person incurs an obligation to the institution or as a result of which he may incur such an obligation;
- (b) a transaction under which the institution will incur, or as a result of which it may incur, an obligation in the



## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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event of that person defaulting on an obligation to a third party; or

- (c) a transaction under which the institution acquires or incurs any obligation to acquire, or as a result of which it may incur an obligation to acquire, an asset the value of which depends wholly or mainly on that person performing his obligations or otherwise on his financial soundness;

and the risk of loss attributable to a transaction is, in a case within paragraph (a) or (b), the risk of the person concerned defaulting on the obligation there mentioned and, in a case within paragraph (c), the risk of the person concerned defaulting on the obligations there mentioned or of a deterioration in his financial soundness.

(6) Any question whether an institution is or would be exposed to risk as mentioned in subsection (1) (or in that subsection as extended by subsection (2)) shall be determined in accordance with principles published by the Authority or notified by it to the institution concerned; and those principles may in particular make provision for determining the amount at risk in particular circumstances or the event to which any such amount is to be taken into account for the purposes of this section.

(7) For the purposes of this section the available capital resources of an institution (or, in a case within subsection (3), of an institution and its relevant subsidiary or subsidiaries) and the value of those resources at any time shall be determined by the Authority and notified by it to the institution by notice in writing; and any such determination, which may be varied from time to time, shall be made by the Authority after consultation with the institution concerned and in accordance with principles published by the Authority.

(8) The principles referred to in subsections (6) and (7) may make different provision for different cases and those referred to in subsection (6) may, in particular, exclude from consideration, either wholly or in part, risks resulting from transactions of a particular description or entered into in particular circumstances or with persons of particular descriptions.

(9) An institution which fails to make a report as required by this section shall be guilty of an offence; but where an institution shows that at the time when the report was required to be made it did not know that the facts were such as to require the making of the report it shall not be guilty of an offence by reason of its failure to make a report at that time but shall be guilty of an offence unless it makes the report within seven days of becoming aware of those facts.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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(10) An institution guilty of an offence under this section shall be liable on summary conviction to a fine of \$25,000.

(11) The Minister acting on the advice of the Authority may by order—

- (a) amend subsection (1) so as to substitute for either of the percentages for the time being specified in that subsection such other percentage as may be specified in the order;
- (b) make provision, whether by amending subsection (5) or otherwise, with respect to the transactions and risks to be taken into account for the purposes of this section.

(12) An order made under subsection (11) shall be subject to negative resolution procedure.

### **Power to obtain information and reports**

39 (1) The Authority may by notice in writing served on an institution—

- (a) require the institution to provide the Authority (or such person acting on behalf of the Authority as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Authority may reasonably require for the performance of its functions under this Act;
- (b) require the institution to provide the Authority with a report, in such form as may be specified in the notice, by the institution's auditor or by an accountant or other person with relevant professional skill on, or on any aspect of, any matter about which the Authority has required or could require the institution to provide information under paragraph (a).

(2) The person appointed by an institution to make any report required under subsection (1)(b) shall forthwith give written notice to the Authority of any fact or matter of which he becomes aware which indicates to him that the business of the institution is being conducted in a manner detrimental to the interests of the depositors or potential depositors of the institution.

### **Power to require production of documents**

40 (1) The Authority may—

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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- (a) by notice in writing served on an institution require it to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;
- (b) authorise an officer, servant or agent of the Authority, on producing evidence of his authority, to require any such institution to provide him forthwith with such information, or to produce to him forthwith such documents, as he may specify,

being such information or documents as the Authority may reasonably require for the performance of its functions under this Act.

(2) Where, by virtue of subsection (1), the Authority or any officer, servant or agent of the Authority has power to require the production of any documents from an institution, the Authority or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(3) The power under this section to require an institution or other person to produce any documents includes power—

- (a) if the documents are produced, to take copies of them or extracts from them and to require that institution or person, or any other person who is a present or past director, controller or senior executive of, or is or was at any time employed by or acting as an employee of, the institution in question, to provide an explanation of any of them; and
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) If it appears to the Authority to be desirable in the interests of the depositors or potential depositors of an institution to do so, it may also exercise the powers conferred by section 39 and subsection (1) of this section in relation to any company which is or has at any relevant time been—

- (a) a parent company, subsidiary company or related company of that institution;
- (b) a subsidiary company of a parent company of that institution;

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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- (c) a parent company of a subsidiary company of that institution; or
- (d) a company in the case of which a shareholder controller of that institution, either alone or with any associate or associates, holds 50 per cent or more of the shares or is entitled to exercise, or control the exercise of more than 50 per cent of the voting power at a general meeting.

(5) The Authority may by notice in writing served on any person who is or is to be a director, controller or senior executive of an institution require him to provide the Authority, within such time as may be specified in the notice, with such information or documents as the Authority may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.

(6) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of six months or to both.

(7) Nothing in this section shall compel the production by a barrister and attorney of a document containing a privileged communication made by him or to him in that capacity.

### **Right of entry to obtain information and documents**

41 (1) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under sections 39(1) and 40(1) for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by section 40(3).

(2) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by any person on whom a notice could be served under sections 39(1) and 40(1) for the purpose of obtaining there such information or documents as are specified in the authority, but the Authority shall not authorise any person to act under this subsection unless it has reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(3) Any person who intentionally obstructs a person exercising rights conferred by this section shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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### INVESTIGATIONS

#### **Investigations on behalf of the Authority**

42 (1) If it appears to the Authority desirable to do so in the interests of the depositors or potential depositors of an institution the Authority may appoint one or more competent persons to investigate and report to the Authority on—

- (a) the nature, conduct or state of the institution's business or any particular aspect of it; or
- (b) the ownership or control of the institution;

and the Authority shall give written notice of any such appointment to the institution concerned.

(2) If a person appointed under subsection (1) thinks it necessary for the purposes of his investigation, he may also investigate the business of any company which is or has at any relevant time been—

- (a) a parent company, subsidiary company or related company of the institution under investigation;
- (b) a subsidiary company or related company of a parent company of that institution;
- (c) a parent company of a subsidiary company of that institution; or
- (d) a company in the case of which a shareholder controller of that institution, either alone or with any associate or associates, holds 50 per cent or more of the shares or is entitled to exercise, or control the exercise of more than 50 per cent of the voting power at a general meeting.

(3) Where a person appointed under subsection (1) decides to investigate the business of any company by virtue of subsection (2) he shall give it written notice to that effect.

(4) It shall be the duty of every person who is or was a director, controller, senior executive, employee, agent, banker, auditor or barrister and attorney of a company which is under investigation (whether by virtue of subsection (1) or (2)), any person appointed to make a report in respect of that company under section 39(1)(b) and anyone who is a significant shareholder in relation to that company within the meaning of section 36 —

- (a) to produce to the persons appointed under subsection (1), within such time and at such place as they may

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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require, all documents relating to the company concerned which are in his custody or power;

- (b) to attend before the persons so appointed at such time and place as they may require; and
- (c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give;

and those persons may take copies of or extracts from any documents produced to them under paragraph (a).

(5) For the purpose of exercising his powers under this section a person appointed under subsection (1) may enter any premises occupied by a company which is being investigated by him under this section; but he shall not do so without prior notice in writing unless he has reasonable cause to believe that if such a notice were given any documents whose production could be required under this section would be removed, tampered with or destroyed.

(6) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.

(7) Any person who—

- (a) without reasonable excuse fails to produce any documents which it is his duty to produce under subsection (4) ;
- (b) without reasonable excuse fails to attend before the persons appointed under subsection (1) when required to do so;
- (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to an institution which is under investigation or a company which is being investigated by virtue of subsection (2); or
- (d) intentionally obstructs a person in the exercise of the rights conferred by subsection (5) ,

shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of six months or to both.

(8) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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(9) Nothing in this section shall compel the production by a barrister and attorney of a document containing a privileged communication made by him or to him in that capacity.

### **Investigation of suspected contraventions**

43 (1) Where the Authority has reasonable grounds for suspecting that a person has contravened section 11 the Authority or any duly authorised officer, servant or agent of the Authority may by notice in writing require that or any other person—

- (a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Authority may reasonably require for the purpose of investigating the suspected contravention;
- (b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required by the Authority for that purpose;
- (c) to attend at such place and time as may be specified in the notice and answer questions relevant for determining whether such a contravention has occurred.

(2) The Authority or a duly authorised officer, servant or agent of the Authority may take copies of or extracts from any documents produced under this section.

(3) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under subsection (1) for the purpose of obtaining there the information or documents required by the notice, putting the questions referred to in paragraph (c) of that subsection or exercising the powers conferred by subsection (2).

(4) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section or intentionally obstructs a person in the exercise of the rights conferred by subsection (3) shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of six months or to both.

(5) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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(6) Nothing in this section shall compel the production by a barrister and attorney of a document containing a privileged communication made by him or to him in that capacity.

### **Powers of entry in cases of suspected contraventions**

44 (1) A magistrate may issue a warrant under this section if satisfied on information on oath laid by an officer of the Authority or laid under the Authority's authority that there are reasonable grounds for suspecting that a person is guilty of such a contravention as is mentioned in section 43 and—

- (a) that that person has failed to comply with a notice served on him under that section;
- (b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by him in response to such a notice; or
- (c) that there are reasonable grounds for suspecting that if a notice were served on him under that section it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(2) A warrant under this section shall authorise any police officer not below the rank of inspector, together with any other person named in the warrant and any other police officers—

- (a) to enter any premises occupied by the person mentioned in subsection (1) which are specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1)(c) or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of or extracts from any such documents;
- (d) to require any person named in the warrant to answer questions relevant for determining whether that person is guilty of any such contravention as is mentioned in section 43.



## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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(3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(4) Any documents of which possession is taken under this section may be retained—

(a) for a period of three months; or

(b) if within that period proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 43, until the conclusion of those proceedings.

(5) Any person who intentionally obstructs the exercise of any right conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (2)(d) shall be guilty of an offence and liable—

(a) on summary conviction, to a fine of \$10,000 or to imprisonment for a term of six months or to both;

(b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for a term of two years or to both.

### **Obstruction of investigations**

45 (1) A person who knows or suspects that an investigation is being or is likely to be carried out—

(a) into a suspected contravention of section 11; or

(b) under section 42,

shall be guilty of an offence if he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

(2) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine of \$10,000 or to imprisonment for a term of six months or to both;

(b) on conviction on indictment, to a fine of \$50,000 to imprisonment for a term of two years or to both.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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### FINANCIAL STATEMENTS AND AUDIT

#### **Appointment of auditors**

46 (1) Every institution shall appoint annually an approved auditor to audit the financial statements of the institution.

(2) If an institution fails to appoint an approved auditor under subsection (1) or, at any time, fails to fill a vacancy for such auditor, the Authority may appoint an approved auditor and shall fix the remuneration to be paid by that institution to such auditor.

(3) An institution shall forthwith give written notice to the Authority if the institution—

- (a) proposes to remove an auditor before the expiration of his term of office; or
- (b) proposes to replace an auditor at the expiration of the term of his office with a different auditor.

(4) An auditor of an institution shall forthwith give written notice to the Authority if the auditor—

- (a) resigns before the expiration of his term of office;
- (b) does not seek to be re-appointed;
- (c) decides to include a modification of his report on the institution's financial statements and in particular, a qualification or denial of his opinion, or the statement of an adverse opinion;
- (d) becomes aware of any fact or matter which indicates to him that the business of the institution is being conducted in a manner detrimental to the interests of the depositors or potential depositors of the institution.

(5) An institution or auditor who fails to comply with this section shall be guilty of an offence and shall be liable on summary conviction to a fine of \$50,000 .

(6) For the purposes of this section, "approved auditor" means a person who is a member of a professional body for the time being declared by the Minister by notice published in the Gazette to be approved for the purposes of this Act.

(7) No person having an interest in any institution otherwise than as a depositor, and no officer, servant or agent of any institution shall be eligible for appointment as an approved auditor for that institution; and any person appointed as such auditor to any institution

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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who subsequently acquires such interest or becomes an officer, servant or agent of that institution shall cease to be an approved auditor.

### **Duty to audit etc.**

47 (1) Notwithstanding anything to the contrary in any other Act, an institution shall prepare annual financial statements of its business copies of which shall be laid before the institution in general meeting.

(2) An institution shall cause the financial statements of its business to be audited annually and shall at each of its offices in Bermuda—

(a) keep a copy of its most recent audited financial statements together with the auditor's report on the financial statements ;

(b) during normal business hours make that copy of the financial statements and report available for inspection by any person on request.

(3) An institution shall provide the Authority with a copy of the audited financial statements and report not later than four months after the close of each financial year of an institution.

(4) An institution which fails to prepare annual financial statements or which fails to cause the financial statements to be audited annually as required by subsection (1), or fails to comply with subsection (2)(a) or fails to comply with a request made in accordance with subsection (2)(b) or fails to comply with subsection (3) shall be guilty of an offence and shall be liable on summary conviction to a fine of \$75,000.

### **Auditor's report**

48 (1) An approved auditor shall make a report to the institution's members on all annual financial statements of the institution of which copies are to be laid before the institution in general meeting during his tenure of office.

(2) The auditor shall conduct his audit and prepare his report pursuant to the provisions of section 90 of the Companies Act 1981.

### **Communication by auditor, etc. with Authority**

49 (1) No duty to which—

(a) an auditor of an institution;

(b) a person appointed to make a report under section 39(1)(b),

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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may be subject shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request made by the Authority, any information or opinion on a matter to which this section applies and which is relevant to any function of the Authority under this Act.

(2) In relation to an auditor of an institution this section applies to any matter of which he becomes aware in his capacity as auditor and which relates to the business or affairs of the institution or any associated company.

(3) In relation to a person appointed to make a report under section 39(1)(b) this section applies to any matter of which he becomes aware in his capacity as the person making the report and which—

(a) relates to the business or affairs of the institution in relation to which his report is made or any associated company of that institution;

(b) if by virtue of section 40(4) the report relates to an associated company of an institution, to the business or affairs of that company.

(4) In this section "associated company" , in relation to an institution, means any such company as is mentioned in section 40(4).

### **RESTRICTION ON INSTITUTIONS ACTIVITIES**

#### **Restriction on advances on institution shares**

50 (1) An institution shall not accept any form of security over its own shares as security for any advances, credit facilities or guarantee given to it by any person.

(2) An institution that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$50,000.

#### **Restriction on commercial activities of institutions**

51 (1) Subject to this section, an institution shall not without obtaining the prior approval of the Authority—

(a) in the case of all institutions—

(i) engage in manufacture;

(ii) trade in any goods;

(iii) acquire or hold any interest in land;

(b) in the case of an institution holding a banking licence, provide any services other than the business of banking

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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or dealing in money or securities of any kind, including all services normally associated with such business;

- (c) in the case of an institution holding a deposit company licence, provide any services other than deposit-taking business including all services normally associated with such business,

except in so far as may be necessary with respect to any interests the institution may acquire in the course of the satisfaction of debts due to it, and provided such interests are disposed of at the earliest suitable opportunity.

(2) An institution may acquire and hold an interest in any undertaking to a value not exceeding such percentage of the amount of the paid-up capital and published reserves of the institution as the Minister acting on the advice of the Authority may prescribe by order.

(3) An order made under subsection (2) shall be subject to negative resolution procedure.

(4) An institution may acquire and hold an interest or estate in land—

- (a) for the purpose of accommodating its business; or  
(b) as security for any advances, credit facilities or guarantees given to it by any person.

(5) An institution that contravenes the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine of \$50,000.

### RESTRICTION ON DISCLOSURE OF INFORMATION

#### **Restricted information**

52 (1) Except as provided by sections 53, 54 and 55—

- (a) no person who under or for the purposes of this Act receives information relating to the business or other affairs of any person; and  
(b) no person who obtains such information directly or indirectly from a person who has received it as aforesaid,

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received as aforesaid.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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(2) This section does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) Any person who discloses information in contravention of this section commits an offence and is liable —

(a) on summary conviction to a fine of \$50,000 and to imprisonment for two years or to both;

(b) on conviction on indictment to a fine of \$100,000 or to imprisonment for five years or to both.

### **Disclosure for facilitating the discharge of functions of the Authority**

53 (1) Section 52 does not preclude the disclosure of information in any case in which disclosure is for the purpose of enabling or assisting the Authority to discharge —

(a) its functions under this Act; and

(b) its functions under the Bermuda Monetary Authority Act 1969.

(2) Without prejudice to the generality of subsection (1), section 52 does not preclude the disclosure of information by the Authority to the auditor of an institution if it appears to the Authority that disclosing the information would enable or assist the Authority to discharge the functions mentioned in that subsection or would otherwise be in the interests of the depositors.

### **Disclosure for facilitating the discharge of functions by other authorities**

54 (1) Section 52 does not preclude the disclosure of information to the Minister or other authority in Bermuda in any case in which the disclosure is for the purpose of enabling or assisting him to discharge his regulatory functions.

(2) Section 52 does not preclude the disclosure of information for the purpose of enabling or assisting an authority in a country or territory outside Bermuda to exercise functions corresponding to the functions of the Authority under this Act.

(3) Subsection (2) does not apply in relation to disclosures to an authority unless the Authority is satisfied that the authority is subject

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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to restriction on further disclosure at least equivalent to those imposed by sections 52, 53 and this section.

(4) Section 52 does not preclude the disclosure of information—

- (a) for the purpose of enabling or assisting a person to do anything which he is required to do in pursuance of a requirement imposed under section 39(1)(b);
- (b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or otherwise;
- (c) in connection with any other proceedings arising out of this Act.

(5) Section 52 does not preclude the disclosure by the Authority to the Director of Public Prosecutions or a police officer not below the rank of inspector of information obtained pursuant to section 42, 43 or 44 or of information in the possession of the Authority as to any suspected contravention in relation to which the powers conferred by those sections are exercisable.

(6) Information which is disclosed to a person in pursuance of this section shall not be used otherwise than for the purpose mentioned in this section.

### **Information supplied to the Authority by relevant overseas authority**

55 (1) Section 52 applies to information which has been supplied to the Authority for the purposes of any relevant functions by the relevant supervisory authority in a country or territory outside Bermuda.

(2) Information supplied to the Authority as mentioned in subsection (1) shall not be disclosed except as provided by section 52—

- (a) for the purpose of enabling or assisting the Authority to discharge its functions under this Act; or
- (b) with a view to the institution of, or otherwise for the purpose of, criminal proceedings, whether under this Act or otherwise.

(3) In this section—

"relevant functions" in relation to the Authority means its functions under this Act and the Bermuda Monetary Authority Act 1969;

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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"relevant supervisory authority" means the authority discharging in that country or territory functions corresponding to those of the Authority under this Act.

### MISCELLANEOUS AND SUPPLEMENTAL

#### **Offences by companies**

56 (1) Where an offence under this Act committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any director, senior executive, secretary or other similar officer of the company, or any person who was purporting to act in any such capacity, he, as well as the company, shall be guilty of that offence and be liable to be proceeded against and punished accordingly unless such person shows that he took all reasonable steps to avoid the commission of an offence.

(2) Where the affairs of a company are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the company.

#### **Restriction on use of word "bank"**

57 No person carrying on business in Bermuda shall use any name which indicates or may reasonably be understood to indicate (whether in English or in any other language) that he is a bank or banker or is carrying on deposit-taking business authorised under a banking licence unless it is an institution holding a banking licence under this Act.

#### **Notices**

58 (1) This section has effect in relation to any notice, direction or other document required or authorised by or under this Act to be given to or served on any person other than the Authority.

(2) Any such document may be given to or served on the person in question—

- (a) by delivering it to him;
- (b) by leaving it at his principal place of business; or
- (c) by sending it to him at that address by facsimile or other similar means which produce a document containing the text of the communication.

(3) Any such document may in the case of a company be given to or served—



## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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- (a) by delivering it to the company's principal place of business or registered office in Bermuda; or
- (b) by sending it by registered post addressed to the company's principal place of business.

### **Service of notice on Authority**

59 (1) No notice required by this Act to be given or served on the Authority shall be regarded as given or served until it is received.

(2) Subject to subsection (1), such notice may be given by facsimile or other similar means which produce a document containing the text of the communication.

### **Regulations**

60 (1) The Minister acting on the advice of the Authority, may make regulations prescribing anything which may be prescribed under this Act and generally for the implementation of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may in particular—

- (a) prescribe forms, fees and charges;
- (b) regulate advertising and the soliciting of deposits by whatever means (including electronic soliciting).
- (c) prescribe penalties not exceeding \$10000 for any breach of the regulations.

(3) Regulations made under this section are subject to negative resolution procedure.

### **Repeals**

61 The following enactments shall cease to have effect and are hereby repealed—

The Banks Act 1969; and

The Deposit Companies Act 1974.

### **Consequential amendments**

62 (1) The Minister may by order amend any enactment as he thinks fit in consequence of this Act and the repeal of the enactments listed in section 61.

(2) An order made under this section shall be subject to affirmative resolution procedure.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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### **Transitional**

63 (1) Notwithstanding the provisions of this Act, where, upon the commencement of this Act a person is carrying on a deposit-taking business —

- (a) under a licence issued by the Minister under the repealed Banks Act 1969; or
- (b) under a licence issued by the Minister under the repealed Deposit Companies Act 1974,

the Authority shall issue to the person holding the licence referred to in paragraph (a) a banking licence, and to a person holding the licence referred to in paragraph (b) a deposit company licence.

(2) Subject to this section and section 64, upon the issue of the licence the provisions of this Act shall apply to the institution as if such licence were granted under section 14.

(3) Except where the Authority directs otherwise in the interests of the depositors or potential depositors, for the period of twelve months from the date of commencement of this Act, or such other longer period as the Authority may in any particular case specify, paragraph 7 of the minimum criteria specified in the Second Schedule shall not apply to an institution licensed under this section.

(4) Section 37(2)(a)(ii) and Section 37(2)(b)(ii) shall apply to institutions licensed under this section as if for "since the incorporation of the institution" there were substituted "since the commencement of this Act".

### **Savings**

64 Nothing in this Act shall require an institution licensed under section 63 to provide any services to the public in Bermuda that it did not provide before the commencement of this Act.

## **FIRST SCHEDULE** (section 12(1))

### **EXEMPTIONS**

1 The following are exempt from all of the provisions of this Act—

- (a) the Government of Bermuda;
- (b) the Bermuda Monetary Authority;

**BANKS AND DEPOSIT COMPANIES ACT 1999**

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(c) every public authority in Bermuda.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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### **SECOND SCHEDULE** (section 14(2) )

#### **MINIMUM CRITERIA FOR LICENSING**

##### *Directors etc. to be fit and proper persons*

1 (1) Every person who is, or is to be, a director, controller or senior executive of the institution is a fit and proper person to hold the particular position which he holds or is to hold.

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfill those responsibilities and to whether the interests of depositors or potential depositors of the institution are, or are likely to be, in any way threatened by his holding that position.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has—

- (a) committed an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under any enactment appearing to the Authority to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
- (c) engaged in any business practices appearing to the Authority to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on his method of conducting business;
- (d) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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### *Business to be directed by at least two individuals*

2 At least two individuals effectively direct the business of the institution.

### *Composition of board of directors*

3 The directors include such number (if any) of directors without executive responsibility for the management of its business as the Authority considers appropriate having regard to the circumstances of the institution and the nature and scale of its operations.

### *Business to be conducted in prudent manner*

4 (1) The institution conducts, or, in the case of an institution which is not yet carrying on a deposit-taking business, will conduct its business in a prudent manner.

(2) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain capital which, together with other financial resources available to the institution of such nature and amount as considered appropriate by the Authority, are—

(a) of an amount which is commensurate with the nature and scale of the institution's operations; and

(b) of an amount and nature sufficient to safeguard the interests of its depositors and potential depositors, having regard to the particular factors mentioned in subparagraph (3) and any other factors appearing to the Authority to be relevant.

(3) The particular factors referred to above are—

(a) the nature and scale of the institution's operations; and

(b) the risks inherent in those operations and in the operations of any other undertaking in the same group so far as capable of affecting the institution.

(4) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate liquidity, having regard to the relationship between its liquid assets and its actual and contingent liabilities, to the times at which those liabilities will or may fall due and its assets mature, to the factors mentioned in subparagraph (3) and to any other factors appearing to the Authority to be relevant.

## **BANKS AND DEPOSIT COMPANIES ACT 1999**

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(5) For the purposes of subparagraph (4) the Authority may, to such extent as it thinks appropriate, take into account as liquid assets, assets of the institution and facilities available to it which are capable of providing liquidity within a reasonable period.

(6) An institution shall not be regarded as conducting its business in a prudent manner unless it makes or, as the case may be, will make adequate provision for depreciation or diminution in the value of its assets (including provision for bad or doubtful debts), for liabilities which will or may fall to be discharged by it and for losses which it will or may incur.

(7) An institution shall not be regarded as conducting its business in a prudent manner unless it makes or, as the case may be, will maintain adequate accounting and other records of its business and adequate systems of control of its business and records.

(8) Those records and systems shall not be regarded as adequate unless they are such as to enable the business of the institution to be prudently managed and the institution to comply with the duties imposed on it by or under this Act and in determining whether those systems are adequate the Authority shall have regard to the functions and responsibilities in respect of them of any such directors of the institution as are mentioned in paragraph 3 .

(9) Subparagraphs (2) to (8) are without prejudice to the generality of subparagraph (1) .

### *Consolidated supervision*

5 The position of the institution within the structure of any group to which it may belong or its links with any related companies shall be such that it will not obstruct the conduct of effective consolidated supervision.

### *Integrity and skill*

6 The business of the institution is or, in the case of an institution which is not yet carrying on a deposit-taking business, will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.

### *Minimum net assets*

7 The institution will at the time when the licence is granted to it have initial net assets amounting to not less than \$10 million in the case of a bank and \$1 million in the case of a deposit company (or an amount of equal value denominated wholly or partly in another unit of account.