ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER B12

BANKING ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises and consolidates—

Act 6/2015, in force 18 April 2016
Act 11/2019, in force 4 April 2019

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BANKING ACT

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BANKING ACT

PART 1
PRELIMINARY

Interpretation

1. (1) In this Act—

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

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

(i) a holding company or subsidiary of F,

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

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

(b) any company over which F has control;

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

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

(e) a company which has any interlinked business with F and—

(i) has the same beneficial owner, or

(ii) shares common management;

and "affiliation" shall be construed accordingly;
(Act 11/2019, s. 2(a)(i)*)*

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

"assigned capital" means the net assets derived from the funds of a foreign financial institution which it is required to keep during the term of its licence in accordance with prudential standards issued by the Central Bank;

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

"banking business" means—

(a) the business of receiving funds through—

(i) the acceptance of monetary deposits which are repayable on demand or after notice or any similar operation,

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(ii) the sale or placement of bonds, certificates, notes or other securities,

and the use of such funds either in whole or in part for extensions of credit or investment for the account and at the risk of the person doing such business; or
(Act 11/2019, s. 2(a)(ii))

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

"board" means the board of directors responsible for the management of a licensed financial institution;

"borrower group" means—

(a) a family group comprising an individual and that individual's relative where each member of the group is substantially dependent upon the same income sources;

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

(c) a group of companies which is under a common control;

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

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

(f) any other group of persons as may be determined by the Central Bank;

"branch" means any office or place of business of a licensed financial institution, other than the principal office where a licensed financial institution carries on any banking business and which facilitates the—

(a) acceptance of deposits and other repayable funds; or

(b) issuing and administering means of payment including credit cards, travellers' cheques, bankers' drafts, and electronic money, but not including automatic banking machines and *bureaus de exchange*;
(Act 11/2019, s. 2(a)(iii))

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

"CARICOM national" means a national of a member state of the Caribbean Community including the CARICOM Single Market and Economy established by Article 2 of the Revised Treaty of Chaguaramas signed at Nassau, The Bahamas on 5th July 2001;
(Act 11/2019, s. 2(a)(iv))

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

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"control" means the power of a person, either alone or with an affiliate or relative or connected or other person, directly or indirectly or by an agreement or otherwise to—

(a) exercise more than 20% of the voting rights at any meeting of shareholders of a licensed financial institution, company or unincorporated body;

(b) elect a majority of the directors of a licensed financial institution, company or unincorporated body; or

(c) exert influence over the business and affairs of a licensed financial institution, company or unincorporated body;

and the terms "controlling interest" and "controlling shareholder" shall be construed accordingly;

"corporate group" means a company and its affiliates;

"credit facilities" includes loans, advances, lines of credit, commitment letters, standby facilities, letters of credit, overdrafts, and any other facilities or arrangements, whether on or off-balance sheet;

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

"Currency Union" refers collectively to the member countries and territories of Anguilla, Antigua and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Christopher and Nevis, Saint Lucia and Saint Vincent and the Grenadines which use the Eastern Caribbean currency as their official currency;

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

"exposure" means the amount at risk and includes—

(a) credit facilities, investments including equities, participations, guarantees and acceptance or any other asset recognized by the Central Bank as an exposure;
(Act 11/2019, s. 2(a)(vi))

(b) claims on a counterparty including actual and potential claims that would arise from the drawing down in full of undrawn advised facilities, whether on or off-balance sheet, revocable or irrevocable, conditional or unconditional, that the licensed financial institution has committed itself to provide, arrange, purchase or underwrite;

"external auditor" means an auditor appointed under section 59 that is—

(a) a person who is a member of a professional body of accountants which the Minister has specified by Order published in the *Gazette*; or

(b) any other person approved by the Central Bank;

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"financial group" means a corporate group, the members of which carry on banking business or business of a financial nature;

(Act 11/2019, s. 2(a)(vii))

"foreign financial institution" means a financial institution which is incorporated under the laws of a country outside of the Currency Union;

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

"international financial institutions" refers to the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, and the International Finance Corporation;

"large exposure" means an exposure to a person or a borrower group, which amounts to 10% or more of the tier 1 capital of a licensed financial institution;

(Act 11/2019, s. 2(a)(viii))

"licensed financial holding company" means a holding company of a licensed financial institution licensed under this Act and includes a former licensed financial holding company;

(Act 11/2019, s. 2(a)(ix))

"licensed financial institution" means a person or incorporated entity licensed to carry on banking business and includes a former licensed financial institution;

(Act 11/2019, s. 2(a)(x))

"local licensed financial institution" means a licensed financial institution formed under the laws of a member country or territory of the Currency Union;

"Minister" means the Minister responsible for Finance;

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

"officer" means—

(a) a chief executive officer, chief operating officer, president, vice-president, branch manager, country manager, corporate secretary, treasurer, chief financial officer, chief accountant, chief auditor, chief investment officer, chief compliance officer or chief risk officer;

(Act 11/2019, s. 2(a)(xi))

(b) any other individual designated as an officer by its articles of incorporation or continuance, bye-laws or other constituent document, or resolution of the directors or members; or

(Act 11/2019, s. 2(a)(xii))

(c) any other individual who performs functions similar to those performed by a person referred to in paragraph (a), whether or not the individual is formally designated as an officer;

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"outsource" means to enter into a contractual arrangement with a third-party service provider, where the service provider manages functions, business activities, processes or products that are, or could be, undertaken by the licensed financial institution;

(Act 11/2019, s. 2(a)(xiii))

"Participating Governments" means the governments of the member countries and territories of the Currency Union;

"person" means an individual, public body, company, partnership, trust, association or body of persons whether corporate or unincorporated;

"place of business" means a physical location, site, structure, or other similar facility, through which a licensed financial institution or licensed financial holding company transacts its affairs or carries on business;

(Act 11/2019, s. 2(a)(xiv))

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

(a) a local financial institution, its principal office in the Currency Union; and

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

"related party" includes—

(a) any financial holding company, subsidiary or other affiliate of a licensed financial institution;

(b) directors, officers, and significant shareholders of a licensed financial institution, financial holding company, subsidiary or other affiliate of a licensed financial institution;

(c) a relative or other member of the households of persons listed in paragraph (b);

(d) any entity that is controlled by a person described in paragraphs (a), (b) and (c); or

(e) any other person or class of persons determined by the Central Bank to be a related party because of its past or present interest in or relationship with the licensed financial institution being such that it can reasonably be expected that this person can influence the decision of the licensed financial institution regarding a transaction;

"relative" means a spouse, son, daughter, stepson, stepdaughter, adopted son, adopted daughter, brother, sister, father or mother;

(Act 11/2019, s. 2(a)(xv))

"significant shareholder" means a person who either alone or with an affiliate or connected person, is entitled to hold more than 10% of the shares of the licensed financial institution or to exercise or control more than 10% of the total voting rights at any general meeting of the licensed financial institution or another company of which the licensed financial institution is a subsidiary, and the terms "significant", "significant interest" and "significant shareholding" shall be construed accordingly;

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"spouse" includes—

(a) a woman who, for a period of not less than 5 years, has cohabited with a man as if she were in law his wife; and

(b) a man who, for a period of not less than 5 years, has cohabited with a woman as if he were in law her husband;

(Act 11/2019, s. 2(a)(xvi))

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

"tier 1 capital" means the total of—

(a) paid-up share capital, statutory reserve fund, share premium account, retained earnings and any other capital account approved by the Central Bank, in the case of local licensed financial institutions; or

(b) such other capital account or similar measure as approved by the Central Bank, in the case of a licensed branch of a foreign financial institution, less any amount by which that total has been impaired in either case;

(Act 11/2019, s. 2(a)(xvii))

"ultimate beneficial owner" means the individual that ultimately derives the benefits of ownership or control of a body corporate;

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

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

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

(2) For the purposes of this Act, a person is connected to another person—

(a) where that person is an individual, the person is—

(i) the relative of that person,

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

(iii) a company of which that person is a director or controlling or significant shareholder, or

(iv) a business partner of that person;

(Act 11/2019, s. 2(b)(i))

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(b) where that person is a company, the person is—

(i) a director or controlling or significant shareholder of that company,

(ii) a subsidiary or affiliate of that company, or

(iii) a director of any such subsidiary or affiliate of that company;

(Act 11/2019, s. 2(b)(ii))

(c) where 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 a company or under which they undertake to act together in exercising their voting power in relation to the company, the person is that other person.

(3) In this Act, for the purposes of the payment of licence fees, a reference to a local financial institution includes a foreign financial institution that is a CARICOM national.

(Act 11/2019, s. 2(c))

PART 2

LICENCES

Requirement for licence

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

(2) A financial institution which, on 18 April, 2016, holds a valid licence under this Act to carry on banking business in Anguilla is deemed to have been granted a licence under section 7.

(3) Notwithstanding subsection (2), the Central Bank shall, within a set period after 18 April, 2016, as the Central Bank may determine, issue to a financial institution a new licence certificate under this Act.

(4) Any person intending to carry on banking business in the Currency Union shall, before commencing such business, apply for a licence under section 6.

(5) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction—

(a) in the case of a corporation, to a fine of $1,000,000, and in the case of a continuing offence, to a further penalty of $100,000 for each day on which the offence is continued after conviction;

(Act 11/2019, s. 3)

(b) in the case of a director or an officer, to a fine of $500,000 or to imprisonment for a term of 3 years or to both such fine and imprisonment and in the case of a continuing offence, to a further penalty of $100,000 for each day on which the offence is continued after conviction.

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

3. (1) In this section "relevant documents" means any books, accounts, records and other documents, cheques and securities.

(2) Where the Central Bank has reasonable cause to suspect that—

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

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

an application without notice may be made to the High Court by the Central Bank for an order that a named officer or officers of the Central Bank be entitled to enter and search the premises with a police officer and seize the relevant documents and any cash as may be found on the premises relating to the carrying on of banking business, to ascertain whether the person is carrying on banking business without a licence.

(Act 11/2019, s. 4(a))

(3) Any order issued by the High Court under subsection (2) may authorise—

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

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

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

(4) A police officer who accompanies an officer in whose name an order has been granted under subsection (2) may in the case of resistance break open a door and remove an impediment or obstruction to the entry, search or seizure.

(Act 11/2019, s. 4(b))

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

Appointment of receiver for failure to hold licence

4. Notwithstanding subsection 2(5), if a person is found under subsection 3(2) to be carrying on banking business without a licence, the Central Bank may appoint a receiver for the person under section 137(1)(b).

(Act 11/2019, s. 5)

Repayment of funds obtained without licence

5. A person holding funds which were obtained by doing banking business without being in possession of a licence granted under this Act shall repay such funds in accordance with the directions of the Central Bank.

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Application for licence

6. (1) An application for a licence shall be made in writing to the Central Bank, and shall be accompanied by the non-refundable application fee specified in Schedule 1 and the following documents and other information—

(a) authenticated copies of the instrument under which the applicant is organised;

(b) a statement of the address of its head office and the locations of the principal and other places of business where the applicant proposes to do business;

(c) detailed information regarding the persons who will hold or ultimately benefit from significant shareholdings, directly or indirectly, the respective values of the shares and the percentage of ownership;

(d) detailed information regarding the directors and officers, including their qualifications and experience, financial position, business interests and performance of the business concerns under their control or management;

(e) where the applicant will be a member of a financial group or other corporate group, a complete diagram of the group, including all direct and indirect affiliates and associates of the financial institution and the nature of their relationship to the group;

(Act 11/2019, s. 6(a))

(f) documentary evidence of the capital of the applicant seeking to be licensed, including the original sources, and any other sources of funds;

(g) a business plan, including projected statement of financial position, financial performance and capital and full particulars of the business the applicant proposes to operate;

(h) an operating plan and documented internal controls system; and

(i) such other information as the Central Bank may require.

(2) A foreign financial institution that intends to open a branch or subsidiary within the Currency Union shall, in addition to submitting the documents and other information required under subsection (1), submit with its application—

(a) a certificate showing that the home banking supervisor of the jurisdiction in which it was incorporated, formed or organised has no objection to its application for a licence to do business in the Currency Union; and

(b) evidence satisfactory to the Central Bank that it is subject to comprehensive supervision on a consolidated basis by the home banking supervisor of the jurisdiction.

(Act 11/2019, s. 6(b))

(3) The Central Bank may require that information supplied to it be verified, certified or otherwise authenticated in the manner that the Central Bank may consider fit.

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Grant or denial of licence

7. (1) In considering an application for a licence, the Central Bank shall conduct any investigation it may consider necessary to ascertain that the criteria for approval of a licence are met.

(2) A licence shall not be granted by the Central Bank, unless it is satisfied—

(a) as to the validity of the documents submitted in accordance with section 6;

(b) that the business plan and financial projections are based on sound analysis under reasonable assumptions and that the business plan is feasible;

(c) as to the financial condition and history of the applicant;

(d) as to the character of the business of the applicant;

(e) that the proposed directors and officers are fit and proper in accordance with the criteria under section 96;

(f) as to the adequacy of the capital structure and compliance with the minimum capital requirement of section 44;

(g) as to the earning prospects of the applicant;

(h) as to the convenience and needs of the community to be served by the granting of the licence;

(i) as to the suitability of the significant shareholders;

(j) as to the transparency of the ownership structure;

(k) as to the acceptable sources of initial capital;

(l) as to the adequacy of the applicant's arrangements for governance, including but not limited to accounting, risk management, and internal control systems and records; and

(m) that the proposed legal and managerial structures will not hinder effective supervision, including supervision on a consolidated basis.

(3) A licence shall not be granted by the Central Bank for a subsidiary or branch of a foreign financial institution unless Central Bank is satisfied that, in addition to the requirements in subsection (2), the following requirements are satisfied—

(a) the foreign financial institution is subject to supervision and regulation that is satisfactory to the Central Bank, including supervision on a consolidated basis within its home country; and

(b) arrangements satisfactory to the Central Bank for cooperation, coordination, and information-sharing with the home country supervisor are in place.

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(4) Within 6 months of its receipt of a completed application for a licence, the Central Bank shall either—

(a) grant the licence and may place any restrictions as the Central Bank considers to be prudent in respect of the licence; or

(b) refuse to grant the licence, if the Central Bank is of the opinion that—

(i) it would be undesirable in the public interest to grant the licence, or

(ii) the criteria for approving a license are not met.

(5) Upon payment of the initial licence fee specified in Schedule 1, a licence granted by the Central Bank under this section is valid until revoked.

(6) A licence granted under this section is not transferable or assignable.

Licence fees and penalty for default

8. (1) Every licensed financial institution and licensed financial holding company shall pay an annual licence fee as specified in Schedule 1.

(2) All licence fees paid under this Act shall be payable to the Central Bank not later than the 31st January in each year or such later date as may be specified by the Central Bank, except that where a licence is issued, or a branch is opened for the first time, after the first quarter in any year, the fee payable shall be calculated on a *pro rata* basis.

(3) Where a licensed financial institution or a licensed financial holding company fails to pay the annual licence fees under subsection (1), the licensed financial institution or licensed financial holding company is liable to a penalty of $10,000 and a further penalty of $1,000 for each day of default.

Permissible activities

9. (1) A licensed financial institution shall not carry on any business except as provided in this section.

(2) A licensed financial institution may conduct one or more of the following activities—

(a) acceptance of deposits and other repayable funds;

(b) lending;

(c) financial leasing;

(d) investment in financial securities;

(e) money transmission services;

(f) issuing and administering means of payment including credit cards, travellers cheques, bankers' drafts, and electronic money;

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(g) guarantees and commitments;

(h) the keeping and administration of securities;

(i) credit reference services;

(j) safe custody of valuables;

(k) electronic banking;

(l) payment and collection services;

(m) dealing in foreign currency; and

(n) any other services that the Central Bank may determine as banking practice.

(3) The Central Bank may, by prudential standards issued pursuant to section 183, restrict the permissible activities of a licensed financial institution in general, or of a class of licensed financial institutions, or remove the restriction so imposed as it considers appropriate.

(4) The conduct of permissible activities by a licensed financial institution shall be in accordance with any conditions imposed in a licence.

Conditions for licence

10. A licence issued under this Act is subject to the conditions that the Central Bank may impose, including the activities in which the licensed financial institution is permitted to engage.

Variation of conditions for licence

11. The Central Bank may amend, add to, vary or cancel any condition attached to a licence.

Register of licensed financial institutions

12. (1) A central register shall be kept by the Central Bank that is available to the public which shall record for each licensed financial institution, the name, the head office and branch office addresses, and the class or category of licence held.

(2) The Central Bank shall also maintain in the register a list of licensed financial institutions, the licences of which have been revoked.

Revocation of licence

13. (1) The Central Bank may revoke any licence to carry on banking business in the Currency Union if the licensed financial institution—

(a) fails to commence operations within a period of 12 months following the granting of the licence;

(b) in connection with the application for the licence, provided false, misleading or inaccurate information or suppressed material information;

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(c) fails to comply with the conditions of its licence or the measures required by the Central Bank in accordance with section 10;

(d) is in breach of any of the provisions of this Act which is applicable;

(e) ceases to carry on banking business in the Currency Union;

(f) is conducting its affairs in a manner detrimental to the national and regional interests or to the interest of its depositors;

(g) fails to maintain sufficient capital or liquidity to meet its liabilities;

(h) has not fulfilled or is unlikely to fulfil the minimum criteria for licensing under this Act;

(i) merges or amalgamates with another company or licensed financial institution and the licence is no longer required; or

(j) loses (or its parent company loses) its authorisation to carry on banking business or business of a financial nature in its home jurisdiction, or bankruptcy or insolvency proceedings have been or are to be initiated.

(Act 11/2019, s. 7)

(2) Before revoking any licence under subsection (1), the Central Bank shall—

(a) give the licensed financial institution concerned notice in writing of its intention to do so, specifying the grounds upon which it proposes to make the revocation;

(b) require the licensed financial institution to submit to the Central Bank within a specified period of not less than 30 days, a written statement of objections to the making of the revocation; and

(c) advise the licensed financial institution of its decision.

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

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

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

(6) Where a licence to carry on banking business in the Currency Union has been revoked, the Central Bank shall, as soon as possible cause a notice of the revocation to be published in the *Gazette* and a newspaper circulating in the relevant member country or territory of the Currency Union and cause such other steps to be taken as it considers necessary to inform the public of the revocation.

Requirement to inform Minister

14. (1) Where the Central Bank receives an application for a licence pursuant to section 6, the Central Bank shall in writing inform the Minister of the application.

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(2) Where the Central Bank makes a decision in relation to a licence pursuant to—

(a) section 7, to grant or deny a licence;

(b) section 11, to vary a condition of a licence; or

(c) section 13, to revoke a licence,

the Central Bank shall in writing inform the Minister of its decision, stating the reasons for the decision.

Restricted words, names, and practices

15. (1) No licensed financial institution shall be granted or continue to hold a licence under a name which so closely resembles the name of an existing licensed financial institution in the Currency Union or elsewhere as would be likely, in the opinion of the Central Bank, to mislead the public.

(2) Except with the written consent of the Central Bank, no person other than a licensed financial institution shall—

(a) use the words "bank", "financial institution", "savings" and "loan", or any of their derivatives or any mutations in any language, or any other word indicating the carrying on of banking business, in the name, description or title under which a person is carrying on business in the Currency Union; or

(b) make any representation to the effect in any other manner for the purpose of indicating that a person is carrying on banking business in the Currency Union.

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

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

(a) make or continue to make representations in any billhead, letter, letterhead, circular, paper, notice, advertisement or in any other manner that the person is carrying on banking business;

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

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

Display of licence certificate

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

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Offices and branches deemed one licensed financial institution

17. All offices and branches of a licensed financial institution in the Currency Union shall be deemed to be one licensed financial institution.

Authorisation of location and approval of new business premises

18. (1) Any licence granted under this Act shall authorise the licensed financial institution to carry on banking business in the Currency Union at the place of business designated in the licence and at such other place as the Central Bank may in writing authorise.

(2) A licensed financial institution shall not open a new place of business or change the location of an existing place of business in the Currency Union without the prior approval of the Central Bank.

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

(4) No local licensed financial institution shall open a place of business elsewhere than in the Currency Union without the prior approval of the Central Bank.

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

(6) The Central Bank, may direct the closing of a branch or subsidiary of a licensed financial institution operating outside of the Currency Union or impose limitations on the activities of the licensed financial institution or subsidiary if the Central Bank determines that the supervision by the host country supervisor is not adequate compared to the risks that the branch presents to the viability or soundness of the local licensed financial institution.

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

(Act 11/2019, s. 8)

(8) Where a licensed financial institution operating under a valid licence has, on 18 April, 2016, established an automatic banking machine in a place other than a place of business the licensed financial institution shall notify the Central Bank of the location of all the automatic banking machines within 60 days of 18 April, 2016.

(Act 11/2019, s. 8)

(9) A licensed financial institution is liable to a penalty of $250,000 where it—

(a) opens a new place of business or changes the location of an existing place of business in the Currency Union without the prior approval of the Central Bank under subsection (2);

(b) closes an existing place of business in the Currency Union without giving notice under subsection (3); or

(c) establishes or changes the location of an automatic banking machine without giving notice under subsection (7).

(Act 11/2019, s. 8)

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(10) A local licensed financial institution is liable to a penalty of $250,000 where it—

(a) opens a place of business elsewhere than in the Currency Union without the prior approval of the Central Bank under subsection (4); or

(b) closes a place of business outside of the Currency Union without giving notice under subsection (5).

PART 3

OWNERSHIP STRUCTURES

Ownership or control of licensed financial institutions

19. Subject to section 31, except with the written approval of the Central Bank, no person, acting directly or indirectly, alone or together with one or more persons, shall hold or acquire—

(a) shares in a local licensed financial institution which, together with any existing direct or indirect holdings of that person, would exceed the supervisory thresholds of 10, 20 or 50% of the share capital;

(b) in the case of a local licensed financial institution not having a share capital, more than the supervisory thresholds of 10, 20 or 50% of the total voting rights of all the members entitled to vote at a general meeting of the local licensed financial institution.

Written application for approval

20. Any person seeking written approval of the Central Bank pursuant to section 19 shall apply in writing and shall submit to the Central Bank the information in a form that the Central Bank may specify.

Criteria for approval for ownership or control

21. The Central Bank, in determining whether or not to grant its approval, shall make such investigations and inquiries as it considers necessary, and shall consider—

(a) the terms and conditions of the proposed acquisition;

(b) the financial resources and history of the shareholder or proposed shareholder;

(c) the financial condition and capitalisation of the local licensed financial institution;

(d) any proposed change in the business, corporate structure, or management, including the board of directors, of the local licensed financial institution;

(e) the completeness and truthfulness of the information submitted by the shareholder or proposed shareholder;

(f) whether the shareholder or proposed shareholder is a fit and proper person pursuant to sections 96 and 97;

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(g) whether the board of directors of the shareholder or proposed shareholder are fit and proper persons pursuant to section 96;

(h) the identity of the ultimate beneficial owner of the shares and whether such owner is a fit and proper person; and

(i) any other matters that the Central Bank considers appropriate.

Granting of approval

22. The Central Bank may grant its approval pursuant to section 19 subject to any terms and conditions as it determines in order to protect the licensed financial institution from the risks of membership in a corporate group or to ensure that the ownership or control structure does not hinder effective supervision on a solo or consolidated basis, and may at any time, add to, vary or revoke any term or condition.

Person with control to be fit and proper

23. A person who has received the approval of the Central Bank under section 22 shall at all times during which the person holds the shares or control, continue to be a fit and proper person pursuant to sections 96 and 97.

Grounds for disapproval of a transfer

24. The Central Bank may disapprove a proposed transfer of shares in the interest of sound and prudent management of a licensed financial institution by preventing—

(a) the acquisition of shares by a person who does not satisfy the fit and proper criteria issued by the Central Bank or who exercises control to the detriment of that licensed financial institution; or

(b) a transaction in any other situation in which the Central Bank has reason to believe that the transaction will be detrimental to that licensed financial institution.

Prohibition against selling below supervisory threshold

25. Except with prior notice to the Central Bank, no person shall sell or dispose of shares in a licensed financial institution to any other person if as a result of the transaction the shareholding falls below the supervisory threshold of 10, 20 or 50% of the share capital.

Group holdings to be deemed holdings of single member

26. Where the Central Bank determines that the interests of a group of two or more shareholders of a licensed financial institution are connected, the total holdings of those shareholders shall be combined and deemed to be the holdings of a single member.

Quarterly reports on ownership and control

27. A local licensed financial institution shall submit a quarterly report to the Central Bank on ownership and control of the local licensed financial institution, which shall include—

(a) the names and addresses of any person who owns 5% or more of the total voting rights of the local licensed financial institution;

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(b) where a person is a nominee, the name and address of the ultimate beneficial owner for whom the person holds the shares or other ownership interests;

(c) the name and address of any persons that control the local licensed financial institution, acting directly or indirectly, and acting individually or jointly; and

(d) any other information as the Central Bank may determine.

Report by foreign licensed financial institution on change of control

28. A foreign licensed financial institution shall submit a report to the Central Bank whenever there is a change of control, as determined by the Central Bank.

Sanctions

29. (1) In the event that the Central Bank determines that the provisions of this Part have been violated, the Central Bank may take one or more of the following actions—

(a) issue an order requiring the divestment of so much of the offending interest as is necessary to secure compliance with section 19;

(b) prohibit the payment of dividends in respect of the shares; or

(c) prohibit the issue of 'bonus shares' or 'rights issue' in respect of the shares.

(2) Where the Central Bank has issued an order under paragraph (1)(a), the owner or nominee of the owner of the offending interest shall be prohibited from the exercise of voting rights in respect of the shares.

Prohibition against transfer and acquisition of interest

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

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

Non-applicability of this Part to government or other persons

31. This Part does not apply to the Government or to any person who on 18 April, 2016 has acquired more than 20% of the total voting rights of all the members of the local licensed financial institution, but no person shall without the consent of the Central Bank, acquire any additional shares which have the effect of increasing that person's percentage of the voting rights.

Variation of supervisory thresholds

32. The thresholds referred to in sections 19, 25 and 31 may be varied by the Central Bank.

Approval of application for licence by financial holding company

33. Where the Central Bank approves an application for a licence for a financial holding company as required under section 35, it shall constitute approval for the purposes of section 19.

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PART 4

FINANCIAL HOLDING COMPANIES

Requirement for licensing of financial holding companies

34. (1) Where a licensed financial institution or proposed licensed financial institution is, or is about to become, a member of a corporate group in which—

(a) one or more members, in addition to the licensed financial institution or proposed licensed financial institution, are limited in their activities to those permitted to a member of a financial group; and

(b) one or more members are not limited in their activities to those permitted to a member of a financial group,

the Central Bank may, in writing, direct the controlling shareholder of the licensed financial institution to engage in restructuring to form a financial holding company that meets the criteria of subsection (2).

(2) The criteria referred to in subsection (1) are that—

(a) the licensed financial institution is directly controlled by the financial holding company; and

(b) the other members that are limited in their activities to those permitted to a member of a financial group are either directly or indirectly controlled by the financial holding company or the licensed financial institution referred to in paragraph (1)(a).

(3) In directing a restructuring under subsection (1) the Central Bank may require that the financial holding company be the direct subsidiary of the ultimate parent company of the corporate group.

(4) Where the Central Bank directs a restructuring under subsection (1) it shall be carried out—

(a) within 12 months of the date of the direction; or

(b) within such period, within a maximum of 2 years from the date of the direction, that the Central Bank may, in its discretion, direct by notice in writing to the local licensed financial institution.

(5) A holding company that only controls, whether directly or indirectly, members of a financial group, at least one of which is a licensed financial institution, shall be a financial holding company.

(6) Where a financial holding company is required by this section, it shall apply to the Central Bank for a licence pursuant to section 35.

(7) This section shall not apply where a person who controls a licensed financial institution is itself a licensed financial institution under this Act.

(8) No person incorporated or formed under the laws of a jurisdiction outside the Currency Union may be a financial holding company unless that person is a financial institution or a financial

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holding company subject to authorisation, regulation and supervision in another jurisdiction that is satisfactory to the Central Bank.

(9) The Central Bank may exempt a foreign bank or other foreign company that is subject to regulation and supervision in another jurisdiction from the applicability of one or more of the provisions of this Act applicable to financial holding companies, if a foreign bank or other foreign company is subject to supervision and regulation that is satisfactory to the Central Bank, including supervision on a consolidated basis, in its home jurisdiction or another host jurisdiction in which it has substantial operations.

Application for licence by financial holding companies

35. (1) An application for a licence for a financial holding company shall be made in writing to the Central Bank and be accompanied by the non-refundable application fee specified in Schedule 1.

(2) An applicant for a licence under this section shall provide the following information and documents—

(a) the capital resources, including original sources, and capital structure of the proposed financial holding company;

(b) the names, addresses, occupations, business and professional history for the past 10 years, certified financial positions, and corporate affiliations of persons who will hold or benefit from shareholdings, directly or indirectly, in the proposed financial holding company, and the respective values of the shares;

(c) organisational and managerial structures, including a complete diagram of the group of companies controlled by the proposed financial holding company, identifying all direct and indirect affiliates and associates and the nature of their relationship to the financial holding company;

(d) the particulars of the directors and officers of the proposed financial holding company, including their qualifications, experience, business and professional history for the past 10 years, certified financial position, business interests and performance of the business concerns under their control or management;

(e) the feasibility reports including a business plan and financial projections for the first 5 years and the areas of intended activities;

(f) audited financial statements for the past 3 years, if applicable, or for a lesser period if the entity has been in existence for less than 3 years;

(g) the measures and structures the company intends to adopt to ensure that its business is conducted in accordance with sound corporate governance principles;

(h) for each director, officer or significant shareholder of the proposed financial holding company, an affidavit disclosing any convictions for offences by a criminal court, personal bankruptcy filings, disqualifications from practicing a profession, or past or present involvement in a managerial function of a body corporate or other undertaking subject to insolvency proceedings, if any;

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(i) a certificate showing that the home banking supervisor of the jurisdiction in which it was incorporated, formed or organised has no objection to its application for a licence to do business in the Currency Union; and

(j) any other particulars that the Central Bank may require.

Considerations to grant licence to financial holding company

36. In determining whether to grant a licence to an applicant under section 35(1), the Central Bank shall—

(a) take into account the information referred to in section 35(2), and in particular whether the person or persons controlling the proposed financial holding company are fit and proper, or may be persons likely to prejudice the interests of depositors and other customers of the licensed financial institution in question; and

(b) determine whether ownership of shares by the person or persons controlling the proposed financial holding company, given their corporate affiliations or structure, will hinder effective supervision under this Act or would be likely to prejudice the interests of depositors and other customers of the licensed financial institution.

Grant or denial of licence to financial holding company

37. (1) The Central Bank shall not grant a licence under this section, unless the Central Bank is satisfied that—

(a) the feasibility report is based on sound analysis under reasonable assumptions;

(b) the proposed officers are fit and proper, that is, that their integrity is established and their qualifications and experience are appropriate for their positions in light of the proposed financial holding company's business plan and activities, taking into account the size, nature and complexity of the proposed financial holding company;

(c) the proposed significant shareholders are fit and proper and the ownership and managerial structure of the proposed financial holding company will not hinder effective supervision, including supervision on a consolidated basis;

(d) the capital of the applicant is adequate and the original sources of capital are acceptable and do not include borrowed funds;

(e) the applicant's arrangements for corporate governance, including but not limited to accounting, risk management, and internal control systems and records, are adequate;

(f) the applicant is able and willing to comply with the other conditions that the Central Bank may impose; and

(g) where the applicant is an authorised foreign financial institution or financial holding company—

(i) the foreign financial institution or financial holding company is adequately supervised on a consolidated basis by its home country supervisor, and

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(ii) arrangements satisfactory to the Central Bank for cooperation, coordination, and information-sharing with the home country supervisor are in place.

(2) Upon payment of the initial licence fee specified in Schedule 1, a licence granted by the Central Bank under this section is valid until revoked.

(3) A licence granted under this section is not transferable or assignable.

Conditions for licence to financial holding company

38. The Central Bank may attach conditions to the licence of a financial holding company under this section, including, without limitation, conditions to ensure that—

(a) the capital available to the financial group is adequate and will not jeopardize the financial position of the licensed financial institutions within the financial group;

(b) no double or multiple gearing or excessive leveraging of capital exists or will take place;

(c) the financial group is structured and managed in such a manner that it may be supervised by the Central Bank;

(d) each member of the financial group maintains adequate control mechanisms enabling it to provide to the Central Bank any data or information relevant to its supervision;

(e) activities or overseas locations of operations that may be injurious to the licensed financial institutions that are members of the financial group are prevented,

and the Central Bank may from time to time, vary, remove or add further conditions to the licence.

Restriction on activities of financial holding companies

39. (1) A licensed financial holding company shall not—

(a) carry on any activity other than administering its holding of shares in members of its financial group or providing management, advisory, financing, accounting or information processing services to members in the financial group or any other services as approved by the Central Bank;

(b) directly or indirectly exercise control over any member of another financial group, without the prior approval of the Central Bank; or

(c) directly or indirectly, acquire or hold any share or ownership interest in any commercial, agricultural or industrial company or unincorporated entity.

(2) A licensed financial holding company may acquire interest in any company that engages in activities permissible for licensed financial institutions under section 9.

(3) The Central Bank may issue prudential standards under this section, without limitation, relating to—

(a) the maximum percentage of shares of any class or the maximum value of ownership interests that may be acquired or held; and

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(b) the maximum aggregate value of any shares and ownership interest.

Limitation of risk to licensed financial institution

40. (1) Where a licensed financial institution or proposed licensed financial institution is or will be a member of a corporate group and no other member of the corporate group is limited in its activities to those permitted to a member of a financial group, in lieu of or in addition to a restructuring under section 34, the Central Bank may require the licensed financial institution to take any measures as, in the opinion of the Central Bank, are appropriate to limit the risks to which the licensed financial institution may be exposed from the other members of the corporate group.

(2) Without limiting the generality of subsection (1), the Central Bank may, by order—

(a) restrict or prohibit credit exposures by the licensed financial institution to the other members of the corporate group, or to any person that directly or indirectly controls the holding company of the corporate group;

(b) limit or prohibit loans or other transfers of funds by members of the corporate group to the licensed financial institution, other than deposits with the licensed financial institution made in the ordinary course of business;

(c) limit or prohibit loans or other transfers of funds by the licensed financial institution to members of the corporate group;

(d) increase capital and liquidity requirements with respect to the licensed financial institution; or

(e) require that some or all of the directors of the licensed financial institution be independent directors.

Revocation of licence of financial holding company

41. (1) The Central Bank may revoke the licence of a licensed financial holding company where—

(a) the licensed financial holding company persistently fails to comply with the requirements of this Act;

(b) the licensed financial holding company fails to comply with the conditions of its licence;

(c) the licensed financial holding company ceases to meet the requirements for licensing as a financial holding company;

(d) the Central Bank determines that a licence was granted based on false or inaccurate information;

(e) the Central Bank determines that a licensed financial holding company is or is likely to be insolvent;

(f) the parent company of the licensed financial holding company loses its authorisation to carry on banking business in its home jurisdiction; or

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(g) proceedings for bankruptcy, insolvency, or an arrangement with creditors is initiated.

(2) Where the Central Bank revokes the licence of a licensed financial holding company, it may—

(a) order the divestiture of the licensed financial institution owned by the licensed financial holding company;

(b) restrict transactions between the licensed financial institution and the licensed financial holding company and other members of the financial group; or

(c) place the licensed financial holding company under official administration or receivership.

Actions of fundamental change requiring approval

42. (1) Unless the approval of the Central Bank is first obtained, no licensed financial institution or licensed financial holding company shall—

(a) transfer the whole or any substantial part of its assets or liabilities in the Currency Union other than in the ordinary course of its business;

(b) purchase or acquire the business or undertaking of another financial institution;

(c) effect a reduction of its paid-up capital established under section 44;

(d) alter its name as set out in its licence;

(e) enter into a merger or consolidation in the Currency Union; and

(f) in the case of a local licensed financial institution or licensed financial holding company, amend the instrument or charter under which it was formed in the Currency Union.

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

(3) Every licensed financial institution or licensed financial holding company shall provide the Central Bank with any bye-law adopted or any amendment to an existing bye-law within 30 days of the adoption or amendment.

(4) In considering approval of any proposed action under subsection (1), the Central Bank shall be guided by the criteria specified in section 7.

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PART 5

FINANCIAL REQUIREMENTS AND LIMITATIONS

Definition of specified assets

43. In this Part "specified assets" means freely transferable assets free from any charge, lien or encumbrance and include—

(a) notes and coins which are legal tender in the Currency Union and such foreign notes and coins as the Central Bank may specify;

(b) balances at the Central Bank;

(c) net balances at licensed financial institutions in the Currency Union but where the balances are negative they will be subtracted from the specified assets;

(d) treasury bills and other securities issued or guaranteed by a Participating Government and securities issued by a statutory corporation wholly owned by a Participating Government and approved by the Central Bank;

(e) bills of exchange and promissory notes eligible for rediscount by the Central Bank and warehouse warrants or their equivalent securing possession of goods against which the Central Bank may grant advances, within the limits and in accordance with the evaluation fixed by the Central Bank;

(f) net balances at licensed financial institutions in the monetary areas as the Central Bank may approve and the Central Bank may provide for the treatment to be accorded the balance or any portion in respect of the head office of a licensed financial institution organised abroad, and where any balances are negative they will be subtracted from specified assets; and

(g) money at call in monetary areas approved by the Central Bank under paragraph (f), bills of exchange bearing at least two good signatures drawn on and payable at any place in the approved monetary areas, and treasury bills issued by the government of a country in any approved monetary areas and maturing within 180 days.

(Act 11/2019, s. 10)

Minimum paid-up or assigned capital

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

(a) if operating as a bank, the minimum required capital shall be not less than $20,000,000;

(b) if operating as a credit or other financial institution, the minimum required capital shall be not less than $5,000,000.

(Act 11/2019, s. 11(a))

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(2) Every licensed financial holding company shall maintain in the Currency Union unimpaired, paid-up capital at least equal to 3 times the minimum amount applied to the licensed financial institution for which it is the holding company or such other amount as the Central Bank shall determine.

(Act 11/2019, s. 11(a))

(3) The Central Bank may from time to time by—

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

(Act 11/2019, s. 11(a))

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

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

(4) Any licensed financial institution or licensed financial holding company which fails to maintain the minimum capital under subsection (1) or (2) is liable to a penalty of $1,000,000 and to a further penalty of $100,000 for each day of default.

(5) The Central Bank may approve the holding of assigned capital in the form of specified assets.

(Act 11/2019, s. 11(b))

Maintenance of reserve fund

45. (1) Subject to subsection (2) every licensed financial institution shall maintain a reserve fund and shall, out of its net profits of each year transfer to that fund a sum equal to not less than 20% of profits whenever the amount of the reserve fund is less than 100% of the paid-up or, as the case may be, assigned capital of the licensed financial institution.

(2) A licensed financial institution or licensed financial holding company shall not declare, credit or pay any dividend or make any other transfer from profits if the declaration, credit, payment or transfer would result in—

(a) an impairment of the capital required under section 44;

(b) inadequate and inappropriate forms of liquidity contrary to section 47; or

(c) negative retained earnings or accumulated deficit.

(Act 11/2019, s. 12(a))

(3) Subject to subsections (4) and (5) a licensed financial institution or licensed financial holding company shall not, except with prior written approval of the Central Bank, declare, credit or pay any dividend or make any other transfer from profits if the licensed financial institution or licensed financial holding company realises a net loss for that financial year.

(Act 11/2019, s. 12(b))

(4) A licensed financial institution or licensed financial holding company shall seek the approval of the Central Bank under subsection (3) at least 15 days before the intended declaration, credit, payment or transfer.

(Act 11/2019, s. 12(b))

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(5) The Central Bank may grant approval under subsection (3) on terms and conditions the Central Bank deems fit.

(Act 11/2019, s. 12(b))

Adequacy of capital and additional capital requirements

46. (1) A licensed financial institution or a licensed financial holding company shall not at any time have a capital adequacy ratio of less than the percentage calculated in the manner, the Central Bank may determine, in respect of all or any appropriate class of licensed financial institution.

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

(3) The Central Bank may require a licensed financial institution or a licensed financial holding company to maintain additional capital as it may consider appropriate to address risks in the licensed financial institution, the licensed financial holding company or in the financial system.

Liquidity requirement

47. (1) The Central Bank shall issue liquidity requirements that require licensed financial institutions and licensed financial holding companies to hold adequate and appropriate forms of liquidity.

(2) Each licensed financial institution and licensed financial holding company shall comply at all times with the liquidity requirements issued by the Central Bank.

Limit on exposures

48. (1) Except with the approval of the Central Bank and subject to such terms and conditions as the Central Bank may determine, a licensed financial institution shall not directly or indirectly, incur exposures to—

(a) any person;

(b) any member of a borrower group; or

(c) any borrower group;

so that the total value of the exposures in respect of such person, member or group, is at any time more than 25% of the aggregate amount of the licensed financial institution's tier 1 capital, unless prior approval is obtained from the Central Bank.

(Act 11/2019, s. 13)

(2) The limitation specified in subsection (1) shall not apply to transactions that represent loans to a Participating Government, or to the boards, agencies, or local government bodies of a Participating Government which are guaranteed by the Participating Government.

(3) In applying subsection (1), where the Central Bank determines that the interests of 2 or more persons are connected, the total indebtedness of the persons shall be aggregated and deemed to be the indebtedness of a single person.

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(4) In making a determination under subsection (3), the Central Bank may take into account whether the financial soundness of any of the persons may affect the financial soundness of the other or others, or the same factors may affect the financial soundness of some or all of them, or if as a result of the structure of their relationship the other person is in fact ultimately responsible for, or benefits from, the exposure outstanding.

(5) A licensed financial institution shall, within 14 days of exceeding the limit on exposures in subsection (1), report such exposures to the Central Bank and shall provide a written plan for remedying the breach within 30 days.

(6) The aggregate of large exposures of a licensed financial institution shall not exceed 400% of its tier 1 capital, or such other percentage as the Central Bank may determine.

(Act 11/2019, s. 13)

Restrictions on exposures to related parties

49. (1) A licensed financial institution shall not grant or permit to be outstanding an exposure to any of its related parties, unless an exposure is granted on non-preferential terms.

(2) Before an exposure is granted to any related party, an exposure shall be approved by the board of directors and assessed in accordance with any prudential standards issued by the Central Bank.

(3) For the purpose of subsection (1) "non-preferential" means made on substantially the same terms, including interest rates and collateral, as applicable, as those prevailing for comparable transactions with other persons.

(4) A licensed financial institution shall not grant an exposure to a related party where the aggregate of all financial exposures to related parties would exceed 50% of tier 1 capital of the licensed financial institution.

(Act 11/2019, s. 14)

(5) For the purposes of calculating capital adequacy, the amount of exposures that are in excess of the limits under subsection (4) shall be deducted from capital.

Restrictions on lending to employees

50. (1) Except as provided in this section, all lending to employees is subject to the general credit policies of the licensed financial institution and subject to section 49.

(2) Lending on preferential terms to employees of a licensed financial institution shall only be permitted where it forms part of a written employment package or employee benefits plan approved by the board or consistent with a written board policy for employee lending that is in compliance with any prudential standards issued by the Central Bank.

(3) A licensed financial institution shall not, except with the prior written approval of the Central Bank, grant or permit to be outstanding to its employees any unsecured advances or credit facilities which in the aggregate amount for any one employee exceeds the annual remuneration of such employee.

(Act 11/2019, s. 15(a))

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(4) The Central Bank may grant approval under subsection (3) on terms and conditions the Central Bank deems fit.

(Act 11/2019, s. 15(b))

(5) When a licensed financial institution calculates its capital adequacy, any exposures that are in violation of this section shall be deducted from capital.

(6) For purposes of this section, the term "employees" does not include any persons who are considered to be related parties subject to section 49.

Prohibition of advances against security of own shares

51. A licensed financial institution shall not grant any advance against the security of its own shares, the shares of an affiliate, or the shares of a company to which the advance is being granted.

Prohibition on engaging or investing in trade and outsourcing

52. (1) A licensed financial institution shall not engage in trade, except insofar as may be temporarily necessary in the conduct of its business or in the course of the satisfaction of debts due to it.

(2) No licensed financial institution shall be an affiliate of a company which does not carry on banking business or business of a financial nature, unless the Central Bank grants approval.

(Act 11/2019, s. 16(a))

(3) Notwithstanding subsection (2), subsidiaries of a licensed financial institution may only engage in activities permitted under section 53.

(4) A licensed financial institution shall not acquire or continue in the acquisition of any ownership interest in any commercial, agricultural, industrial or other non-financial undertaking except such interest as a licensed financial institution may acquire for the satisfaction of debts due to it which shall, be disposed of as soon as possible, but not later than 5 years after the acquisition.

(5) Upon the approval of and subject to the terms and conditions the Central Bank may determine, subsection (4)(c) shall not prevent the purchase and sale or holding of shares or stocks—

(a) for a trust account or upon the order and for the account of a customer without recourse;

(b) in any company set up for the purpose of promoting the development of a money market or securities market or of improving the financial mechanism for the financing of economic development in the Currency Union; or

(c) in another company, the aggregate value of which does not at any time exceed 10% of tier 1 capital of that licensed financial institution, and where there is no established market value for such shares the value of such shares shall be established on the basis of a valuation approved by the Central Bank.

(Act 11/2019, s. 16(b))

(6) The total amount of the holdings of a licensed financial institution under subsection (5)(c) may not exceed 60% of tier 1 capital of the licensed financial institution.

(Act 11/2019, s. 16(b))

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(7) An investment in a company under subsection (5)(c) may not exceed 5% of the shares of that company.

(8) A licensed financial institution shall not outsource any of its functions to any other person without the approval of the Central Bank.

Financial subsidiaries permitted

53. (1) A licensed financial institution may acquire or establish a subsidiary company with the prior written approval of the Central Bank, where the subsidiary shall be engaged solely in permissible activities as determined by the Central Bank.

(2) A licensed financial institution shall not own a subsidiary company that does not engage solely in permissible activities.

(Act 11/2019, s. 17(a))

(3) The investment of a licensed financial institution in a permitted subsidiary shall not exceed 10% of tier 1 capital.

(Act 11/2019, s. 17(c))

(4) The aggregate amount of investment which a licensed financial institution may take in respect of its subsidiaries, shall not exceed 25% of its tier 1 capital.

(Act 11/2019, s. 17(c))

(5) In considering the granting of approval under this section, the Central Bank shall take into account—

(a) whether the acquisition of the shares is likely to prejudice the—

(i) financial condition of the licensed financial institution,

(ii) capitalisation of the licensed financial institution, or

(iii) interest of depositors of the licensed financial institution;

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

(c) any other criteria as the Central Bank may determine.

(6) For the purposes of this section "permissible activities" includes business of a financial nature and any other activities that the Central Bank may determine.

(Act 11/2019, s. 17(b))

Restrictions on investments in real property

54. (1) A licensed financial institution shall not directly or indirectly, except with the prior approval of the Central Bank, purchase, acquire or lease real or immovable property, unless it is necessary for the purpose of carrying on its business as a licensed financial institution including provision for future expansion and housing its officers and employees.

(Act 11/2019, s. 18(a))

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(2) If a licensed financial institution holds any real or immovable property held or leased by it before 18 April, 2016 for purposes other than for carrying on its business as a licensed financial institution, the licensed financial institution shall comply with this section within a period of 3 years or such further period as may be determined by the Central Bank.

(Act 11/2019, s. 18(b))

(3) A licensed financial institution may secure a debt on any real or immovable property and in default of repayment may acquire the property for resale as soon as possible, but not later than 5 years after the acquisition.

(4) The Central Bank may grant approval to a licensed financial institution under subsection (1) on such terms and conditions as the Central Bank deems fit.

(Act 11/2019, s. 18(c))

Time limit for compliance with financial requirements

55. (1) Any licensed financial institution to which sections 48 to 54 are applicable that, prior to 18 April, 2016, entered into any transactions incompatible with sections 48 to 54 shall, within 12 months after 18 April, 2016, or within any further period as the Central Bank may determine, submit a statement of the transactions to the Central Bank and shall, in respect of the transactions, take action within a reasonable time determined by the Central Bank.

(2) Where a licensed financial institution fails to comply with the provisions of sections 48 to 55 it is liable to a penalty of $100,000 for each provision with which it fails to comply.

Maintenance of specified assets

56. (1) Every licensed financial institution may be required to maintain specified assets of an amount not less than that from time to time determined by the Central Bank.

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

(3) The Central Bank may approve a period during which surpluses and deficiencies in specified assets may be averaged.

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

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

(6) Every licensed financial institution which is required to hold specified assets shall be afforded a reasonable time to comply.

(7) Where a licensed financial institution—

(a) fails to furnish promptly any information required by the Central Bank to satisfy itself that the licensed financial institution is observing the requirements of this section;

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(b) allows its holdings of specified assets to be less than the amount which is fixed from time to time; or

(c) during the period of any deficiency of specified assets the licensed financial institution grants or permits increases in its outstanding advances, whether by loans or overdrafts or investment portfolio other than investment in specified assets;

it is liable to pay a penalty at an annual rate of 11.5% on the amount of the deficiency for so long as the failure continues, and the penalty shall be payable to the Central Bank on the date as may be fixed by the Central Bank and may be recovered by deduction from any balance of the licensed financial institution with the Central Bank.

Recordkeeping and reporting required

57. A licensed financial institution shall maintain information systems to identify loan exposures to single borrowers, borrower groups, related parties, and affiliates and shall record the amount of the loans and monitor and report on the loans to the Central Bank at the times and in a form as the Central Bank shall specify.

PART 6

AUDIT AND INFORMATION

Annual audit, report and publication of financial statements and results

58. Accounts and financial statements of a licensed financial institution or a licensed financial holding company, including financial statements on a consolidated basis, shall be in accordance with internationally accepted accounting standards, reflecting additional accounting rules or standards as shall be issued by the Central Bank.

Appointment of external auditor

59. (1) A licensed financial institution or a licensed financial holding company shall appoint annually an external auditor satisfactory to the Central Bank.

(2) An external auditor may not serve for more than 9 consecutive years, however the lead and concurring audit partner shall be changed every 6 years.

(Act 11/2019, s. 20(a))

(3) A person who has served the maximum period under section 59(2) may not be re-appointed as the external auditor until after a period of 5 years has elapsed since the last appointment.

(Act 11/2019, s. 20(b))

(4) Prior to appointment, a licensed financial institution or a licensed financial holding company shall give prior notification in writing to the Central Bank of its intention to appoint an external auditor.

(5) The Central Bank shall notify the licensed financial institution or a licensed financial holding company within 30 days if it has an objection to an appointment.

(6) If a licensed financial institution or a licensed financial holding company fails to appoint an external auditor satisfactory to the Central Bank, the Central Bank may appoint an external auditor for

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the licensed financial institution or licensed financial holding company and the remuneration of the external auditor so appointed shall be determined by the Central Bank and paid by the licensed financial institution or licensed financial holding company.

(7) The Central Bank may at any time appoint an external auditor to conduct an independent audit, a special study, or a diagnostic review of a licensed financial institution or a licensed financial holding company, in accordance with the instructions of the Central Bank, and to report the findings or results to the Central Bank, at the expense of the licensed financial institution or licensed financial holding company.

(8) No director, officer, secretary, employee or agent of a licensed financial institution or a licensed financial holding company, and no person having an interest in any licensed financial institution other than as a depositor, shall be eligible for appointment as an external auditor for a licensed financial institution or a licensed financial holding company.

(9) Any person appointed as an external auditor who shall, after appointment, acquire any interest in a licensed financial institution or a licensed financial holding company, otherwise than as a depositor, or become a director, officer, secretary, employee or agent of a licensed financial institution or a licensed financial holding company, shall immediately cease to be an external auditor.

Duties of external auditor

60. (1) The external auditor shall conduct its audit consistent with internationally accepted auditing standards.

(2) The duties of an external auditor shall include—

(a) examining the books and records and reporting on the annual financial statements which comprise—

(i) the statement of financial position, statement of changes in equity, statement of comprehensive income, statement of cash flows, and

(ii) a summary of significant accounting policies and other explanatory notes,

on both a solo and consolidated basis if applicable, and in every report the auditor;

(b) stating whether in the external auditor's opinion the financial statements examined under paragraph (a) present fairly in all material respects the financial position of the licensed financial institution or licensed financial holding company and of its financial performance and its cash flows for the year then ended; and

(c) all or any of the following duties as may from time to time be required by the Central Bank—

(i) submission of additional information in relation to the audit of the licensed financial institution or licensed financial holding company as the Central Bank considers necessary,

(ii) carrying out any other examination or establishing any procedure in any particular case,

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(iii) submission of a report on any of the matters referred to in sub-paragraphs (i) and (ii),

(iv) submission of a report on the financial and accounting systems and risk management controls of the licensed financial institution or licensed financial holding company,

(v) submission of a report on whether prudent credit–granting and investment criteria, policies, practices and procedures are approved and reviewed by the management and board and communicated to all credit officers and whether major credits and investments are decided at a high managerial level,

(vi) certifying whether the systems of loan classification, provisioning and write-offs determined by the Central Bank are being adhered to, and

(vii) certifying whether suitable measures to counter money laundering and to combat the financing of terrorism have been adopted by the licensed financial institution or licensed financial holding company and are being implemented in accordance with the applicable laws.

Remuneration of external auditor

61. A licensed financial institution or a licensed financial holding company shall remunerate the external auditor in respect of the discharge by the external auditor of all or any of the duties set out in section 60.

Immediate reports to Central Bank

62. If, in the course of the performance of an external auditor's duties, an external auditor is satisfied that—

(a) there has been a material breach of or non-compliance with the provisions of this Act or any Regulations, Notice, or Order made, or prudential standards or directions issued, under this Act;

(b) there is evidence that a criminal offence involving fraud or other dishonesty may have been committed;

(c) losses have been incurred which reduce the paid-up capital or assigned capital, as the case may be, of the licensed financial institution or licensed financial holding company by 25% or more;

(d) material irregularities have occurred, including but not limited to—

(i) any change in accounting policy or the misrepresentation of the financial position of the licensed financial institution or licensed financial holding company,

(ii) evidence that data reported to the Central Bank or data provided to the auditor is not valid,

(iii) transactions that have a serious impact on the financial position of the licensed financial institution or licensed financial holding company,

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(iv) transactions giving rise to significant risks that have the potential to jeopardise the viability of the licensed financial institution or licensed financial holding company,

(v) any other transactions or conditions which in the opinion of the external auditor could affect the interest of depositors; or

(e) the claims of depositors covered by the assets cannot be confirmed;

the external auditor shall immediately report the matter to the licensed financial institution or licensed financial holding company and the Central Bank.

Resignation or removal of external auditor

63. The licensed financial institution or licensed financial holding company and the external auditor shall immediately report to the Central Bank—

(a) the resignation of an external auditor; or

(b) the removal of the external auditor by the licensed financial institution or licensed financial holding company.

Request for copies of reports

64. The Central Bank may request copies of reports submitted to the board of a licensed financial institution or a licensed financial holding company by both its internal and external auditors.

External auditor to report to Central Bank

65. An external auditor shall report to the Central Bank on any matter it is required to report on, or on any licensed financial institution or licensed financial holding company, to any investigative, regulatory or other institution, simultaneously with its report to the licensed financial institution or licensed financial holding company.

No liability for breach of duty

66. No external auditor is liable for breach of any duty solely by reason of compliance with this Part or with any request for information by the Central Bank.

Failure to comply with request

67. (1) A licensed financial institution or a licensed financial holding company which fails to comply with a request under section 60(2)(c) is liable to a penalty of $100,000 for each failure.

(2) Any director or officer responsible for a failure to comply with a request under section 60(2)(c) is liable to a penalty of $100,000 for each failure.

Audited financial statements

68. (1) The report of the auditor made in accordance with section 60 shall be presented with the report of the board and the financial statements of the licensed financial institution or the licensed financial holding company at the annual meeting of shareholders of each local licensed financial institution or licensed financial holding company and shall be transmitted to the head office of each foreign licensed financial institution.

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(2) A copy of the financial statements and reports shall be sent to the Minister and the Central Bank within 3 months of the end of the financial year.

(3) A licensed financial institution or a licensed financial holding company shall within 3 months of the end of its financial year—

(a) publish in the *Gazette* or on the company website, and in a local newspaper; and

(b) exhibit in a conspicuous place in each of its offices;

a true and full yearly statement of its accounts and a consolidated balance sheet of all its operations in Anguilla and abroad as the case may be as certified by its external auditor.

(4) The statement shall be signed by the manager or by an officer of the licensed financial institution or the licensed financial holding company as may from time to time be authorised by the licensed financial institution or the licensed financial holding company to sign the statement on its behalf.

(5) Subject to section 90, if a licensed financial institution or a licensed financial holding company fails to comply with the requirements of—

(a) subsection (1) within 6 months of the end of its financial year; or

(b) subsections (2) to (4);

it is liable to a penalty of $50,000 and $3,000 for every day of the default.
(Act 11/2019, s. 21)

PART 7
SUPERVISION

Central Bank examination

69. (1) The Central Bank shall examine or cause an examination to be made of each licensed financial institution from time to time or whenever in its judgment an examination is necessary or expedient, in order to determine that the licensed financial institution is in a sound financial condition and that the requirements of this Act have been complied with in the conduct of its business, provided however that each licensed financial institution shall be examined at least once every 36 months.

(2) For the purpose of determining compliance with this Act and potential risks to a licensed financial institution from its membership in a corporate group, the Central Bank may at any time examine or cause an examination to be made of any affiliate of the licensed financial institution, in the Currency Union or abroad or in any of its overseas offices, to the same extent that an examination may be made of the licensed financial institution.

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

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

Consolidated supervision

70. (1) The Central Bank shall conduct consolidated supervision of corporate groups to assess and, if necessary, require remedial action as authorised in this Act to minimise or eliminate risks to a licensed financial institution from its membership in a corporate group.

(2) For purposes of consolidated supervision, the prudential requirements specified in section 71 shall be applied on a consolidated basis to—

(a) a licensed financial institution and its affiliates; and

(b) a licensed financial holding company of a licensed financial institution and its affiliates.

Prudential requirements

71. (1) The prudential requirements to be applied on a consolidated basis include—

(a) minimum capital adequacy ratio of section 46;

(b) liquidity requirements of section 47;

(c) exposure limits of section 48;

(d) related-party lending limits of section 49;

(e) prohibition on payment of dividends or transfers of profit under section 45; and

(f) other prudential requirements as may be determined by the Central Bank to be necessary or appropriate.

(2) The Central Bank shall determine the manner in which the prudential requirements shall be applied on a consolidated basis, which may include any modifications, adaptations, qualifications and exceptions as may be necessary or appropriate to provide for effective supervision on a consolidated basis.

Reporting of group structures

72. (1) For purposes of consolidated supervision, each licensed financial institution which is a member of a corporate group shall provide to the Central Bank at least twice a year—

(a) a complete diagram of the group, including all direct and indirect affiliates and associates of the licensed financial institution and the nature of their relationship to the group; and

(b) any other information the Central Bank may require.

(2) Any changes to the structure of the group that are not otherwise subject to approval of the Central Bank under this Act shall be reported by the licensed financial institution to the Central Bank within the time frame determined by the Central Bank.

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

73. (1) A person who is authorised by the Central Bank to examine, investigate or for any other purpose shall—

(a) have full access to the premises of a licensed financial institution under examination or investigation; and

(b) have a right to call upon—

(i) any director, officer or any other employee of a licensed financial institution,

(ii) an affiliate, any external auditor, or any person to which the licensed financial institution has outsourced any of its functions,

(iii) or any other person with information regarding the licensed financial institution,

to furnish any information and explanation which that person may consider necessary.

(2) A licensed financial institution or an affiliate shall produce for the inspection of any examiner appointed by the Central Bank, at the time the examiner specifies, all books, minutes, accounts, cash, securities, documents and vouchers relating to its business as requested by the examiner for the purposes of this Act.

(3) If any books, minutes, accounts, cash, securities, documents and vouchers are not provided, or any information or explanation is not supplied in accordance with subsection (1), the defaulting person commits an offence and is liable on summary conviction to a fine of $25,000 and, in the case of a continuing offence, to a further penalty of $1,000 for each day on which the offence is continued after conviction.

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

Central Bank's powers of remedial action

74. (1) If, in the opinion of the Central Bank, a licensed financial institution or any affiliate, director, officer, employee, or significant shareholder of the licensed financial institution—

(a) engages in unsafe or unsound practices in conducting the business of the licensed financial institution;

(b) violates any provision of this Act, the Regulations or an Order made under this Act to which the licensed financial institution, affiliate, or person is subject;

(c) violates any prudential standard issued by the Central Bank to which the licensed financial institution, affiliate, or person is subject;

(d) violates any condition attached to a licence issued by the Central Bank; or

(e) incurs losses;

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it may be subject to the remedial actions specified in subsection (2).

(2) Where the Central Bank has reasonable cause to believe that the circumstances referred to in subsection (1)(a) to (e) are likely to occur, the Central Bank may take one or more of the following measures—

(a) issue a written warning as it considers necessary or appropriate;

(b) conclude a written agreement with the licensed financial institution or the licensed financial holding company providing for a program of remedial action;

(c) issue an order to the licensed financial institution or the licensed financial holding company or their affiliates or the person responsible for the management of the licensed financial institution or the licensed financial holding company;

(d) issue such directions as it considers necessary in relation to the persons comprising the management of the licensed financial institution or the licensed financial holding company.

(3) An agreement, order, or direction under subsection (2) may require any or all of the following—

(a) to cease and desist from the specified practice or violation;

(b) affirmative action to correct the condition resulting from the specified practice or violation;

(c) any specified remedial action.

Additional Central Bank remedial actions

75. The Central Bank may also take the following remedial actions—

(a) restrict the licensed financial institution or affiliate from further lending or taking further financial exposures, including off-balance sheet transactions, investments, or capital expenditure;

(b) require the licensed financial institution or affiliate to suspend for a specified period of time, alter, reduce, or terminate any activity that in the opinion of the Central Bank has caused material losses to the licensed financial institution or affiliate, is detrimental to the interest of depositors, or presents excessive risk to the licensed financial institution or affiliate;

(c) require the licensed financial institution or affiliate to sell, liquidate, or otherwise dispose of an affiliate or part of its business;

(d) prohibit payment of bonuses or incentive compensation to any director or officer;

(e) prohibit the licensed financial institution or affiliate from paying a dividend or making a distribution on its share capital or issue rights, shares or bonus shares to shareholders or to any person claiming under their authority;

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(f) require shareholders to contribute additional capital;

(g) suspend or remove any officer of the licensed financial institution or affiliate or restrict the officer's powers;

(h) remove any or all of the directors on the board of the licensed financial institution or affiliate or restrict their powers;

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

(j) any other action necessary or appropriate to eliminate the basis for requiring remedial action; or

(k) revoke the licence issued to the licensed financial institution to do banking business pursuant to section 13.

Remedial actions against directors, officers, employees or significant shareholders

76. (1) In this section and section 77 "relevant person" means director, officer, employee or significant shareholder.

(2) The Central Bank, pursuant to section 74, may take the following remedial actions with respect to any relevant person of a licensed financial institution or affiliate —

(a) require the relevant person to reimburse the licensed financial institution for losses caused by any violations;

(b) prohibit the relevant person from direct or indirect exercise of voting rights attached to shares of the licensed financial institution;

(c) suspend the relevant person from his position with the licensed financial institution or declare him to no longer be fit and proper; and

(d) prohibit the payment of capital distributions or dividends to a relevant person.

(3) If the Central Bank has reasonable cause to believe that a financial institution or its shareholders, directors, officers, employees, attorneys, accountants or other professionals have engaged or are engaging in criminal or fraudulent activities, it shall immediately refer the matter to the authorities responsible for investigating and prosecuting the activities.

Additional Central Bank powers of remedial action against directors, officers, employees or significant shareholders

77. (1) If in the opinion of the Central Bank any relevant person of a licensed financial institution or affiliate—

(a) wilfully or repeatedly has caused violation of any provision of this Act, the Regulations, or an Order issued under this Act, or any prudential standards issued by the Central Bank to which the institution or person is subject, following a written warning or an order from the Central Bank under section 74;

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(b) has been engaging in an unsafe or unsound practice that has resulted in a material loss to the licensed financial institution or financial gain to a person; or

(c) has been conducting his affairs in a manner detrimental to the interests of the depositors,

that person shall be subject to the remedial actions specified in subsection (2).

(2) In addition to the actions in section 76, the Central Bank may take one or more of the following actions—

(a) dismiss the relevant person from his position in the licensed financial institution or affiliate;

(b) prohibit the relevant person from serving in or engaging in banking business permanently or for a stated period;

(c) require the relevant person to dispose of all or any part of his direct or indirect ownership interest in the licensed financial institution or affiliate or cease to hold a significant interest in it.

Supplemental powers

78. The powers of the Central Bank under sections 74 to 77 are in addition to any other provisions authorizing or requiring the Central Bank to take action or impose penalties under other sections of this Act.

Failure to comply with remedial actions

79. (1) A licensed financial institution or an affiliate of a licensed financial institution that fails to comply with any requirement or prohibition that the Central Bank imposes on the licensed financial institution under this Part commits an offence and is liable on summary conviction to a fine of $100,000, and to a further penalty of $10,000 for each day of the default.

(2) A director, officer, employee or significant shareholder of a licensed financial institution who fails to comply with any requirement or prohibition that the Central Bank imposes on the director, officer, employee or significant shareholder under this Part commits an offence and is liable on summary conviction to a fine of $50,000 and to a further penalty of $5,000 for each day of the default.
(Act 11/2019, s. 22)

Effective date of order, warning, agreement, direction

80. Any order, warning, agreement, or direction issued by the Central Bank under section 74(2) shall be deemed to take effect from the date specified.

Suspension of persons charged with criminal offence etc.

81. If any person referred to in sections 76 and 77 is charged with a criminal offence involving dishonesty or breach of trust and his continued service or participation in the licensed financial institution or affiliate—

(a) poses, or may pose a threat to the interests of the depositors; or

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(b) threatens, or may threaten to impair public confidence in the licensed financial institution or affiliate;

the Central Bank may issue an order temporarily suspending the person from his position in the licensed financial institution or affiliate and, if applicable, suspending the exercise of voting rights of shares in the licensed financial institution or affiliate by the person pending the determination of the criminal case.

Dismissal of criminal case not a bar to Central Bank action

82. A dismissal of the criminal case or decision of not guilty on the merits of the case against the person referred to in section 81 shall not preclude the Central Bank from taking any action with respect to a person authorised by this Act.

Persons convicted may be prohibited from banking business

83. Where a person is convicted of a criminal offence, the Central Bank may permanently prohibit the person from serving in or engaging in banking business.

Appointment of observer

84. (1) Where any of the grounds for remedial action under section 74 exists and—

(a) the Central Bank considers it necessary to stabilise the licensed financial institution or affiliate; or

(b) a licensed financial institution or affiliate fails to comply with a measure under section 74;

the Central Bank may by order appoint a competent person as observer of the licensed financial institution or affiliate at the expense of the licensed financial institution or affiliate.

(2) The Central Bank shall give the licensed financial institution, or affiliate—

(a) notice in writing of its intention to appoint an observer; and

(b) the opportunity to submit to it, within a specified period being not less than 14 days, a written statement of objections to the appointment;

unless the Central Bank determines that time to object would be detrimental to the interests of the licensed financial institution, the affiliate, or depositors.

(3) A licensed financial institution or affiliate which is served with an order appointing an observer shall comply with the order.

(4) An observer appointed under this section is entitled to attend the meetings of the board of the licensed financial institution or affiliate or its committees.

(5) The observer's views shall be recorded in the minutes of the meetings, but the observer shall not have the right to vote on any matter.

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(6) An observer appointed under this section—

(a) shall hold office for a period determined by the Central Bank; and

(b) shall furnish the Central Bank with status reports on the licensed financial institution or affiliate as the Central Bank may determine.

(7) An observer appointed under this section shall have full access to the premises of the licensed financial institution or affiliate and shall have a right to call upon any director, officer, external auditor, or other person to which any function is outsourced or any other person with information regarding the licensed financial institution or affiliate, to furnish the observer any information and explanation which the observer may consider necessary and that person shall comply.

Actions required for adequately capitalised licensed financial institutions or affiliates suffering losses

85. (1) Where a licensed financial institution or affiliate which complies with the capital requirements under this Act or prudential standards issued by the Central Bank has incurred or is likely to incur losses within any financial year, the Central Bank shall by order or direction take any of the following actions—

(a) prohibit the licensed financial institution or affiliate from declaring and distributing any dividends which are, in the opinion of the Central Bank, likely to cause it not to comply with the capital requirements under this Act or prudential standards issued by the Central Bank or would otherwise be detrimental to the financial soundness of the licensed financial institution;

(b) undertake more frequent inspection of the licensed financial institution or affiliate;

(c) require additional or more frequent reporting;

(d) require the directors or officers of the licensed financial institution or affiliate to provide a written explanation detailing the causes of those losses and the measures to be taken by the licensed financial institution or affiliate to rectify the position and prevent future losses.

(2) This section shall not preclude the Central Bank from taking action under any other section of this Act.

Actions required for undercapitalised licensed financial institutions, or affiliates

86. (1) Where a licensed financial institution or affiliate fails to comply with any or all of the capital requirements under this Act or prudential standards issued by the Central Bank, the Central Bank shall take any of the following actions—

(a) the actions specified in section 85;

(b) require the licensed financial institution or affiliate to present a plan that is satisfactory to the Central Bank to reconstitute its capital adequacy ratio within 30 days or such longer period as may be determined by the Central Bank;

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(c) prohibit the licensed financial institution or affiliate from awarding any bonuses, or increments in the salary, emoluments and other benefits of all directors and officers.

(2) Where a licensed financial institution or affiliate is required by the Central Bank to submit a capital restoration plan under subsection (1), and it fails, refuses or neglects to comply or to implement the capital restoration plan, the Central Bank shall take any of the following measures—

(a) prohibit the licensed financial institution or affiliate from opening new branches or acquiring or establishing new subsidiaries;

(b) restrict the licensed financial institution or affiliate from engaging in new business;

(c) impose such restrictions on growth of assets or liabilities of the licensed financial institution or affiliate as it shall consider fit;

(d) restrict the rate of interest on savings and time deposits payable by the licensed financial institution to the rates as the Central Bank shall determine;

(e) remove officers of the licensed financial institution or affiliate responsible for the noncompliance.

(3) If at any time—

(a) after the period specified, the licensed financial institution or affiliate failed to raise its capital to the levels necessary to rectify its undercapitalisation; or

(b) before the end of the period specified, the financial position of the licensed financial institution or affiliate continues to deteriorate;

the Central Bank may, without having to wait for the expiry of that period, place the licensed financial institution into official administration in accordance with Part 9 or revoke its licence and initiate receivership and liquidation in accordance with Part 10.

(4) This section shall not preclude the Central Bank from taking action under any other section of this Act.

Notification of removal of directors and officers

87. (1) If an action under this Part requires the removal of a director or officer of a licensed financial institution, the Central Bank shall serve on the licensed financial institution and on the director or officer concerned written notice of the intended removal.

(2) The licensed financial institution and the director or officer served with a notice under subsection (1) may, within 14 days commencing from the day after which the notice is served, make written representations and a request for face to face representation to the Central Bank.

(3) If the Central Bank receives a request for a face to face representation under subsection (2), the face to face representation shall take place within 14 days of receipt of the request.

(4) The Central Bank shall take the representations into account in deciding whether to remove the director or officer.

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(5) If the Central Bank is of the opinion that the public interest may be prejudiced by the director or officer continuing to exercise the powers or carry out the duties and functions of that office during the period for making representations specified in subsections (2) and (3), the Central Bank may make an order suspending the director or officer and the suspension shall not extend beyond the period for making representations.

(6) If the Central Bank decides to remove the director or officer, the Central Bank shall, within 7 days of the written or face to face representation, notify the director or officer and the licensed financial institution of the removal order made under this Part.

(7) The director or officer ceases to hold office on the date the removal order is made or a later date specified in the removal order.

(8) If the director, officer or licensed financial institution is aggrieved by the decision of the Central Bank under subsection (6), the director, officer or the licensed financial institution may, within 14 days of the decision, appeal to the High Court but the appeal shall not operate as a stay of the decision under this section unless the High Court directs otherwise.

(Act 11/2019, s. 23)

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

88. (1) Every licensed financial institution shall furnish to the Central Bank, at the time and in the manner the Central Bank may determine, information and data, on a solo or consolidated basis, as the Central Bank may require for the proper discharge of its functions and responsibilities.

(2) For the purposes of determining compliance with this Act and any potential risks to a licensed financial institution from its membership in a corporate group, the Central Bank may require any affiliate of a licensed financial institution to furnish to the Central Bank information and data in such time and manner as the Central Bank may determine.

(3) Without limiting the generality of subsection (1) every licensed financial institution shall, at the request of the Central Bank, submit to the Central Bank in a form as the Central Bank determines—

(a) not later than 14 days after the last day of the month to which it relates, a monthly statement of assets and liabilities at the end of each month;

(b) not later than 14 days after the end of the quarter to which it relates, a quarterly return providing an analysis of customers' liabilities to the licensed financial institution in respect of loans, advances and other assets of the licensed financial institution at the end of each quarter;

(c) not later than 14 days after the end of the quarter to which it relates, a quarterly return providing information on all exposures that equal to or are in excess of 10% of tier 1 capital of the licensed financial institution;

(Act 11/2019, s. 24)

(d) within such period as the Central Bank may determine, such other returns as may be required.

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(4) All statements and returns submitted by a licensed financial institution under subsection (3), any data or information submitted by a licensed financial institution or affiliate under subsection (1) or (2), and any other information obtained under this Act regarding the identity, assets, liabilities, transactions or other information in respect of a depositor or customer of a licensed financial institution shall be regarded by the Central Bank as secret.

(5) Notwithstanding subsection (4), the Central Bank may—

(a) provide—

(i) to international financial institutions, foreign banking supervisors and any other local or foreign authorities responsible for the supervision or regulation of a licensed financial institution, or for maintaining the integrity of the financial system with such statements, returns, data and information, and

(ii) access to any officer of a foreign authority responsible for the supervision or regulation of foreign financial institution in order to assess the safety and soundness of a foreign financial institution;

on a reciprocal basis and subject to an agreement for confidentiality and a Memorandum of Understanding; and

(b) publish statements on the assets and liabilities of each licensed financial institution furnished under subsection (3)(a) but no information in respect of the affairs of a particular customer of a licensed financial institution shall be so published.

Central Bank may request further information

89. The Central Bank may—

(a) require a licensed financial institution to submit any further information and data relating to the matters described in section 88(3); and

(b) from time to time call for any other information which it may require for the purposes of this Act from any licensed financial institution about its operations and those of its affiliates in the Currency Union or from a local licensed financial institution about its operations and those of its affiliates abroad;

and any further information and data shall be submitted within the period and in the manner as the Central Bank may require.

Extension of period for providing information

90. At the request of a licensed financial institution or an affiliate, the Central Bank may extend, any period within which a licensed financial institution or affiliate is, in accordance with this Act, obliged to furnish any document or information.

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Disclosure of basis for charges and fees

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

(Act 11/2019, s. 25)

Restriction on advertising likely to mislead the public

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

(a) the relationship of the licensed financial institution to the Central Bank or any department or official of the Central Bank;

(b) the interest rate paid on deposits or charged on credit;

(c) the insured or guaranteed status of deposits or other liabilities of the licensed financial institution; or

(d) the financial condition of the licensed financial institution.

(2) Any licensed financial institution that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of $50,000 for each contravention.

Agreement or arrangement with foreign supervisory authority

93. The Central Bank may enter into an agreement or arrangement for coordination, cooperation, and the exchange of information with a foreign supervisory authority with responsibility to supervise financial institutions, financial holding companies, or other similar institutions, and with a foreign resolution authority or other government agency with direct responsibility for matters relating to the resolution of failing or failed financial institutions, if different from the supervisory authority, where the Central Bank is satisfied that the foreign authority has the obligation to protect the confidentiality of the information imparted.

Furnishing of statement or return to participating governments

94. At the request of a Participating Government, the Central Bank shall arrange for that Participating Government to be supplied with a copy of any statement or return furnished by a licensed financial institution under section 88(3) in relation to its operation in the territory of that Government, and all statements and returns so supplied shall be regarded by the Government as secret.

Prohibition against providing false, misleading statements

95. (1) Where a licensed financial institution or an affiliate fails—

(a) to submit returns or to produce information and data required by the Central Bank in accordance with section 88;

(b) to provide further information and data to the Central Bank pursuant to section 89; or

(c) to provide the information and data requested under sections 88 and 89 to the Central Bank in accordance with the extension granted under section 90;

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it is liable to a penalty of $25,000 for each failure.

(2) Where a licensed financial institution supplies any statement, return, information or data knowing it to be false or misleading in any material particular, it is liable to a penalty of $25,000.

PART 8

CORPORATE GOVERNANCE

Minimum criteria for determining whether a person is fit and proper

96. (1) Every person who is, or is likely to be, a director, significant shareholder, or officer of a licensed financial institution or licensed financial holding company must be a fit and proper person to hold the particular position which he holds, or is likely to hold.

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

(a) the person's probity, competence and soundness of judgment for fulfilling the responsibilities of that position;

(b) the academic or professional qualifications or effective experience in banking, finance, business or administration or any other relevant discipline of the person concerned;

(c) the diligence with which the person is fulfilling or likely to fulfil the responsibilities of the position;

(d) whether the interests of depositors or potential depositors of the licensed financial institution are, or are likely to be, in any way threatened by the person holding the position;

(e) whether the person is a significant shareholder, director or officer or holds any position of authority in any licensed financial institution locally or elsewhere, whose licence has been suspended, or revoked otherwise than as a result of an amalgamation or voluntary liquidation or which has been or is being wound-up or compulsorily liquidated;

(f) whether the person has failed to satisfy any judgment or order of a court locally or abroad including for the repayment of a debt;

(g) whether the person is an undischarged bankrupt or has been declared a bankrupt locally or abroad;

(h) whether the person has been removed or suspended by a regulatory authority from serving as a director or officer in a licensed financial institution or any body corporate locally or abroad; and

(i) whether the person is a director or officer of, or directly or indirectly concerned in the management of a corporation locally or abroad, that is compounding with or suspending payments to its creditors.

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

(a) committed an offence involving fraud or other dishonesty or violence;

(b) contravened any provision made by or under an enactment designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of a discharged or undischarged bankrupt;

(c) engaged in any business practices appearing to the board to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on the person's method of conducting business;

(d) an employment record which leads the board to believe that the person carried out an act of impropriety in the handling of his employer's business; or

(e) engaged in or been associated with any other business practices or otherwise conducted himself in a manner as to cast doubt on his competence and soundness of judgment.

Criteria for determining whether a person is fit and proper to be a significant shareholder

97. In determining whether a company or person is a fit and proper person to be a significant shareholder, regard shall be had to, but not limited by, the following criteria—

(a) whether the directors of the company or person has satisfied the fit and proper criteria set out in this Part;

(b) whether the company or person has been found guilty of insider trading or fraud involving trading in securities by local or foreign authorities;

(c) whether the company or person has been convicted of an offence under this Act;

(d) whether, in the opinion of the Central Bank, the company or person has failed to carry on its business or business affairs in a prudent manner;

(e) whether, in the opinion of the Central Bank, the company is insolvent or is likely to become insolvent;

(f) whether the company or person has suspended or is about to suspend payment in respect of, or is unable to meet their obligations, as they fall due;

(g) whether, in the opinion of the Central Bank, the affairs of the company or person are being conducted in a manner prejudicial to the soundness of the licensed financial institution in question or the financial system of the Currency Union; and

(h) any other matter which the Central Bank may determine.

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Determining whether business carried out in prudent manner

98. In determining whether a company has failed to carry on its business in a prudent manner under section 97(d) the Central Bank shall take into consideration—

(a) the capital of the company in relation to the size and nature of the business or proposed business of the licensed financial institution;

(b) loan concentration or proposed loan concentration and risk exposures or proposed risk exposures in the company and the licensed financial institution;

(c) separation of the business or proposed business of the company and the licensed financial institution or licensed financial holding company from other business and from other interests of any significant shareholder of the company;

(d) internal controls and accounting systems or proposed internal controls and accounting systems of the company;

(e) risk management systems and policies or proposed risk management systems and policies of the company and the licensed financial institution or licensed financial holding company;

(f) arrangements for any business, or functions relating to any business of the company or the licensed financial institution or licensed financial holding company to be carried on by any person other than the company, the licensed financial institution or licensed financial holding company; and

(g) such other matters as the Central Bank may determine.

Requirement for fit and proper policy

99. All licensed financial institutions shall have a fit and proper policy in accordance with this Act, or prudential standards issued by the Central Bank, and shall apply such fit and proper policy in assessing directors and officers.

Notification to Central Bank of appointment of officers and directors

100. (1) A licensed financial institution or licensed financial holding company shall give written notice to the Central Bank of the proposed appointment or election of a director or officer at least 60 days prior to the appointment or election of the director or officer.

(2) On receipt of the notice under subsection (1) the Central Bank shall conduct an investigation to determine whether the proposed director or officer satisfies the fit and proper criteria in section 96.

(3) On completion of its investigation, the Central Bank shall inform the licensed financial institution or licensed financial holding company in writing that—

(a) the requirements of section 96 have been satisfied and it has no objections to the proposed appointment or election of the director or officer; or

(b) the requirements of section 96 have not been satisfied, the manner in which the requirements have not been met and that it objects to the appointment.

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(4) Despite subsection (1), if prior notification of the appointment or election of a director or officer of a licensed financial institution or licensed financial holding company is not possible, the licensed financial institution or licensed financial holding company—

(a) may appoint or elect the director or officer, conditional on the Central Bank's confirmation under subsection (3) that the director or officer satisfies the requirements of section 96; and

(b) shall within 5 days after the appointment or election give written notice to the Central Bank of the conditional appointment or election of the director or officer, specifying the reasons for the appointment or election of the director or officer without prior approval.

(5) If the Central Bank receives a notice under subsection (4) and is not satisfied that a director or officer meets the requirements of section 96, the Central Bank—

(a) shall direct the removal of the director or officer; and

(b) may notify in writing the person whose removal is required by serving on the person a copy of the direction under paragraph (a).

(Act 11/2019, s. 27)

Responsibility of board for corporate governance

101. (1) The board of a licensed financial institution or a licensed financial holding company shall establish policies over the entire operations of the licensed financial institution and the licensed financial holding company, including without limitation—

(a) adequate policies and procedures for risk management;

(b) corporate governance;

(c) internal controls;

(d) internal audit and compliance;

(e) external audit; and

(f) executive compensation.

(2) The board of a licensed financial institution or a licensed financial holding company shall ensure that the risk management policies and procedures under subsection (1)(a) include appropriate risk strategies and risk management frameworks to address the following risks—

(a) credit;

(b) country and transfer;

(c) market;

(d) interest rate risk in the banking book;

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(e) legal and reputational risk; and

(f) operational risks on a bank-wide basis.

(3) Where the board of a licensed financial institution or licensed financial holding company fails to comply with this section, the Central Bank may take any action against the licensed financial institution or licensed financial holding company and the directors under sections 74 to 77.

Removal and disqualification of director or officer

102. (1) Any person who is a director or officer of a licensed financial institution or licensed financial holding company shall cease to hold office—

(a) upon notification by the board of a finding by its members—

(i) of that person's permanent incapacity or serious neglect of, or misconduct in, office, or

(ii) that the person is not a fit and proper person in accordance with this Act or prudential standards issued by the Central Bank;

(Act 11/2019, s. 28(a))

(b) if that person—

(i) is or was convicted of an offence under this Act,

(ii) has been declared bankrupt or is compounding with, or suspending payment to, the person's creditors, or

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

(2) Subject to subsection (3) and prudential standards issued by the Central Bank, a person who—

(a) has been declared bankrupt;

(b) has been sentenced for an offence involving a term of imprisonment exceeding 6 months or sentenced to imprisonment in default of the payment of a fine;

(c) has been a director or officer of a company which has been wound-up by a court or has been placed in receivership;

(d) has been a director or officer of, or directly or indirectly concerned in the management of a former licensed financial institution or body corporate locally or abroad, the licence of which has been revoked;

shall not, without the prior approval of the Central Bank, act or continue to act as a director or officer of, or be directly or indirectly concerned in any way in the management of, any licensed financial institution or licensed financial holding company.

(Act 11/2019, s. 28(b))

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(3) Paragraph (2)(d) does not apply if the revocation of the licence was due to—

(a) its amalgamation with another licensed financial institution or licensed financial holding company or other company; or

(b) its voluntary winding-up.

(Act 11/2019, s. 28(c))

(4) A licensed financial institution or licensed financial holding company shall within 15 days of becoming aware that any of its directors or officers is ineligible to hold the office, cause the removal of the ineligible director or officer and notify the Central Bank accordingly.

(5) Where the Central Bank is satisfied that any of the directors or officers of a licensed financial institution or licensed financial holding company who is ineligible under subsection (1), continues to hold office, the Central Bank may—

(a) direct the licensed financial institution or licensed financial holding company in writing to remove the person from the office within the period specified in the direction; and

(b) notify in writing the person whose removal is required with a copy of the direction.

Right to make representation

103. (1) A licensed financial institution or licensed financial holding company to which a direction is given and a person who is served a copy of the direction under section 100(5) or 102(5) may, within 14 days commencing from the day after which the direction is given, make written representations and a request for a face to face representation to the Central Bank.

(2) If the Central Bank receives a request for a face to face representation under subsection (1), the face to face representation shall take place within 14 days of receipt of the request.

(3) The Central Bank shall take the representations into account in deciding whether to confirm the direction.

(Act 11/2019, s. 29)

Notice of confirmed removal

104. (1) If the Central Bank decides to confirm the direction it shall, within 7 days of the written or face to face representation as the case may be, serve written notice of the confirmation on the licensed financial institution or the licensed financial holding company and the person whose removal is required.

(2) If the licensed financial institution, the licensed financial holding company or the person whose removal is required is aggrieved by the decision of the Central Bank under subsection (1), the licensed financial institution, the licensed financial holding company or the person whose removal is required may, within 14 days of the decision, appeal to the High Court, but the appeal shall not operate as a stay of the decision under this section unless the High Court directs otherwise.

(Act 11/2019, s. 30)

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Person to be removed from office

105. The licensed financial institution or licensed financial holding company shall, within the period specified in the direction, remove the person identified from the office and notify the person in writing of his removal from office and shall take any other steps as are necessary to inform the shareholders of the licensed financial institution or licensed financial holding company and the Registrar of Companies of the removal.

Effective date of removal

106. The removal of the director or officer in accordance with the directions given under section 100(5) or 102(5) shall take effect from the date of receipt by the director or officer of the notification of removal given by the Central Bank or any later date specified in the notice, notwithstanding any other law or the constituent documents of the licensed financial institution or licensed financial holding company.

(Act 11/2019, s. 31)

Failure to comply with a direction

107. If a licensed financial institution or licensed financial holding company fails to comply with a direction under section 100(5) or 102(5) the Central Bank may take any action against the licensed financial institution or licensed financial holding company and the director or officer under sections 74 to 77.

(Act 11/2019, s. 32)

Failure to comply with section 102

108. (1) A licensed financial institution that fails to comply with section 102 is liable to a penalty of $100,000 and $10,000 for each day of the default.

(2) A director or officer of a licensed financial institution who fails to comply with section 102 is liable to a penalty of $50,000 and $5,000 for each day of the default.

(Act 11/2019, s. 33)

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

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

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

(a) it specifies the nature and extent of the interest of the director; and

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

(3) Every director of a licensed financial institution or licensed financial holding company who holds any office or possesses any property where directly or indirectly, duties or interests might be created in conflict with his duties or interests as a director in the Currency Union, shall declare the fact, nature, character and extent of the conflict at the first meeting of the board held—

(a) after assuming office as a director of the licensed financial institution or licensed financial holding company; or

(b) if already a director, after the date of commencement in office or possession of the property.

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

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

Responsibility for deceiving statements and obstruction of audit or authorised examination

110. Any director, officer, secretary, employee or agent of a licensed financial institution or licensed financial holding company who—

(a) with intent to deceive—

(i) makes any false or misleading statement or entry,

(ii) omits any statement or entry that should be made in any book, account, report or statement of the licensed financial institution or licensed financial holding company; or

(b) obstructs or endeavours to obstruct—

(i) the proper performance by an auditor of his duties in accordance with the provisions of this Act, or

(ii) a lawful examination of the licensed financial institution or licensed financial holding company by a duly authorised examiner appointed by the Central Bank;

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

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

111. Any director, officer, secretary or other officer concerned in the management of a licensed financial institution or licensed financial holding company who—

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

(b) is implicated in an offence committed under section 92;

commits an offence and is liable on summary conviction to a fine of $15,000 or to imprisonment for a term of 2 years or to both such fine and imprisonment, unless a different penalty is specified by another section of this Act.

Liability of directors, officers and partners

112. (1) Where an offence under this Act has been committed by a body of persons that is—

(a) a body corporate, society or other body of persons, every person who at the time of the commission of the offence was a director, secretary or other officer of the body corporate, society or other body of persons as well as that body corporate, society or other body of persons commits the offence and is liable to be prosecuted; or

(b) a partnership or firm, every partner of the partnership or firm as well as that partnership or firm commits the offence and is liable to be prosecuted.

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

(a) the act constituting the offence took place without his knowledge or consent; or

(b) he exercised all due diligence to prevent the commission of the offence.

PART 9

OFFICIAL ADMINISTRATION

Grounds for appointing an official administrator

113. (1) The Central Bank may appoint an official administrator for a licensed financial institution or licensed financial holding company where—

(a) the Central Bank determines that the licensed financial institution or licensed financial holding company has—

(i) violated any provision of this Act or Regulations made under this Act or prudential standards issued by the Central Bank, or

(ii) engaged in any unsafe and unsound practices, in such a manner as to weaken the licensed financial institution's or licensed financial holding company's condition,

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threaten depositors' interests, or dissipate the licensed financial institution's or licensed financial holding company's assets;

(b) the licensed financial institution's or licensed financial holding company's regulatory capital level falls below the minimum regulatory capital required pursuant to section 44 and related prudential standards issued by the Central Bank;

(c) the Central Bank has reasonable cause to believe that the licensed financial institution or the licensed financial holding company or its directors, officers, or significant shareholders has engaged or is engaging in illegal activities in such a manner as to jeopardise depositors' interests;

(d) the Central Bank determines that the licensed financial institution or licensed financial holding company is in an unsafe or unsound condition to transact business and the licensed financial institution or licensed financial holding company or its directors or officers are unable to promptly improve such condition;

(e) the licensed financial institution or the licensed financial holding company fails in any manner to cooperate with the Central Bank or its examiners to enable the Central Bank to perform its supervisory responsibilities, including through concealment or failure to submit for inspection any of the licensed financial institution's or licensed financial holding company's books, papers or records;

(f) the licensed financial institution or licensed financial holding company fails in any manner to cooperate with its external auditors;

(g) the licensed financial institution or licensed financial holding company or its directors, officers, employees, or significant shareholders wilfully violate or fail to comply with an order or direction of the Central Bank under sections 74 to 86; or

(h) the licensed financial institution or licensed financial holding company, by resolution of its directors or shareholders, requests the appointment of an official administrator.

Notice of appointment of official administrator

114. A licensed financial institution or a licensed financial holding company shall be promptly notified of the appointment of an official administrator and the notification shall specify the grounds for the appointment.

Effective date of appointment

115. The appointment of an official administrator shall be effective from the time specified by the Central Bank.

Persons qualified to be official administrator

116. The official administrator may be a person from the private sector or an official of the Central Bank who meets the qualifications determined by the Central Bank.

Period of appointment

117. (1) An official administrator may be appointed for a period not exceeding 12 months.

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(2) An official administrator may be appointed for a further period not exceeding 12 months if it appears to the Central Bank that additional time is required to ensure an orderly restructuring of the licensed financial institution or licensed financial holding company under this Act.

Replacement and removal of official administrator

118. (1) The official administrator may at any time be replaced by the Central Bank.

(2) The official administrator may be removed prior to the end of the period specified.

Official administrator to be fit and proper

119. An official administrator shall be subject to the fit and proper provisions of this Act and any prudential standards issued by the Central Bank.

Declaration of conflict of interest

120. Section 109 shall apply to an official administrator except that any obligation to report to the board shall represent an obligation to report to the Central Bank, and any decision to be made by the board of a licensed financial institution or licensed financial holding company shall refer to a decision of the Central Bank.

Transactions to be approved by Central Bank

121. Any transaction involving the licensed financial institution or licensed financial holding company in official administration in which the official administrator has a material interest or relationship in the matter, may be engaged in, only with the prior approval of the Central Bank.

Failure of official administrator to disclose interest

122. If an official administrator fails to disclose an interest or relationship as required, the appointment may be set aside and the Central Bank shall remove the official administrator.

General powers of the official administrator

123. (1) Upon the appointment of an official administrator, all powers, functions and responsibilities of the licensed financial institution's or licensed financial holding company's shareholders, directors, and officers shall vest in the official administrator, except where the official administrator requests the shareholders or directors or officers to carry out any activity provided under this Act.

(2) The official administrator shall have full and exclusive powers to manage and operate the licensed financial institution or licensed financial holding company, including taking any action—

(a) necessary or appropriate to carry on the business of the licensed financial institution or licensed financial holding company in accordance with this Act, the Regulations, Orders or prudential standards issued by the Central Bank;

(b) to preserve and safeguard its assets and property; or

(c) to implement a plan of action with respect to the licensed financial institution or licensed financial holding company approved by the Central Bank.

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(3) The official administrator may, with the approval of the Central Bank, and notwithstanding any other law or the constituent documents of the licensed financial institution or licensed financial holding company—

(a) remove any or all directors and officers, and appoint their replacements subject to the criteria in section 96;

(b) issue shares, or rights to acquire shares, in the licensed financial institution or licensed financial holding company;

(c) cancel shares, or rights to acquire shares, in the licensed financial institution or licensed financial holding company;

(d) reduce the share capital by cancelling any paid-up share capital that is not represented by available assets; or

(e) sell shares, or rights to acquire shares, in the licensed financial institution or licensed financial holding company.

(4) The official administrator may employ, at the expense of the licensed financial institution or licensed financial holding company in official administration—

(a) legal counsel;

(b) accountants;

(c) valuators;

(d) appraisers;

(e) and other independent professionals or consultants;

to assist the official administrator, on terms the Central Bank shall approve.

Central Bank oversight of official administration

124. (1) In the exercise of his powers under this Part, the official administrator shall act in accordance with the Regulations and directions and prudential standards issued by the Central Bank, at any given time in the course of the official administration, and shall be accountable only to the Central Bank for the performance of his duties and the exercise of his powers as official administrator.

(2) The official administrator may delegate any of his powers or duties to other persons, in accordance with the instructions issued by the Central Bank.

Suspension of dividends

125. The official administrator shall immediately suspend the payment of capital distributions in general and payment of any kind to directors, officers, and significant shareholders, however base compensation may be paid to directors or officers for services rendered in their capacity as directors or officers of the licensed financial institution or licensed financial holding company.

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Moratorium and effect of official administration on proceedings

126. (1) The Central Bank may impose a moratorium suspending some or all payments by a licensed financial institution or licensed financial holding company in official administration, except payments to central clearing counterparties and to payment, settlement and clearing systems.

(2) On and during the appointment of an official administrator, no creditor, shareholder, depositor or any other person shall have any remedy against the licensed financial institution or licensed financial holding company in respect of any claim.

(3) Without prejudice to the generality of subsection (2), no creditor, shareholder, depositor or any other person shall—

(a) commence or continue any action, execution or other proceedings; or

(b) seek to enforce in any way any judgment or order obtained against the licensed financial institution or licensed financial holding company, or its successor or the transferee of the whole or any part of any property, assets or undertaking of the licensed financial institution or licensed financial holding company, for the recovery of any claim or in respect of any other liability;

until the termination of official administration in relation to the licensed financial institution or licensed financial holding company or without the prior leave of the court, unless the court directs otherwise.

(4) Where official administration has not yet been terminated, the Central Bank may, where it is of the opinion that it is no longer necessary to impose a stay, publish in the *Gazette* and in such newspapers as it thinks appropriate in the member countries or territories where it has assumed control of the licensed financial institution or licensed financial holding company, a notification to lift the stay imposed under this section.

(5) Where a stay has been lifted under subsection (4), no person shall take any steps to institute winding-up, receivership, administration or any other related proceedings in relation to that licensed financial institution or licensed financial holding company without the prior leave of the court, unless the court directs otherwise.

(6) No creditor, shareholder, depositor or any other person shall—

(a) commence or continue any claim, action, execution or other proceedings; or

(b) seek to enforce in any way any judgment or order obtained against the official administrator;

in respect of any act, omission, claim, fact or matter connected with or arising out of the acts or omissions of the official administrator in respect of the licensed financial institution or licensed financial holding company, until the termination of official administration in relation to the licensed financial institution or licensed financial holding company without the prior leave of the court, unless the court directs otherwise.

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(7) No provision of a security agreement, lease or licence between the licensed financial institution or licensed financial holding company and a secured or other creditor that provides, in substance, that on—

(a) the winding-up of the licensed financial institution or licensed financial holding company or any related entity or any insolvency restructuring or reorganisation proceedings being commenced, continued or ordered in respect of the licensed financial institution or licensed financial holding company or any related entity; or

(b) the default by the licensed financial institution or licensed financial holding company of an obligation under the security agreement, lease or licence;

the licensed financial institution or licensed financial holding company ceases to have such rights to use or deal with assets secured or dealt with under the agreement, lease or licence as the licensed financial institution or licensed financial holding company would otherwise have, or is given lesser rights or priorities in respect of any assets or property as the licensed financial institution or licensed financial holding company would otherwise have, shall have any force or effect, until the termination of official administration in relation to the licensed financial institution or licensed financial holding company or without the prior leave of the court, unless the court directs otherwise.

(8) No provision in any contract or agreement or any other document which gives any party a right to acquire any property or assets of the licensed financial institution or licensed financial holding company on the grounds of any change of control or on any analogous ground, or on the grounds of insolvency, shall have any effect until the termination of official administration in relation to the licensed financial institution or licensed financial holding company or without the prior leave of the court, unless the court directs otherwise.

(9) For the purposes of this section—

(a) the rights, property and assets referred to in this provision are taken to be the rights, property and assets wherever located; and

(b) the agreement, lease or licence referred to in this provision are taken to be an agreement, lease or licence governed by any law.

(10) A stay pursuant to subsection (2) shall only operate as a temporary stay of a claim against the licensed financial institution or licensed financial holding company and shall not have or be taken to have the effect of extinguishing such a claim.

(11) Where a claim is stayed pursuant to this section, for the purposes of the computation of time limits under any applicable law on limitation of actions, the period of time commencing with the date of appointment of the official administrator and ending with the date of termination of appointment of the official administrator shall be excluded.

(12) For the purposes of this section, "claim" means any claim whatsoever, including claims which are secured or unsecured, present or future, actual, prospective or contingent, or arising out of contract, tort, bailment, restitution, breach of trust or any other cause of action and whether or not made by a creditor, shareholder, depositor or any other person.

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Suspension of contractual early termination rights

127. No right or obligation of a third party under any contract to which the licensed financial institution or licensed financial holding company in official administration is a party, may be terminated, accelerated, or modified solely because of the appointment of the official administrator or any action taken by the official administrator.

Taking control of the licensed financial institution

128. (1) Immediately upon appointment, the official administrator shall secure the properties, offices, assets, books and records of the licensed financial institution or licensed financial holding company, and may take all necessary or appropriate steps aimed at such purpose, including without limitation—

(a) cancelling authorisations of persons to engage the financial responsibility of the licensed financial institution or licensed financial holding company and issuing new authorisations, as appropriate, and notifying third parties;

(b) informing correspondent financial institutions, registrars and transfer agents of securities and external asset managers of the licensed financial institution's or licensed financial holding company's assets that persons who previously had authorisation to give instructions on behalf of the licensed financial institution or licensed financial holding company with respect to dealing in the licensed financial institution's or licensed financial holding company's assets or assets held in trust by the licensed financial institution or licensed financial holding company are no longer so authorised, and that only the official administrator, and persons authorised by the official administrator, have such authority.

(2) In the course of the official administration, the official administrator shall have unrestricted access to, and control over, the properties, offices, assets and the books of account and other records of the licensed financial institution or licensed financial holding company.

(3) The official administrator may request the assistance of law enforcement officials, who shall, if necessary, use force to assist the official administrator to gain access to any premises of the licensed financial institution or licensed financial holding company, to gain control over, and to secure such properties, offices, assets, books and records of the licensed financial institution or licensed financial holding company.

(4) The licensed financial institution or licensed financial holding company, its affiliated institutions and their directors, officers and agents, other than its auditors, shall give every assistance to the official administrator, including the supply of information or explanation in any form as may be required, the production of books, documents, minutes, cash, securities and vouchers, and generally the provision of all necessary facilities required for the performance of any function of the official administrator, save that in the case of its auditors they shall only be required to supply any information which is in their possession or knowledge, other than their internally generated working papers.

(5) A person who does not comply with subsection (4), or otherwise obstructs the Central Bank or an official administrator in the performance of functions under this section, commits an offence and is liable on summary conviction to a fine of $15,000 or to a term of imprisonment of 2 years.

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Inventory and plan of action to resolve the licensed financial institution or licensed financial holding company

129. (1) Not later than 30 days after the appointment, the official administrator shall prepare and deliver to the Central Bank an inventory of the licensed financial institution's or licensed financial holding company's assets and liabilities.

(2) The official administrator in his report shall classify the assets in accordance with applicable asset classification criteria.

(3) Not later than 90 days after the appointment, the official administrator shall prepare and deliver to the Central Bank a report on the financial condition and future prospects of the licensed financial institution or licensed financial holding company.

(4) The official administrator shall include in the report an assessment of the amount of assets likely to be realized in a liquidation of the licensed financial institution or licensed financial holding company.

(5) In the report referred to under subsection (3), the official administrator shall propose a plan of action which, as appropriate, may recommend—

(a) returning the licensed financial institution or licensed financial holding company to compliance with this Act by carrying out a plan of corrective actions that may include a capital increase;

(b) compulsory liquidation of the licensed financial institution or licensed financial holding company if there is no reasonable prospect for the return of the licensed financial institution or licensed financial holding company to financial soundness through reorganisation or otherwise; or

(c) any other course of action designed to resolve the licensed financial institution or licensed financial holding company in a manner that minimises disruption to depositors and preserves the stability of the financial system.

(6) The official administrator shall promptly provide any additional report or information requested by the Central Bank.

(7) The Central Bank may—

(a) approve the report or additional report mentioned in subsection (3) or (6) without modification;

(b) approve the report or additional report mentioned in subsection (3) or (6) subject to such conditions as it considers necessary; or

(c) refuse to approve the report.

(8) On the basis of the report and with the approval of the Central Bank, the official administrator shall implement the plan of action.

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(9) In carrying out any resolution pursuant to this Part, the Central Bank shall take into account the order of priorities of claims that would be applicable in liquidation, as set out in section 152 and ensure that similarly situated creditors are treated in a similar manner.

(10) The Central Bank may take any action otherwise authorised by this Part that does not comply with subsection (9) if it determines that the category of claims that are benefitted by an action are of strategic importance to the economy or that the action is necessary to contain potential systemic impact in connection with the resolution of the licensed financial institution or to maximise the value for the benefit of all creditors as a whole.

(11) The official administrator and the Central Bank shall have no liability to depositors, creditors or shareholders of the licensed financial institution or licensed financial holding company as a result of actions taken in accordance with this Part, except to the extent that the amount received by a depositor, creditor, or shareholder as a result of the completion of the plan of action is less than the amount that would have been received if the licensed financial institution or licensed financial holding company had been liquidated and wound-up under Part 10.

(12) In assessing any liability under subsection (11), actual or potential financial assistance provided by the Central Bank or any Participating Government to the licensed financial institution or licensed financial holding company, disregarding ordinary assistance offered by the Central Bank on its usual terms or to a third party to facilitate the resolution, must be disregarded.

Capital increase by existing shareholders

130. (1) On the basis of the report under section 129, and with the approval of the Central Bank, the official administrator may take the following actions to increase the licensed financial institution's or licensed financial holding company's capital through the issuance of new shares—

(a) determine the extent of losses and prepare the licensed financial institution's or licensed financial holding company's balance sheet covering the amount of such losses through the licensed financial institution's or licensed financial holding company's profits, reserves and, if necessary, capital; and

(b) notify existing shareholders of the amount of additional capital needed to bring the licensed financial institution's or licensed financial holding company's capital into compliance with all capital requirements and allow the shareholders to subscribe and purchase additional shares, by submitting binding commitments equal to the full amount of additional capital needed within 10 business days of such notification.

(Act 11/2019, s. 34)

(2) Existing shareholders of a licensed financial institution or licensed financial holding company in official administration shall have no pre-emptive or other rights to purchase additional shares issued, except as provided in this section.

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Recapitalisation by new shareholders

131. (1) On the basis of the report produced under section 129, and with the approval of the Central Bank, the official administrator may take the following actions to increase the licensed financial institution's or licensed financial holding company's capital through the issuance of shares to new shareholders in the following circumstances—

(a) in the event that binding commitments are not submitted in an amount equal to the full amount of additional capital needed by existing shareholders; or

(b) without offering shares to existing shareholders, where the Central Bank determines that—

(i) an expedited resolution of the licensed financial institution or licensed financial holding company to maintain financial stability is necessary,

(ii) the existing shareholders are no longer fit and proper to maintain a significant capital position in the licensed financial institution or licensed financial holding company, or

(iii) there has been a failure to comply with a remedial measure under this Act requiring an increase in the capital of the licensed financial institution or licensed financial holding company.

(2) To carry out a recapitalisation by new shareholders, the official administrator shall—

(a) if not already carried out in accordance with section 129, determine the extent of losses and prepare the licensed financial institution's or licensed financial holding company's balance sheet covering the amount of losses through the licensed financial institution's or licensed financial holding company's profits, reserves and, if necessary, capital;

(b) if necessary to reflect losses, reduce the par value of outstanding shares, notwithstanding any other provision of law;

(c) determine the amount and type of funding needed to bring the licensed financial institution or licensed financial holding company into compliance with all capital requirements; and

(d) cause the licensed financial institution or licensed financial holding company to issue additional shares in the amount necessary and carry out the sale of shares by the licensed financial institution or licensed financial holding company and purchase of such shares by new investors.

(3) Any new significant shareholders may acquire interests pursuant to this provision only if the Central Bank is satisfied that they are fit and proper.

Mergers, sales and other restructurings

132. (1) On the basis of the report produced under section 129, and with the approval of the Central Bank, the official administrator may carry out a merger of the licensed financial institution or licensed financial holding company or a transfer, in whole or in part, of the licensed financial institution's or

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licensed financial holding company's assets and liabilities, without obtaining any approval, assignment, or consent with respect to such transfer or assumption.

(2) A transfer of the licensed financial institution's assets and liabilities may include a transfer to a bridge financial institution or an asset management vehicle established by one or more Participating Governments for the purpose of resolving the licensed financial institution.

(3) The transferee may be required to continue operating at the premises of the transferor for a specified period of time, including safe deposit box and safekeeping activities.

(4) The transferee of assets of the licensed financial institution or licensed financial holding company shall have no liability to depositors, creditors, or shareholders of the licensed financial institution or licensed financial holding company except to the extent that liabilities are explicitly assumed.

(5) In accordance with the instructions given by the Central Bank, the official administrator may approve a restructuring of the licensed financial institution's or licensed financial holding company's liabilities through arrangements with the creditors, including a reduction, modification, rescheduling and novation of their claims.

(6) In carrying out a transfer of assets and liabilities, where a depositor whose deposit is to be transferred owes the licensed financial institution an amount for a matured or past-due loan, that amount may be set off against the deposit amount in accordance with prudential standards issued by the Central Bank.

Mandatory restructuring of liabilities

133. (1) On the basis of the report produced under section 129, and with the approval of the Central Bank, the official administrator may restructure the liabilities of the licensed financial institution or licensed financial holding company in accordance with this section without the approval of depositors, creditors or shareholders.

(2) The Central Bank may approve mandatory restructuring of liabilities if the Central Bank determines that the restructuring, either alone or combined with recapitalisation or other resolution measures, will restore the licensed financial institution or licensed financial holding company to viability.

(3) The official administrator shall not apply mandatory restructuring to secured debt.

(4) The official administrator may restructure liabilities directly or may convert the liabilities to shares.

(5) In the exercise of his powers under this section, the official administrator shall act in accordance with the Regulations and prudential standards issued by the Central Bank.

Misconduct by shareholders, directors, officers or others

134. If the official administrator has reasonable cause to believe that significant shareholders, directors, officers, attorneys, accountants or other professionals have engaged in or are engaging in illegal activities punishable by imprisonment, or in fraudulent activities, it shall immediately notify—

(a) the Central Bank, and shall pursue civil actions seeking damages and restitution; and

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(b) the authorities responsible for investigating and prosecuting the activities.

Expenses of the official administration

135. (1) The official administrator shall receive a remuneration determined by the Central Bank.

(2) All costs and expenses incurred on account of the official administration shall be borne by and charged to the licensed financial institution or licensed financial holding company subject to any proceedings.

Termination of official administration

136. (1) The official administration shall terminate at the expiry of the term specified in the decision appointing the official administrator or any extension of the term of appointment by the Central Bank.

(2) An official administration may be terminated prior to the expiry of the term identified in subsection (1) if the Central Bank determines that—

(a) official administration is no longer necessary because the grounds for appointment of the official administrator have been remedied; or

(b) the licensed financial institution or licensed financial holding company cannot be rehabilitated and the Central Bank issues a decision to commence receivership and liquidation proceedings under Part 10.

(Act 11/2019, s. 35)

(3) In the case of a termination of official administration that does not involve a closure of the licensed financial institution or licensed financial holding company, the official administrator shall carry out the duties of the licensed financial institution's or licensed financial holding company's directors and officers, until nomination or election of new directors and appointment of officers, at which time all powers of control over the affairs of the licensed financial institution or licensed financial holding company and its properties, offices, assets, books and records that were vested in the official administrator shall vest in the licensed financial institution or licensed financial holding company.

(4) The decision of the Central Bank to terminate an official administration shall be accompanied by a recommendation by the official administrator and a detailed report prepared by the official administrator supporting the recommendation.

(5) Within 30 days of the termination of the appointment, the official administrator shall prepare and submit to the Central Bank a final report and accounting of the official administration.

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PART 10

RECEIVERSHIP AND COMPULSORY LIQUIDATION

Grounds of receivership

137. (1) The Central Bank may appoint a receiver for—

(a) a licensed financial institution or licensed financial holding company if—

(i) it is insolvent,

(ii) it is not viable,

(iii) its capital is impaired or its condition is otherwise unsound,

(iv) it has experienced substantial dissipation of assets or earnings due to any of the grounds for action by the Central Bank under section 74(1),

(v) it or its directors, officers, employees, or significant shareholders wilfully violate or fail to comply with an order or direction of the Central Bank under sections 74 to 86,

(vi) its business is being conducted in an unlawful or imprudent manner,

(vii) the continuation of its activities is detrimental to the interests of its depositors,

(viii) it conceals or refuses to submit any of its records or its operations for examination as provided for in section 73, or has otherwise obstructed such examination,

(ix) its licence has been revoked in accordance with section 13 or 75,

(x) official administration is terminated pursuant to paragraph 136(2)(b),

(xi) it is a bridge financial institution and its designation as a bridge financial institution terminates pursuant to section 185(3)(a) or the Central Bank initiates receivership pursuant to section 185(5), or

(b) a person who is found under section 3(2) to be carrying on banking business without a licence.

(Act 11/2019, s. 36)

(2) A receiver appointed under this Part shall liquidate the licensed financial institution or licensed financial holding company for which it has been appointed receiver and wind-up its affairs in an orderly manner that minimises any risk to financial stability, minimises disruption to depositors, and, consistent with the preceding goals, maximizes the value of the assets of the licensed financial institution or licensed financial holding company.

(3) Subsection (2) and sections 138 to 156 apply where a receiver is appointed for a person under subsection (1)(b), with the necessary modifications.

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(4) For purposes of this section, "insolvent" means the licensed financial institution or licensed financial holding company is not paying or is unable to pay its obligations as they fall due or the value of its liabilities exceeds the value of its assets.

(5) The value of a licensed financial institution's or licensed financial holding company's assets, liabilities and capital shall be determined in accordance with valuation standards and procedures issued by the Central Bank.

Qualifications and compensation for receiver

138. (1) A receiver may be—

(a) a person from the private sector or an official of the Central Bank who meets the qualifications determined by the Central Bank; or

(b) any institution established by Participating Governments whose mandate includes that of receivership.

(2) The Central Bank may dismiss a receiver and replace the receiver with another qualified person.

(3) The terms of the receiver's compensation shall be set by the Central Bank.

(4) The Central Bank may on a current basis pay—

(a) compensation to the receiver;

(b) compensation to the experts engaged by the receiver;

(c) reimbursement to both the receiver and the experts for their expenses.

(5) Any amounts paid by the Central Bank under this section and any remaining costs of the receivership at the end of the term of receivership shall be paid from the proceeds of the sales of the licensed financial institution's or licensed financial holding company's assets with the priority described in section 152.

Commencement and notice of receivership

139. (1) The Central Bank shall provide immediate notice regarding the appointment of a receiver to the chairman of the board of directors of a licensed financial institution or licensed financial holding company.

(Act 11/2019, s. 38(a))

(2) The appointment of a receiver of a licensed financial institution or licensed financial holding company shall be effective from the date of issuance of the notice, unless the notice states otherwise.

(3) The receiver shall immediately post in each office of the licensed financial institution or licensed financial holding company, and publish in the *Gazette* and at least one local newspaper, a notice announcing the appointment by the Central Bank, specifying the effective date and time and the procedures and time frame for depositors and other creditors and stakeholders to present their claims against the licensed financial institution or licensed financial holding company to the receiver.

(Act 11/2019, s. 38(b))

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(4) The notice shall also specify that—

(a) authorisations of persons to engage the financial responsibility of the licensed financial institution or licensed financial holding company have been cancelled; and

(b) persons who previously had authorisation to give instructions on behalf of the licensed financial institution or licensed financial holding company with respect to payment or transfer of the licensed financial institution's or licensed financial holding company's assets or assets managed by the licensed financial institution or licensed financial holding company are no longer so authorised.

(Act 11/2019, s. 38(c))

(5) The receiver shall mail a notice to any depositor or other creditor shown on the books of the licensed financial institution or licensed financial holding company at the address as shown on the books or, if not shown, upon discovery of the name and address.

Central Bank oversight of receiver

140. (1) The receiver shall act in accordance with the Regulations and any directions, and prudential standards issued by the Central Bank at any time in the course of the liquidation, and shall be accountable only to the Central Bank for the performance of its duties and the exercise of its powers as receiver.

(2) The receiver shall report to the Central Bank at least once a month, or more frequently if the Central Bank so requires, on the progress of the receivership in a form determined by the Central Bank and provide any other information upon the request of the Central Bank.

General powers of receiver

141. (1) Upon appointment the receiver shall become the sole legal representative of the licensed financial institution or licensed financial holding company, and shall succeed to all the rights, titles, powers and privileges of the licensed financial institution or licensed financial holding company and its shareholders, directors and officers.

(2) Notwithstanding paragraph (1), shareholders, directors and officers may be instructed by the receiver to exercise specified functions for the licensed financial institution or licensed financial holding company.

(3) The receiver may—

(a) hold title to the books, records, and assets of the licensed financial institution or licensed financial holding company;

(b) manage, operate and represent the licensed financial institution or licensed financial holding company with all of the powers of the shareholders, directors and officers;

(c) marshall assets and claims;

(d) transfer or dispose of assets and liabilities;

(e) take any other action necessary for the efficient liquidation of the licensed financial institution or licensed financial holding company;

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(f) continue or discontinue any operation of the licensed financial institution or licensed financial holding company;

(g) borrow money on a secured or unsecured basis;

(h) hire any necessary staff, specialists, experts or professional consultants and terminate their employment;

(i) administer the licensed financial institution's or licensed financial holding company's accounts;

(j) collect the debts due to the licensed financial institution or licensed financial holding company and recover goods owed by the third parties;

(k) execute any instrument in the name of licensed financial institution or licensed financial holding company;

(l) initiate, defend and conduct in its name any action or proceeding to which the licensed financial institution or licensed financial holding company may be party.

(4) A receiver shall not take any deposits and shall make no loans except to extend funds for the protection of collateral assets where necessary.

(5) The receiver may, in its sole discretion, make partial or complete payment on proven claims at any time, and no liability shall attach to the receiver, by reason of any payment or for failure to pay dividends to a claimant whose claim is not proved at the time of any payment.

Transfer of assets and liabilities

142. (1) The receiver may transfer any asset or liability of the licensed financial institution or licensed financial holding company without obtaining any approval, assignment, or consent with respect to the transfer or assumption.

(2) The receiver may, upon the prior written approval of the Central Bank and according to its directions, pursue the following activities—

(a) dispose of part or all of a licensed financial institution's or licensed financial holding company's assets and liabilities through a purchase and assumption transaction with an acquiring licensed financial institution or licensed financial holding company; or

(b) transfer part or all of a licensed financial institution's or licensed financial holding company's assets and liabilities to a bridge financial institution by one or more Participating Governments.

(3) The arrangements for a transfer of assets and liabilities shall provide for the removal of any director, secretary, officer or employee responsible for the circumstances which led to the appointment of a receiver for the licensed financial institution or licensed financial holding company.

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Effects of receivership

143. Upon and after appointment of a receiver—

(a) any term, statutory, contractual or otherwise, on the expiration of which a claim or right of the licensed financial institution or licensed financial holding company would expire or be extinguished shall be extended by 6 months;

(b) the calculation of interests and penalties against the licensed financial institution's or licensed financial holding company's obligations shall be suspended and no other charge or liability shall accrue on the obligations of the licensed financial institution or licensed financial holding company;

(c) all legal proceedings against the licensed financial institution or licensed financial holding company are stayed and a third party shall not exercise any right against the licensed financial institution's or licensed financial holding company's assets without the prior leave of the court unless the court directs otherwise;

(d) no depositor or other creditor may sell or take possession of any assets of the licensed financial institution or licensed financial holding company as a means of enforcing a claim or initiate or continue any legal proceeding to recover the debt or perfect security interests in the licensed financial institution's or licensed financial holding company's assets;

(e) no attachment or lien, except a lien created by the receiver in the application of the provisions of this Part, shall attach to any of the property or assets of the licensed financial institution or licensed financial holding company;

(f) No execution shall be returned against the assets of a licensed financial institution or licensed financial holding company for which a receiver has been appointed, except an execution effected pursuant to a judgment rendered prior to the date of the appointment of the receiver for an amount not exceeding $1,000.

Taking control of the licensed financial institution or licensed financial holding company

144. (1) The receiver shall have unrestricted access to and control over the offices, books of account and other records, and assets of the licensed financial institution or licensed financial holding company and its subsidiaries.

(2) The receiver may request the assistance of police officers to gain access to the premises of the licensed financial institution or licensed financial holding company or control over the records of the licensed financial institution or licensed financial holding company.

(3) The receiver shall secure the property, offices, books, records, and assets of the licensed financial institution or licensed financial holding company to seek to prevent their dissipation by theft or other improper action.

(4) Any person who wilfully interferes with a receiver's access to or control over the offices, books of account and other records, and other assets of a licensed financial institution or licensed financial holding company commits an offence and is liable on summary conviction to a fine of $15,000 or imprisonment for a period of 1 year.

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Repudiation of contracts

145. (1) Within 90 days from the date of appointment, the receiver may repudiate any contract to the extent that the fulfilment of the contract is determined to be burdensome for the licensed financial institution or licensed financial holding company and the repudiation would promote the orderly administration of the licensed financial institution's or licensed financial holding company's affairs and protect depositors' interest.

(2) Any liability arising from the repudiation shall be determined as of the date of repudiation and shall be limited to actual direct damages incurred and shall not include any damage for lost profits or opportunity or non-monetary damages.

(3) In case of repudiation of a lease agreement of immovable and movable property, the receiver shall give the owner 30 days' notice.

(4) This section shall not apply to contracts entered into by an official administrator appointed in accordance with Part 9, except with the prior approval of the Central Bank.

Avoidance of pre-receivership transfers

146. (1) The receiver may set aside the following transactions affecting the assets of the licensed financial institution or licensed financial holding company and recover the assets from the transferee or other beneficiary of the transaction—

(a) gratuitous transfers to directors, officers, and significant shareholders of the licensed financial institution or licensed financial holding company or their relatives made within 3 years prior to the effective date of the receivership;

(b) transactions with related parties or affiliates conducted within 3 years prior to the effective date of the receivership, if detrimental to the interest of depositors and other creditors;

(c) gratuitous transfers to third parties made within 3 years prior to the effective date of the receivership;

(d) transactions in which the consideration given by the licensed financial institution or licensed financial holding company considerably exceeded the received consideration, made within 3 years prior to the effective date of the receivership;

(e) a transaction based on a forged or fraudulent document that the licensed financial institution or licensed financial holding company has executed to the detriment of creditors;

(f) any act done with the intention of all parties involved to withhold assets from a licensed financial institution's or licensed financial holding company's depositor and creditors, or otherwise impair their rights, within 5 years prior to the effective date of the receivership;

(g) transfers of property of the licensed financial institution or licensed financial holding company to, or for the benefit of a depositor or creditor on account of a debt incurred within 1 year prior to the effective date of the receivership which has the effect of increasing the amount that the depositor or creditor would receive in a liquidation of

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the licensed financial institution or licensed financial holding company but payment of deposits in an amount equal to or less than $200,000 per depositor shall not be subject to this provision; and

(Act 11/2019, s. 39)

(h) any attachment or security interest, except one existing 6 months prior to the effective date of the receivership.

(2) Any action to set aside a transfer under this section shall be taken by the receiver within 1 year following the effective date of the receivership.

(3) Notwithstanding subsections (1) and (2), the receiver may not set aside a payment or transfer by the licensed financial institution or licensed financial holding company if it was made in the ordinary course of business, or if it was part of a contemporaneous exchange for reasonably equivalent value, or to the extent that following the transfer the recipient extended new unsecured credit to the licensed financial institution or licensed financial holding company which had not been satisfied by the licensed financial institution or licensed financial holding company as of the effective date of the receivership.

(4) The receiver may recover property or the value of property transferred by the licensed financial institution or licensed financial holding company from a transferee of an initial transferee only if the second transferee did not give fair value for the property and knew or reasonably should have known that the initial transfer could be set aside under the provisions of this Act.

(5) The receiver may order that notice of an action to set aside a transfer be recorded in the public records for real estate ownership and any other rights in property and a person taking title to or acquiring any security interest or other interest in the property after the filing of a notice takes his title or interest subject to the rights of the receiver to recover the property.

(6) This section shall not apply to transfers to an asset management company established by the Participating Governments or transfers by the official administrator.

Obligations of lessors of licensed financial institution or licensed financial holding company premises and utility providers

147. A lessor of a licensed financial institution's or licensed financial holding company's premises or a utility company or other provider of utility services including, without limitation, a company that supplies electricity, water or telecommunication services (including internet), may not alter, refuse or discontinue the services to a licensed financial institution or licensed financial holding company because of its receivership or because the licensed financial institution or licensed financial holding company has failed to pay for the services prior to its receivership.

Protection of payment, clearance, and settlement systems

148. (1) Irrevocable money and securities transfer orders entered by a licensed financial institution or licensed financial holding company into a payment or securities settlement system recognized as such by the Central Bank shall be legally enforceable and binding on third parties, even upon a decision revoking the licence and appointing a receiver, but only if the transfer orders become irrevocable before the decision takes effect.

(2) Where a licensed financial institution or licensed financial holding company enters irrevocable money or securities transfer orders into a payment or securities settlement system after the decision revoking the licence and appointing a receiver takes effect and the transfer orders are carried

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out on the day of the decision, the transfer orders shall be legally enforceable and binding on third parties, unless the receiver proves that the system operator was aware of the decision before the transfer orders became irrevocable.

(3) No provision authorising the setting aside of contracts and transactions entered into before the appointment of a receiver takes effect shall be applied in a way as to require the unwinding of netting by a payment or securities settlement system recognised by the Central Bank, but the preservation of the netting shall not prevent the ability of the receiver to recover assets directly from the transferee or beneficiary.

(4) For the purposes of subsections (1), (2), and (3)—

(a) a transfer order entered into a money or securities settlement system becomes irrevocable at the time defined by the rules of that system;

(b) "netting" means the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant or participants in a settlement system either issue to, or receive from, one or more other participants in that system with the result that only a net claim or a net obligation remains.

Determination of claims

149. (1) The procedures for determinations of the validity and priority of claims and for liquidation of assets and return of the licensed financial institution or licensed financial holding company customers' property shall be determined by the Central Bank.

(2) Any sale of the licensed financial institution or licensed financial holding company assets shall be accomplished in a transparent and reasonable manner.

(3) Any right of a creditor other than a depositor to set off a debt owed by the creditor to the licensed financial institution or licensed financial holding company against a claim of a creditor may be asserted if it would be enforceable under applicable non-insolvency law, except to the extent that the claim of the creditor is disallowed or the set off is based on a transaction that has been avoided under section 146.

(4) If a depositor owes the licensed financial institution an amount for a matured or past-due loan, that amount shall be set off against the deposit amount owed by the licensed financial institution.

(5) If a depositor owes the licensed financial institution an amount for a loan and the loan is not matured or past-due, then, at the sole option of the depositor, the amount owed may be set off against the deposit amount owed by the licensed financial institution.

Authority to disallow claims

150. (1) The receiver may disallow any claim or portion of a claim against the licensed financial institution or licensed financial holding company, including a claim based on a security interest, preference, set off, or priority which is not proved to the satisfaction of the receiver.

(2) In the case of a claim that is secured by any property or other asset of the licensed financial institution or licensed financial holding company, the portion of the claim which exceeds the fair market value of the property or assets shall be treated as an unsecured claim.

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(3) This section shall not apply to an extension of credit from the Central Bank to the licensed financial institution.

Claims relating to eligible financial contracts

151. (1) In determining the rights and obligations between the licensed financial institution or licensed financial holding company and its contractual counterparties, effect shall be given to the termination provisions of eligible financial contracts between them, except during the period of any temporary stay on the exercise of the right that the Central Bank may determine.

(2) The temporary stay of termination provisions shall be subject to any safeguard standards as the Central Bank shall issue to facilitate liquidation of the licensed financial institution or licensed financial holding company while at the same time minimising disruption to the markets for eligible financial contracts.

(3) The net termination value determined in accordance with an eligible financial contract between them shall be a claim of the licensed financial institution or licensed financial holding company on the counterparty or shall be admitted after its validation as a claim of the counterparty on the licensed financial institution or licensed financial holding company.

(4) For the purposes of this section—

(a) "eligible financial contracts" includes securities contracts, commodities contracts, swaps, repurchase agreements, and similar financial contracts, determined by the Central Bank, and may include a master agreement covering more than one type of contract; and

(b) "net termination value" means the net amount obtained after setting off the mutual obligations between the parties to an eligible financial contract in accordance with its provisions.

Priorities in payment of claims

152. (1) In any liquidation of a licensed financial institution's or licensed financial holding company's assets, allowed secured claims shall be paid to the extent of the realisation of the security or the security shall be delivered to the secured creditor.

(2) Other allowed claims shall be paid in relation to all other debts, in the order described below—

(a) necessary and reasonable expenses of official administration and the receivership, including those paid by the Central Bank in accordance with section 135;

(b) wages and salaries of employees of the licensed financial institution or licensed financial holding company in liquidation for the 6-month period preceding the appointment of the receiver for the licensed financial institution or licensed financial holding company except for wages and salary earned by a director or officer;

(c) the net amount due to any depositor of the licensed financial institution up to $200,000, except to a depositor identified in paragraph (e);

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(d) the net amount due to any depositor of the licensed financial institution in excess of the amount due under paragraph (c), if any, except to a depositor identified in paragraph (e);

(e) the net amount of deposits due to directors, officers and significant shareholders of the licensed financial institution;

(f) national insurance contributions for officers and employees due but not paid;

(g) taxes, rates and deposits owed to Anguilla and local authorities concerned;

(h) unsecured credits extended to the licensed financial institution or licensed financial holding company prior to the appointment of the receiver;

(i) subordinated debt;

(j) fees and assessments due to the Central Bank.

(3) After payment of all other claims filed, with interest at a rate to be fixed by the Central Bank, any remaining claims which were not filed within the prescribed time shall be paid.

(4) After payment of all claims filed, any remaining allowable claims that were not filed within the time specified by rule for the filing shall be paid.

(5) Any proceeds remaining after all claims of depositors and other creditors have been paid shall be distributed among the shareholders of the licensed financial institution or licensed financial holding company in accordance with their rights.

(6) Notwithstanding subsection (2), the Central Bank may take actions that would treat similarly situated creditors differently, but only if the Central Bank determines that—

(a) the category of claims that are benefitted by the action are of strategic importance to the economy or the action is necessary to contain potential systemic impact or to maximise the value for the benefit of all creditors as a whole; and

(b) no creditor will receive less in the liquidation than it would have without the disparate treatment.

(7) For the purpose of determining the net amount due to any depositor under subsections (2)(c), (d) and (e), the Central Bank shall aggregate the amounts of all deposits in the licensed financial institution which are maintained by a depositor in the same capacity.

Unclaimed funds

153. Unclaimed funds remaining after the final distribution made by the receiver which are not subject to other provisions of this Act shall be deposited by the receiver in the Central Bank for 15 years, unless claimed by the owner before the expiration of that period, and on the expiration of that period the funds remaining unclaimed shall be presumed to be abandoned property for the purposes of section 166.

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Safe deposits and unclaimed property

154. (1) Any safe deposit box, the contents of which have not been withdrawn before a date specified by the receiver, shall be opened by the receiver and their contents inventoried and the contents and the inventory shall be deposited by the receiver in the Central Bank.

(2) Any unclaimed property held by the licensed financial institution or licensed financial holding company as bailee, together with inventories, shall be deposited by the receiver in the Central Bank.

(3) Any contents of a safe deposit box or unclaimed property deposited not claimed within a period of 15 years following its deposit in the Central Bank shall be presumed to be abandoned property for the purposes of section 166.

Termination of receivership and final reporting to the Central Bank

155. (1) Once the proceeds for the sale of assets of a licensed financial institution or licensed financial holding company have been distributed, the receiver shall provide a report to the Central Bank that includes a statement of income and expense and sources and uses of funds during the period of receivership.

(2) Upon approval by the Central Bank of the report, the receivership shall be terminated and the Central Bank shall notify the Registrar of Companies which shall proceed to terminate the legal existence of the licensed financial institution or licensed financial holding company as a company and the Central Bank and the receiver shall be relieved of any further responsibility in connection with the receivership of the licensed financial institution or licensed financial holding company.

(3) A receivership shall be terminated within 5 years of its initiation or as soon as is practicable.

Receiver to notify Central Bank of fraudulent activities

156. (1) If the receiver has reasonable cause to believe that a licensed financial institution or licensed financial holding company or its shareholders, directors, officers, attorneys, accountants or other professionals have engaged or are engaging in fraudulent activities or other criminal activities, the receiver shall immediately notify—

(a) the Central Bank and shall pursue civil actions seeking damages and restitution; and

(b) the authorities responsible for investigating and prosecuting the activities.

PART 11

VOLUNTARY LIQUIDATION

Voluntary liquidation

157. A voluntary liquidation of a licensed financial institution or licensed financial holding company shall be subject to authorisation by the Central Bank when—

(a) the licensed financial institution or licensed financial holding company is solvent and has sufficient liquid assets to repay its depositors and other creditors within 3 days; and

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(b) the liquidation has been properly approved by the members or shareholders of the licensed financial institution or licensed financial holding company.

Cessation of business operations

158. When it has received the authorisation of the Central Bank the licensed financial institution or licensed financial holding company shall—

(a) immediately cease to carry on business, retaining only the powers necessary to effect an orderly liquidation;

(b) repay its depositors and other creditors; and

(c) wind up all operations undertaken prior to the receipt of the authorisation.

Notice to depositors of voluntary liquidation

159. (1) Within 30 days from the receipt of authorisation referred to in section 157 a notice of voluntary liquidation, setting out any information as the Central Bank may determine, shall be sent by mail to all depositors, other creditors and persons otherwise entitled to the funds or property held by the licensed financial institution or licensed financial holding company as a trustee, lessor of a safe deposit box or bailee.

(2) The notice shall be posted conspicuously on the premises of each office and branch of the licensed financial institution or licensed financial holding company and shall be published as the Central Bank, shall direct.

(3) The Central Bank may exempt the mailing of such notice to specified persons upon a showing of cause by the licensed financial institution or licensed financial holding company.

Rights of depositors and creditors in voluntary liquidation

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

(2) All deposits shall be paid within 3 days, all other lawful claims shall be paid promptly, and all funds and other property held by the licensed financial institution or licensed financial holding company shall be returned to their owners within such maximum period as the Central Bank shall determine.

Distribution of assets

161. (1) When the Central Bank, is satisfied that the licensed financial institution or licensed financial holding company has discharged all the obligations referred to in section 160, it shall be struck from the list of licensed financial institutions and the remainder of its assets shall be distributed among its shareholders in proportion to their respective rights, but no such distribution shall be made before—

(a) all claims of depositors and other creditors have been paid or, in the case of a disputed claim, before the licensed financial institution or licensed financial holding company has turned over to the Central Bank sufficient funds to meet any liability that may be determined by a court of competent jurisdiction;

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(b) any funds payable to a depositor or other creditor who has not claimed them have been turned over to the Central Bank;

(c) any other funds and property held by the licensed financial institution or licensed financial holding company that could not be returned to the owners in accordance with the provisions of section 160 have been transferred to the Central Bank, together with the inventories.

(2) Any funds or property not claimed within a period of 15 years following a transfer to the Central Bank shall be presumed to be abandoned property for the purposes of section 166.

Insufficiency of assets in discharge of obligations in voluntary liquidation

162. If the assets of a licensed financial institution or licensed financial holding company, whose voluntary liquidation has been authorised will not be sufficient for the full discharge of all its obligations or completion of the liquidation is unduly delayed, the Central Bank may cause the commencement of proceedings leading to its compulsory liquidation or resolution in conformity with the procedures set out in Part 10.

Audited accounts, and conclusion of liquidation

163. (1) When all assets have been distributed in accordance with the provisions of this Act, the licensed financial institution or licensed financial holding company shall render an audited account to the Central Bank.

(2) Upon approval of this account the Central Bank shall notify the Registrar of Companies which shall proceed to terminate the legal existence of the licensed financial institution or licensed financial holding company as a company.

Review of bank resolutions under Parts 9 or 10

164 (1) After completion of an official administration under Part 9 or a receivership under Part 10 (a resolution action), the Central Bank shall conduct a review to ascertain why the licensed financial institution's or licensed financial holding company's problems required a resolution action under either of those Parts.

(2) The Central Bank shall prepare a written report that describes in detail the circumstances leading to the resolution action, the actions taken by the Central Bank prior to action under Part 9 or Part 10 to address any problems, the reasons why those actions did not succeed in preventing the need for resolution.

(3) The Central Bank shall lay a copy of the report before the Monetary Council.

Non-application of Companies Act

165. The provisions of the Companies Act or any law on or relating to company bankruptcy, reorganisation, insolvency or liquidation shall not apply to the liquidation of a licensed financial institution under this Act.

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PART 12

ABANDONED PROPERTY

Abandoned property

166. (1) Subject to subsection (2) the items in paragraphs (a), (b), and (c) which are held or owing by a licensed financial institution for 15 years shall be presumed to be abandoned—

(a) any general deposit (demand, savings or matured time deposit), and funds prepaid on credit cards and other electronic funds made in Anguilla with a licensed financial institution, together with any interest or dividend, but excluding any lawful charges;

(b) any funds paid in Anguilla toward the purchase of shares or other interests in a licensed financial institution or licensed financial holding company, together with any interest or dividend, but excluding any lawful charges;

(c) any sum payable on cheques certified in Anguilla or on written instruments issued in Anguilla on which a licensed financial institution or licensed financial holding company is directly liable.

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

(a) increased or decreased the amount of the deposit or funds or presented the passbook or other record for the crediting of interest or dividends in respect of the items enumerated in subsections (1)(a), (b) and (c);

(b) corresponded in writing with the licensed financial institution or licensed financial holding company concerning the items; or

(c) otherwise indicated an interest in the items enumerated in subsections (1)(a), (b) and (c) as evidenced by a memorandum concerning them written by a licensed financial institution or licensed financial holding company.

Report, publication and disposal of abandoned property

167. (1) Every licensed financial institution or licensed financial holding company holding any of the items enumerated in section 166(1)(a), (b) and (c) shall within 3 months after the end of its financial year report such holdings to the Central Bank, and pay to the Central Bank all property presumed to be abandoned listed in the report in accordance with Regulations made by the Minister upon the recommendation of the Central Bank.

(Act 11/2019, s. 40)

(2) Upon paying the items enumerated in section 166(1)(a), (b) and (c) into the custody of the Central Bank, a licensed financial institution or licensed financial holding company shall be relieved of all liability to the extent of the value of the property for any claim.

(3) Except with the approval of the Central Bank, on the terms and conditions as it may determine, no reduction in the amount of interest or dividends payable and no charges in excess of those made in respect of comparable active accounts shall be made by a licensed financial institution or

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licensed financial holding company either during the period of inactivity of the items set out in section 166(1) or at the time payment and delivery of them under subsection (1) is required.

(4) Within 30 days after the end of its financial year but before the filing of the report to the Central Bank required by subsection (1) and the report to the Minister under section 169(2), a licensed financial institution or licensed financial holding company shall publish in the *Gazette*, a newspaper of general circulation and on its website the name of the owner and particulars concerning the property and shall mail a notice to the owner at his last known address containing particulars concerning the property.

Abandoned property to vest in the Crown

168. (1) Any abandoned property paid into the custody of the Central Bank under subsection 167(1) shall vest in the Crown 15 years from the date on which it was paid into the custody of the Central Bank.

(2) Any abandoned property paid into the custody of the Central Bank prior to 18 April, 2016 shall vest in the Crown 15 years from 18 April, 2016.

(Act 11/2019, s. 41)

Safe deposit boxes

169. (1) The contents of a safe deposit box at a licensed financial institution shall be presumed to be abandoned where—

(a) the lease or rental has expired; and

(b) five years has elapsed from the expiration of the lease or rental.

(2) Every licensed financial institution holding any contents of a safe deposit box presumed abandoned shall—

(a) within 90 days after the end of its financial year report the holdings to the Minister; and

(b) deliver to the Minister the contents of the safe deposit boxes reported under paragraph (a).

(3) Upon delivering the property into the custody of the Minister a licensed financial institution shall be relieved of all liability to the extent of the value of the property for any claim.

Sale of contents of a safe deposit box

170. (1) The contents of a safe deposit box delivered to the Minister under section 169(2) may be sold at public auction by the Minister after the expiration of 60 days from the later date of publication or mailing required by section 167(4) following such advertisement of the sale as the Minister on the recommendation of the Central Bank, may prescribe.

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

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Handling of proceeds of sale of safe deposit box contents

171. (1) There is hereby established an Abandoned Property Fund under the administration and control of the Minister.

(2) The Minister shall deposit the proceeds of the sale of property into the Abandoned Property Fund less all reasonable costs incurred by it in connection with the sale, mailing of notices, and service as it may consider appropriate to assure the prompt payment of claims which may subsequently be made and approved by the Minister.

(3) Any property remaining unsold shall be disposed of by the Minister in such manner as the Minister on the recommendation of the Central Bank may prescribe.

(4) The proceeds of sale of any property under subsection (2) shall be held in the Abandoned Property Fund for a period of 10 years, after which the amount shall vest in the Crown.

Claims on abandoned property

172. (1) Any person claiming an interest—

(a) in any property which has been paid into the custody of the Central Bank;

(b) in any property delivered into the custody of the Minister; or

(c) in the proceeds from the sale of the property by public auction;

may, prior to the expiration of the periods under section 168 and section 171(4) file a claim for that interest by a claim form supported by affidavit evidence.

(2) The Minister on the recommendation of the Central Bank shall by Regulations prescribe the—

(a) claim form;

(b) persons to whom a claim form may be issued;

(c) required documentation to accompany each claim;

(d) procedures for filing the claim form;

(e) process for the approval of claims;

(f) procedures for the payment of claims and for reimbursements.

(3) Upon the expiration of the periods under section 168 and section 171(4) no person may make any claim against the Central Bank or the Crown in respect of the property.

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

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Failure to file report or to pay property

173. A licensed financial institution or licensed financial holding company that fails to comply with sections 167(1), 167(4) or subsection 169(2) is liable to a penalty of $5,000 and for a further penalty of $1,000 for each day of default.

(Act 11/2019, s. 42)

PART 13

TRANSFER OF BANKING BUSINESS

Banking business vesting order

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

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

(3) On completion of the investigation, the Central Bank may, if it thinks fit, make a recommendation to the Minister to make a Banking Business Vesting Order transferring to and vesting in the transferee financial institution the undertaking, as from the date specified therein, and on the making of such an order, all such existing property, rights, liabilities and obligations as are intended by the agreement to be transferred and vested shall, by virtue of this Act, and without further assurance be transferred to, and shall vest in, the transferee financial institution to the intent that the licensed financial institution shall succeed to the whole or such part of the undertaking of the transferor financial institution as is contemplated by the agreement.

(4) No transfer or vesting effected by a Banking Business Vesting Order shall—

(a) operate as a breach of covenant or condition against alienation;

(b) give rise to a forfeiture; or

(c) invalidate or discharge a contract or security.

(5) Notwithstanding anything contained in any enactment to the contrary, the Minister may issue a Banking Business Vesting Order which, for the purposes of corporation tax, may contain provisions respecting—

(a) the carry forward; and

(b) the set off,

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

Supplementary provision as to transfers

175. (1) Without prejudice to the generality of section 174, the effect of a Banking Business Vesting Order as regards the banking business transferred is that on and from the date of transfer—

(a) every existing contract to which the transferor financial institution was a party, whether in writing or not, has effect as if—

(i) the transferee licensed financial institution had been a party thereto instead of the transferor financial institution,

(ii) for any reference (however worded and whether expressed or implied) to the transferor financial institution there were substituted as respects anything failing to be done on or after the date of the transfer, a reference to the transferee financial institution, and

(iii) any reference (however worded and whether express or implied) to the directors or to any director, officer, clerk or servant of the transferor financial institution were, as respect anything failing to be done on or after the date of transfer, a reference (as the case may require) to the directors that the transferee financial institution may appoint, or in default of appointment, to the director, officer, clerk or servant of the transferee financial institution who corresponds as ready as may be to the first mentioned director, officer, clerk or servant;

(b) any account between the transferor financial institution and a customer shall become an account between the transferee financial institution and that customer;

(c) any existing instruction, direction, mandate, power of attorney or consent given to the transferor financial institution shall have effect as if given to the transferee financial institution;

(d) any negotiable instrument or order for payment of money which is expressed to be drawn on, or given to, or accepted or endorsed by the transferor financial institution, or payable at any of its places of business, shall have effect as if it had been drawn on, or given to or accepted or endorsed by the transferee financial institution, or payable at the same place of business of the transferee financial institution;

(e) any security transferred to the transferee financial institution by a Banking Business Vesting Order that immediately before the date of the transfer was held by the transferor financial institution as security for the payment or discharge of any debt or liability or obligation (whether present or future, actual or contingent) shall be held by, and be available to, the transferee financial institution as security for the payment or discharge of such debt or liability or obligation;

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(f) any security referred to in paragraph (e) which extends to future advances or liabilities shall, from the date of the transfer, be held by, and be available to, the transferee financial institution as security for future advances by, and future liabilities to, the transferee financial institution, in the same manner and in all respects as future advances by, or liabilities to, the transferor financial institution were secured immediately before the date of the transfer;

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

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

(2) Subsections (1)(a)(ii) and (iii) apply to—

(a) any statutory provision;

(b) any provision of any existing contract to which the transferor financial institution was not a party; and

(c) any provision of any other existing document (not being a contract but including in particular a will);

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

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

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

(b) as executor of the will of a deceased person;

(c) as administrator of the estate of a deceased person;

(d) as judicial trustee appointed by order of any court; or

(e) in any other fiduciary capacity whatsoever;

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

Transfers to be subject to stamp duty

176. The transfer of, and vesting in, the transferee financial institution of an undertaking by a Banking Business Vesting Order shall, unless exempted (either generally or in some particular case) by the Banking Business Vesting Order, be subject to the provisions of the Stamp Act as if the Banking Business Vesting Order was, in each of the cases in which the duty is imposed on the several instruments specified in the Schedule to the Act, an instrument between party and party within the contemplation of the Act.

PART 14

MISCELLANEOUS PROVISIONS

Secrecy of information

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

(a) with the written authorisation of the depositor or customer or of his heirs or legal personal representatives; or

(b) when required in conformity with this Act; or

(c) when lawfully required to make disclosure by any court of competent jurisdiction within Anguilla; or

(d) under the provisions of any law of Anguilla or agreement among the Participating Governments.

(2) Notwithstanding subsection (1), nothing shall prevent—

(a) a licensed financial institution or any individual referred to in that subsection, from providing to a person, upon a legitimate business request, a general credit rating, a summary of which will be provided to the depositor or customer upon request; or

(b) a licensed financial institution or a director, officer, secretary, employee, agent, auditor, receiver, official administrator or official liquidator of the licensed financial institution, from providing access to confidential information of the licensed financial institution that is necessary to conduct due diligence in connection with a potential acquisition of assets and liabilities of the licensed financial institution, whether through direct transfer or through a merger or similar corporate transaction.

(Act 11/2019, s. 43)

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Administrative penalties

178. An administrative penalty levied pursuant to this Act may be recovered as a civil debt.

Administrative penalties to be placed to the credit of Central Bank

179. (1) The penalties imposed under sections 8(3), 18(9), 18(10), 43(4), 55(2), 56(7), 67, 68(5), 79, 95, 108 and 173 shall be paid to the Central Bank.

(Act 11/2019, s. 44)

(2) The Central Bank may, without prejudice to any other remedies available to it under the law, recover such penalties by deduction from any deposit maintained by a licensed financial institution with the Central Bank.

Schedule 3 offences

180. (1) This section applies to an offence specified in Schedule 3.

(2) Where circumstances giving rise to a reasonable belief that a person has committed an offence specified in Schedule 3, the Central Bank may give notice in the form prescribed in Schedule 4 offering that person the opportunity to discharge any liability to conviction of that offence by payment of a fixed penalty under this section.

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

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

(5) Where a person makes a payment of a fixed penalty under this section it shall be made to the Central Bank and in any proceedings a certificate that payment of a fixed penalty was or was not made to the Central Bank by a date specified in the certificate shall, if the certificate purports to be signed by the Governor of the Central Bank, be admissible as evidence of the stated facts.

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

(a) specify the offence alleged;

(b) give such particulars of the offence as are necessary for giving reasonable information of the allegation; and

(c) state the period (whether 15 days or a longer period) during which, by virtue of subsection (4) proceedings will not be taken for the offence.

(7) In any proceedings for an offence to which this section applies, no reference shall be made after the conviction of the accused to the giving of any notice under this section or to the payment or non-payment of a fixed penalty unless in the course of the proceedings or in some document which is

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before the court in connection with the proceedings, reference has been made by or on behalf of the accused to the giving of such a notice, or, as the case may be, to such payment.

(8) In this section "proceedings" means any criminal proceedings in respect of the act or omission constituting the offence specified in the notice under subsection (2) and "convicted" shall be construed in like manner.

(9) The Minister upon the recommendation of Central Bank may, by Order make provision as to any matter incidental to the operation of this section, and in particular, any such Order may—

(a) prescribe the nature of the information to be furnished to the Central Bank along with payment;

(b) prescribe the arrangements for the Central Bank to furnish any information with regard to any payment pursuant to a notice under this section.

Working days of licensed financial institutions

181. (1) All licensed financial institutions in the Currency Union shall remain open for business during the hours and days, except public holidays, as may be agreed to by the Central Bank.

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

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

Regulations

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

(a) reports or other information to be supplied by persons to whom licences have been granted and any other matter associated with their use;

(b) records to be kept, returns and reports to be made to the Central Bank by persons who are appointed as auditors under the Act;

(c) character of the records to be kept by any licensed financial institution or licensed financial holding company and the form of the report and returns to be made by the licensed financial institution or licensed financial holding company and fixing the times when such reports and returns shall be made;

(d) forms necessary for the administration of this Act;

(e) the better implementation of Part 9;

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(f) the penalties that may be imposed for violations of Orders and Regulations made under this Act and the penalties to be imposed on summary conviction, but no such penalty shall exceed a fine of $50,000 or imprisonment of a term exceeding 12 months.

Prudential standards

183. The Central Bank may issue such prudential standards as may be required from time to time for giving effect to this Act, and without limiting the generality of the foregoing, may issue prudential standards respecting—

(a) policies, practices and procedures for evaluating—

(i) the quality of assets, including off-balance sheet items,

(ii) the adequacy of asset loss provisions, and

(iii) asset loss reserves;

(b) a system of asset classification, provisioning and write-offs;

(c) the method of valuation of collateral;

(d) rules for non-accrual of income on non-performing or impaired assets;

(e) the suspension and reversal of accrued interest;

(f) policies, procedures and systems for identifying, monitoring and controlling country risk, transfer risk, market risk, liquidity risk, interest rate risk, operational risk, and such other risks as the Central Bank shall specify;

(g) liquidity requirements and ratios;

(h) treatment of assets and investments;

(i) treatment of loans and other credit facilities;

(j) related party transactions;

(k) accounting policies;

(l) auditors;

(m) disclosure;

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

(o) corporate governance matters of a licensed financial institution and a licensed financial holding company to ensure prudent operations, including without limitation matters relating to—

(i) the quality the scope and nature of the duties of directors,

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(ii) executive compensation,

(iii) requirements for audit and other specific committees of the board,

(iv) responsibilities of key management personnel,

(v) risk management,

(vi) internal audit,

(vii) internal controls, and

(viii) compliance;

(p) capital adequacy requirements and capital ratios to be maintained by a licensed financial institution or a licensed financial holding company; and

(q) consolidated supervision.

Court's powers in legal claims against Central Bank

184. (1) In any court proceedings under this Act, the Court shall take into consideration the public interest.

(2) In considering the public interest, the Court shall have regard to—

(a) the critical importance of financial stability to the public interest;

(b) the importance of permitting the Central Bank to discharge its functions in an expeditious and efficient manner in the interest of maintaining financial stability.

(3) Any action under this Act by the Central Bank, official administrator or receiver that is the subject of any court proceedings shall be allowed to continue unrestricted notwithstanding the challenge or review before the Court.

(4) Where the Court is satisfied in any proceedings under this Act that—

(a) a remedy in damages is available to the person who seeks relief; and

(b) it would be just in all the circumstances, having regard to the public interest, to limit relief to an award of damages;

the Court shall limit relief in such proceedings to an award of damages.

Bridge financial institutions and asset management vehicles

185. (1) A Participating Government may establish a bridge financial institution for the purpose of acquiring and managing the assets and liabilities of a licensed financial institution that is subject to official administration or receivership under Part 9 or 10 for a period of up to 12 months.

(2) The Central Bank may grant an extension of the period referred to in subsection (1) for up to 4 consecutive periods of 12 months each.

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(3) The designation of a licensed financial institution as a bridge financial institution shall terminate if—

(a) the period under subsection (1) and any subsequent extensions under subsection (2) expire;

(b) the bridge financial institution—

(i) is sold to another person, or licensed financial institution or licensed financial holding company, that is not a bridge financial institution,

(ii) amalgamates with another licensed financial institution that is not a bridge financial institution; or

(c) satisfies the capital requirements of sections 44 and 46.

(4) Where the designation of a licensed financial institution as a bridge financial institution terminates pursuant to paragraph (3)(a) the bridge financial institution shall be placed into receivership and liquidated.

(5) The Central Bank may initiate receivership of a bridge financial institution in accordance with Part 10, prior to the expiration period identified in paragraph (3)(a).

(6) A bridge financial institution established under subsection (1) shall be licensed under this Act and shall be subject to all of the provisions of this Act, except the capital requirements of sections 44 and 46.

(7) A Participating Government may establish an asset management company for the purpose of acquiring, managing, and disposing of problem assets of a financial institution pursuant to Part 9 or Part 10.

(Act 11/2019, s. 45)

Participating Government financing of transfers of deposits

186. (1) In the event that the Central Bank initiates official administration or receivership of a licensed financial institution, a Participating Government may—

(a) if appropriate, provide financing in the amount necessary to facilitate the transfer of deposits held by the licensed financial institution; and

(b) in providing financing under paragraph (a), take into consideration—

(i) its fiscal and debt profile, and

(ii) the costs that would have been incurred in paying out depositors in a liquidation.

(2) Where a Participating Government provides such financing, the Participating Government shall assume the rights of depositors against the licensed financial institution and shall enjoy the priority conferred on depositors over other unsecured creditors in section 152.

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Immunity

187. The official administrator appointed under Part 9 and the receiver appointed under Part 10 shall be immune from legal process with respect to acts performed or omissions made by them in their official capacity in good faith, except where such acts or omissions are as a consequence of fraud, gross negligence or wilful recklessness on the part of the official administrator and the receiver.

Non-application of Aliens (Landholding Regulation)

188. The Aliens Landholding Regulation Act, do not apply to the licensed financial institutions under this Act.

Provisions applicable to credit institution, class of credit institution and financial group

189. The Minister, on the recommendation of the Central Bank may by Order prescribe that any provision of this Act, which on 18 April, 2016 does not apply to a credit institution, class of credit institution or financial group, shall apply with modifications, adaptations, qualifications and exceptions as may be specified in the Order to any credit institution, class of credit institution or financial group.

Amendment of Schedules

190. The Minister, on the recommendation of the Central Bank, may by Order published in the *Gazette* amend the Schedules.

[*]**Citation**[†]

191. This Act may be cited as the Banking Act, Revised Statutes of Anguilla, Chapter B12.

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[*] Repeal and Savings provision preceeding this section (as amended by Act 11/2019, s. 46) was deleted from the 2022 Revision of this Act since it is spent.

[†] The transitional provision has been deleted from the 2022 Revision of this Act since it is spent.

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SCHEDULE 1

(Sections 6(1), 7(5), 8(1), 35(1), 37(2))

FEES FOR LICENSED FINANCIAL INSTITUTION

Description	Non Refundable Application Fee	Initial Licence Fee	Annual Licence Fee
Branch - Foreign Financial Institution	$20,000	$120,000	$120,000
Local Licensed Financial Institution	$20,000	$80,000	$80,000
Licensed Financial Holding Company - Foreign	$20,000	$60,000	$60,000
Licensed Financial Holding Company - Local	$20,000	$40,000	$40,000
Branch – Local Licensed Financial Institution	-	-	$20,000
Additional Branch – Foreign Financial Institution	-	-	$30,000

(Act 11/2019, s. 47)

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SCHEDULE 2

(Section 1)

BUSINESS OF A FINANCIAL NATURE

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

Class		***Activities***
1.	Finance House or Finance Company	Hire purchase and instalment credit
2.	Credit Unions	Provision of basic savings (share accounts) for members and making loans to members.
3.	Merchant Bank	Floating and underwriting, stocks, Shares, and bonds Loans syndication Dealing in gold Providing consultancy and investment management services and corporate advisory services Acceptance credit Project Development Lease financing Foreign exchange dealing Inter-bank financing.
4.	Mortgage Institutions	Mortgage lending
5.	Trust Company	Managing Trust Funds Performing duties of trustees Executor or administrator and attorney Administration of Pension Funds Mortgage lending.
6.	Unit Trust	Providing facilities for the participation by persons as beneficiaries under a trust or other scheme, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatever
7.	Credit card business	Issuing payment, credit or charge cards and in co-operation with others including other financial institutions, operating a payment, credit or charge card plan.
8.	Financial Services	Providing financial services relating to future and contingent liabilities in relation to foreign exchange and commodities.
9.	Securities business	carrying on, within the meaning of the Securities Act, the business of securities exchange, clearing agency, securities depository, securities registry, underwriting, broker-dealer, limited service broker, custodian, an investment adviser, or a management company or trustee or custodian of a collective investment scheme.
10.	Insurance business	Carrying on the business of receiving proposals for or the issuing of policies of any class of insurance, or the collection or receipt of premiums on policies and the making of payments due under such policies, re-insurance, insurance underwriting, insurance brokerage, the issuing and carrying out of contracts to pay annuities, the effecting and carrying out of tontines.

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SCHEDULE 3

(Section 180)

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

Offence	Section	Fixed penalty
Carrying on banking business without a licence	2(5)	$250,000
Refusal to make relevant documents available for examination	3(5)	$2,500
Use of restricted words, names and practices	15(5)	$125,000
Failure to disclose transfer	30(1)	$1,000
Failure to disclose acquisition of interest	30(2)	$2,500
Failure to disclose and allow access to books and records	73(3)	$25,000
Providing information that is false in any material particular	73(4)	$25,000
Restriction on advertising likely to mislead the public	92(2)	$25,000
Failure to declare related interest	109	$5,000
Deceiving statements and obstruction of audit or authorised examination	110	$15,000
Failure of management to comply with the law	111	$7,500
Failure to assist the official administrator	128(5)	$7,500
Interference with receivers access to or control over office, books of accounts and other records	144(4)	$7,500

(Act 11/2019, s. 48)

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SCHEDULE 4

*(*Section 180(2))

NOTICE OF OPPORTUNITY TO DISCHARGE LIABILITY

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

_____
Governor
Eastern Caribbean Central Bank

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