Fourth Session Eighth Parliament Republic of Trinidad and Tobago

REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 15 of 2006

[L.S.]

AN ACT to amend the Financial Institutions Act, 1993

[Assented to 20th July, 2006]

ENACTED by the Parliament of Trinidad and Tobago as follows:— Enactment

1. This Act may be cited as the Financial Institutions (Amendment) Act, 2006. Short title

2. This Act comes into force on such date as the President may declare by Proclamation. Commencement

Interpretation
No. 18 of 1993

3. In this Act, unless the context otherwise requires "the Act" means the Financial Institutions Act, 1993.

Section 2 amended

4. (1) Section 2 of the Act is amended by inserting in appropriate alphabetical sequence the following definitions:

" "acquirer" means a financial entity that either alone or with an affiliate, relative or connected party, is entitled to exercise or control ten per cent or more of the voting power at any general meeting of a licensee or another company of which the licensee is a subsidiary;

"financial entity" means a licensee, a person registered under the Insurance Act, and any other entity that carries on a business that includes the provision of any financial service and includes the holding company of any such financial entity; Chap. 84:01

"financial services" includes without limitation, the business of banking, any business of a financial nature, the business of a credit union, the business of insurance, the business of securities and any business relating to pension funds;

"market share" means the proportion of the market for any financial service or subset thereof which is serviced or controlled by a financial entity or combination of financial entities;

"merger" means the amalgamation of two or more companies pursuant to sections 220 to 226 of the Companies Act.". No. 35 of 1995

(2) Section 2 of the Act is amended by deleting the words "twenty-five" in the definitions of " "Controlling shareholder" and "holding company" " and substituting therefor the word "twenty".

Section 22 amended

5. Section 22 of the Act is amended in paragraph (2)*(j)*, by deleting the words "not including a financial institution,".

Section 35A inserted

6. The Act is amended by inserting after section 35 the following new section:

"Disclosure of information

35A. (1) For the avoidance of doubt, no director, officer or employee of the Central Bank or person acting under the direction of the Central Bank shall disclose any information regarding the business or affairs of a licensee or any of its affiliates or information regarding a person dealing with a licensee, or person registered under the Insurance Act that is obtained, in the course of official duties, by the Central Bank or by a person acting under the direction of the Central Bank.

(2) Notwithstanding subsection (1), section 35 or 36 or any other law, the Central Bank, or a person authorized in writing by the Central Bank may disclose information referred to in subsection (1)—

(a) to any local or foreign regulatory agency or body that regulates financial entities for purposes related to that regulation; or

(b) to the Deposit Insurance Corporation for purposes related to its operations,

if the Central Bank is satisfied that the information will be treated as confidential by the agency or body to whom it is disclosed and used strictly for the purpose for which it is disclosed.".

Section 39 amended

7. Section 39 of the Act is amended—

(a) in subsection (1), by—

(i) inserting after the words "Notwithstanding any other law" the words ", but subject to section 39B,"; and

(ii) deleting the words "without a permit being first obtained from the Central Bank" and substituting the words "without first obtaining a written permit from the Central Bank";

(b) by inserting after subsection (1) the following new subsection:

"(1A) In the circumstances where a proposed controlling shareholder is an acquirer, section 39B shall prevail over this section.";

(c) in subsection (3), by inserting after the words "transmit to it" the word "written";

(d) by deleting subsection (4) and substituting the following new subsection:

"(4) A person who, on the coming into force of the Financial Institutions (Amendment) Act, 2006, holds shares that entitle him to exercise or control twenty per cent or more of the voting power at any general meeting of a licensee, is deemed to hold a permit under the Act for such shares.";

(e) in subsection (5), by inserting after the words "the Central Bank shall take into account," the words "without limitation the criteria contained in the Second Schedule and in particular";

(f) by inserting after subsection (5) the following new subsection:

"(5A) It shall be a condition of every permit granted or deemed to be granted under this section that the controlling shareholder shall—

(a) provide the Central Bank with such relevant information as the Central Bank may from time to time require; and

(b) comply with such terms and conditions as may be specified in the permit.";

(g) in subsection (6), by—

(i) inserting after the word "permit" in line 4, the words "or where a person holds shares that require him to obtain a permit and no permit is obtained";

(ii) inserting after the word "notified" in line 5, the words "in writing";

(iii) inserting after the word "steps" in line 6, the words "in such time"; and

(iv) deleting the words "dispose of such shares as are in excess of twenty-five per cent of the issued shares" and substituting therefor the words "reduce his entitlement to exercise or control twenty per cent or more of the voting power";

(h) inserting a new subsection (6A) as follows:

"(6A) Where a controlling shareholder is notified that he is no longer fit and proper he may, within the period of fourteen days commencing the day after which the notice is given, make written representations to the Central Bank which shall take such representations into account in determining whether to withdraw or vary the notice."; and

(i) in subsection (9), by deleting the words "subsection (7)" and substituting therefor the words "subsection (8)".

Sections 39A and 39B inserted

8. The Act is amended by inserting after section 39 the following new sections:

"Mergers

39A. (1) Notwithstanding any other law, a merger shall not take place where one of the merging companies is a licensee or the holding company of a licensee, without the prior approval in writing of—

(a) the Central Bank pursuant to subsection (6); or

(b) the Minister pursuant to subsection (9).

(2) An application for approval under subsection (1) shall be made in writing, jointly, by all the companies proposing to merge, and submitted to the Central Bank together with a copy of the proposed amalgamation agreement referred to in section 221 of the Companies Act, where applicable, and such further information as the Central Bank may require.

(3) A proposed amalgamation agreement submitted to the Central Bank pursuant to subsection (2), shall not be amended without the prior written approval of the Central Bank.

(4) In determining whether or not to approve a proposed merger, the Central Bank shall take into account such relevant matters including, without limitation—

(a) the terms of the proposed amalgamation agreement and any amendments thereto;

(b) the criteria set out in the Second Schedule as they will apply to the proposed merged company;

(c) the size and concentration of economic power in the proposed merged company; and

(d) whether the business or a part of the business of a licensee—

(i) that is one of the merging companies; or

(ii) of which a merging company is the holding company,

has failed or is being conducted in an unlawful or unsound manner or is otherwise in an unsound condition.

(5) In considering the criteria referred to in subsection (4)*(c)*, the Central Bank shall take into account, without limitation—

(a) the size of the proposed merged company in terms of any combined market share that will be serviced or controlled by the proposed merged company in Trinidad and Tobago;

(b) the size of any of the affiliates of the proposed merged company; and

(c) whether such size and concentration will prevent or lessen substantially, or is likely to prevent or lessen substantially, competition in the financial services industry in Trinidad and Tobago.

(6) Unless subsection (7) applies, after due consideration of the matters referred to in subsection (4), the Central Bank shall—

(a) approve the proposed merger;

(b) refuse to approve the proposed merger; or

(c) approve the proposed merger subject to such conditions, requirements or restrictions as the Central Bank deems appropriate.

(7) Where the percentage of any combined market share in Trinidad and Tobago of the proposed merged company and any financial entity that will be affiliated with it would exceed forty per cent, the Central Bank shall forward to the Minister the application referred to in subsection (2), together with its recommendation, the proposed amalgamation agreement and any other relevant information.

(8) In determining whether or not to approve the proposed merger, the Minister shall consult with the Central Bank and shall take into account the public interest, which shall include, without limitation—

(a) the interests of the financial services industry in Trinidad and Tobago; and

(b) the interests of consumers of financial services in Trinidad and Tobago.

(9) After due consideration of the matters referred to in subsection (8), the Minister shall—

(a) approve the proposed merger;

(b) refuse to approve the proposed merger; or

(c) approve the proposed merger subject to such conditions, requirements or restrictions as he deems appropriate.

(10) Where the Central Bank or the Minister refuses to approve the proposed merger pursuant to subsection (6)*(b)* or (9)*(b)* as applicable, the reasons for the decision shall be sent to the applicants referred to in subsection (2).

(11) A copy of any approval or refusal to approve the proposed merger by the Central Bank under subsection (6) or the Minister under subsection (9), shall be sent forthwith to the Registrar under the Companies Act.

(12) Where a proposed merger has been approved by the Central Bank under subsection (6) or by the Minister under subsection (9), from and after the date that the merger takes effect pursuant to the Companies Act—

(a) subject to paragraph *(b)*, a depositor of a licensee that was one of the merging companies shall continue to enjoy deposit insurance coverage under section 44N(2) of the Central Bank Act for a period of two years from the date that the merger takes effect, as if the merger had not taken place;

(b) the Minister may, by Order, on the recommendation of the Central Bank, extend the period of two years referred to in paragraph *(a)*; and

(c) the Minister may by Order, on the recommendation of the Central Bank, exempt a merged company that is a licensee from complying with the provisions of section 22(2)*(f)*, *(h)*, *(i)* and *(j)* of the Act, subject to such terms and conditions as may be specified in the Order.

(13) This section shall not apply to a merger that was completed prior to the date that this section comes into force.

(14) A person who contravenes subsection (1) or (3) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and

in the case of a continuing offence to a fine of ten thousand dollars for each day during which the offence continues.

(15) A purported merger done in contravention of this section shall be null and void, but shall be without prejudice to the accrued rights of any other *bona fide* party without notice.

Aquisitions

39B. (1) A financial entity shall not become an acquirer of a licensee or of the holding company of a licensee without obtaining a permit issued by—

(a) the Central Bank pursuant to subsection (5); or

(b) the Minister pursuant to subsection (8).

(2) An application for a permit under subsection (1), shall be made in writing by the proposed acquirer and submitted to the Central Bank together with such further information as the Central Bank may require.

(3) In determining whether or not to issue a permit to the proposed acquirer, the Central Bank shall take into account such relevant matters including, without limitation—

(a) the criteria set out in the Second Schedule;

(b) the size and concentration of economic power in the combination of the proposed acquirer and the licensee or the holding company of the licensee; and

(c) whether the business or a part of the business of the licensee, or the holding company of the licensee has failed or is being conducted in an unlawful or unsound manner or is otherwise in an unsound condition.

(4) In considering the criteria referred to in subsection (3)*(b)*, the Central Bank shall take into account, without limitation—

(a) the combined market share in Trinidad and Tobago of the licensee and any financial entity affiliated with the licensee, the proposed acquirer and any financial entity that is affiliated with the proposed acquirer; and

(b) whether the size of, and concentration of economic power in, the combination of the proposed acquirer and the licensee will prevent or lessen substantially, or is likely to prevent or lessen substantially, competition in the financial services industry in Trinidad and Tobago.

(5) Unless subsection (6) applies, after due consideration of the matters referred to in subsection (3), the Central Bank shall—

(a) issue a permit to the proposed acquirer;

(b) refuse to issue a permit to the proposed acquirer; or

(c) issue a permit to the proposed acquirer subject to such conditions, requirements or restrictions as the Central Bank deems appropriate.

(6) Where the combined market share in Trinidad and Tobago of the licensee and any financial entity affiliated with the licensee, the proposed acquirer and any financial entity that is affiliated with the proposed acquirer would exceed forty per cent, the Central Bank shall forward to the Minister the application referred to in subsection (2), together with its recommendation and any other relevant information.

(7) In determining whether or not to issue a permit to the proposed acquirer, the Minister shall consult with the Central Bank and shall take into account the public interest, which shall include, without limitation—

(a) the interests of the financial services industry of Trinidad and Tobago; and

(b) the interests of consumers of financial services in Trinidad and Tobago.

(8) After due consideration of the matters referred to in subsection (7), the Minister shall—

(a) issue a permit to the proposed acquirer;

(b) refuse to issue a permit to the proposed acquirer; or

(c) issue a permit to the proposed acquirer containing such conditions, requirements or restrictions as the Minister deems appropriate.

(9) Where the Central Bank or the Minister refuses to issue a permit to a proposed acquirer pursuant to subsection (5)*(b)* or (8)*(b)* as applicable, the reasons for the decision shall be sent to the applicant.

(10) The provisions of section 39(2), (3) and (5) to (11) shall apply to this section *mutatis mutandis*.

(11) A person who became an acquirer prior to the day that this section comes into force is deemed to have obtained a permit under this section.

(12) A person who contravenes any requirement imposed under subsection (1), is liable on summary conviction to a fine of one hundred thousand dollars and in the case of a continuing offence to a fine of ten thousand dollars for each day during which the offence continues.

9. Section 53 of the Act is amended—

(a) in subsection (2), by—

(i) deleting the comma at the end of paragraph *(g)* and substituting a semicolon; and

(ii) inserting after paragraph *(g)* the following new paragraphs:

"*(h)* to deem a controlling shareholder no longer fit and proper under section 39(6);

(i) to require any person to reduce his entitlement to exercise or control twenty per cent or more of the voting power of a licensee or another company of which the licensee is a subsidiary under section 39(6);

(j) to refuse an application for a merger under section 39A(6)*(b)*;

(k) to refuse to issue a permit to an acquirer under section 39B(5)*(b)*;

(l) to deem an acquirer no longer fit and proper under section 39B(10); and

(m) to require any person to reduce his entitlement to exercise or control ten per cent or more of the voting power of a licensee or another company of which the licensee is a subsidiary under section 39B(10).";

(b) by inserting a new paragraph (2A) as follows:

" (2A) Any person who is aggrieved by a decision of the Minister—

(a) to refuse an application for a merger under section 39A(9)*(b)*; or

(b) to refuse to issue a permit to an acquirer under section 39B(8)*(b)*,

may appeal against the decision to the Appeal Board.".

Second Schedule amended

10. The Second Schedule to the Act is amended—

(a) by deleting the reference to sections in the heading and substituting the following new reference:

"{Sections 10(1), 12(3), 20(1)*(f)*, 39(5) and (6), 39A, 39B and 53(4)*(a)*}";

(b) in the heading at item A, by inserting after the words "controlling shareholders" the word "acquirers"; and

(c) by inserting the following new item:

"G. Other matters for consideration:

(1) The nature and sufficiency of the financial resources of the proposed controlling shareholder or proposed acquirer as a source of continuing financial support for the licensee.

(2) the soundness and feasibility of the proposed controlling shareholder or proposed acquirer for the future conduct and development of the licensee's business.

(3) The business record and experience of the proposed controlling shareholder or the proposed acquirer.

(4) The interests of the financial services industry in Trinidad and Tobago.".

Passed in the Senate this 23rd day of May, 2006.

Acting Clerk of the Senate

Passed in the House of Representatives this 14th day of July, 2006.

Acting Clerk of the House