FINANCIAL INSTITUTIONS ACT

CHAPTER 79:09

Act
26 of 2008

Amended by
17 of 2012
*4 of 2017
*4 of 2018
*19 of 2018
12 of 2019
*3 of 2020
*10 of 2020
*25 of 2020

(*See Notes on pages 2 and 3)

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Note on Subsidiary Legislation

The following Subsidiary Legislation have been omitted:

A. Vesting Orders made under section 89; and

B. Notifications issued by the Central Bank under section 79(3).

For references to the above Subsidiary Legislation *see* the latest edition of the Consolidated Index of Acts and Subsidiary Legislation.

Note on section 130

Section 57(1) of the Financial Institutions Act, 1993 (Act No. 18 of 1993) repealed the Banking Act, No. 26 of 1964 and the Financial Institutions (Non-Banking) Act, No. 52 of 1979 but saved in subsection (2) thereof, all subsidiary legislation made under these Acts.

Note on section 52(2)*(b)*

Section 52(2)*(b)* had not yet come into operation on the date of the revision of this Act. (*See* Section 131).

Note on Act No. 4 of 2017

The amendments made to this Act by Act No. 4 of 2017 took effect on 6th July 2017 by LN 63/2017.

Note on Act No. 4 of 2018

The amendments made to this Act by Act No. 4 of 2018 took effect on 1st January 2021 by LN 369/2020.

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Note on Act No. 19 of 2018

The amendments made to this Act by Act No. 19 of 2018 took effect on 1st January 2019.

Note on Act No. 3 of 2020

The amendments made to this Act by Act No. 3 of 2020 took effect on 1st January 2021 by LN 371/2020.

Note on Act No. 10 of 2020

The amendments made to this Act by Act No. 10 of 2020 took effect on 11th May 2020 by LN 92/2020.

Note on Act No. 25 of 2020

The amendments made to this Act by Act No. 25 of 2020 took effect on 22nd December 2020 by LN 409/2020.

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FINANCIAL INSTITUTIONS ACT

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CHAPTER 79:09

FINANCIAL INSTITUTIONS ACT

26 of 2008.

An Act to provide for the regulation of banks and other financial institutions which engage in the business of banking and business of a financial nature, for matters incidental and related thereto and for the repeal of the Financial Institutions Act, 1993.

Commencement.

[19TH DECEMBER 2008]

Preamble.

WHEREAS it is enacted *inter alia*, by subsection (1) of section 13 of the Constitution that an Act to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any such Act does so declare, it shall have effect accordingly:

And whereas it is provided by subsection (2) of the said section 13 of the Constitution that an Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the Financial Institutions Act.

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2. (1) In this Act—

Interpretation. [17 of 2012 4 of 2017 4 of 2018 12 of 2019 3 of 2020].

"abridged financial statements" means a summary of financial statements, the format and contents of which are agreed to in writing between the Central Bank and the Institute of Chartered Accountants of Trinidad and Tobago;

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

"advertisement" includes every form of advertising whether in a publication, or by display or notices, or by means of circulars or other documents, or by an exhibition of photographs or cinematographic films, or by way of sound broadcasting, television, or telephonic, digital or electronic communication, but does not include a prospectus as defined in the Companies Act, issued by a company, and references to the issue of an advertisement shall be construed accordingly;

Ch. 81:01.

"affiliate", in relation to a given company ("C"), means—

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

(i) a holding company of C;

(ii) a holding company of a holding company referred to in subparagraph (i);

(iii) a subsidiary of a holding company referred to in subparagraph (i) or (ii);

(iv) a subsidiary of C; or

(v) a subsidiary of a subsidiary referred to in subparagraph (iv); and

(b) where company C is a licensee, any company over which the licensee and any connected party or connected party group of the licensee has control,

and the word "affiliation" shall be construed accordingly;

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"assigned capital" in relation to a licensed foreign institution means the amount of cash or approved securities deposited with the Central Bank;

"attorney" means the holder of a power of attorney;

"bank" means any institution which carries on business of banking and business of a financial nature;

"banking business" or "business of banking" has the meaning assigned to that expression in section 16(2);

"Board" means the Board of Directors of the Central Bank as defined in the Central Bank Act; Ch. 79:02.

"Board of Inland Revenue" means the Board of Inland Revenue established by section 3 of the Income Tax Act; Ch. 75:01.

"borrower group" includes—

(a) a family group comprising an individual and his spouse, parents, children, brothers or sisters 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 a controlling interest;

(c) a company in which the family group indicated in paragraph *(a)* has a significant interest;

(d) a group of companies which has a common significant shareholder;

(e) a group of companies which has a common controlling interest;

(f) a group of persons in which the creditworthiness, ability to generate funds or the future viability of each, depends on one or other members of the group;

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

(h) two or more borrowers, whether individuals, companies or unincorporated bodies, holding credit exposures from the same financial

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institution and any of its subsidiaries, whether on a joint or separate basis, who, in the opinion of the Inspector, are interrelated through common ownership, control or management;

(i) any other group of persons whose relationship with each other is such that it may, in the opinion of the Central Bank, lead to a conflict of interest or other regulatory risk;

"business of a financial nature" has the meaning assigned to that expression in section 17(2);

"business of securities" means the business of brokering and dealing in securities as conducted by a broker-dealer as defined in the Securities Act; Ch. 83:02.

"capital base" means the total of paid-up share capital, statutory reserve fund, share premium account, retained earnings, and any other capital account approved by the Central Bank;

"Central Bank" means the Central Bank of Trinidad and Tobago established under the Central Bank Act; Ch. 79:02.

"chief executive officer" means a person who, either alone or jointly with one or more other persons is responsible under the immediate authority of the Board of Directors of an institution for the conduct of the business of that institution, whether or not the individual is formally designated as a chief executive officer;

"company" means an incorporated body wherever and however incorporated;

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

(a) exercise more than fifty per cent of the voting rights at any meeting of shareholders of a licensee, company or unincorporated body;

(b) elect a majority of the directors of a licensee, company or unincorporated body;

(c) secure that the business and affairs of a licensee, company or unincorporated body is conducted in accordance with his wishes; or

(*d*) exercise dominant influence over the conduct of the business and affairs of a licensee, company or unincorporated body,

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

"counterparty" for the purpose of measuring a credit exposure means the borrower or customer, the person guaranteed, the issuer of a security in the case of an investment in a security, or the party with whom the contract is made or obligor in the case of a derivative contract;

"Court" means the High Court of Justice of Trinidad and Tobago;

"credit exposure" means the amount at risk arising through the extension of credit or funds by a licensee and includes, without limitation—

(*a*) credit facilities, investments including equities, participations, guarantees and acceptance;

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

(*c*) contingent liabilities arising in the normal course of business, and which would arise from the drawing down in full of undrawn advised facilities, whether revocable or irrevocable, conditional or unconditional, that the licensee has committed itself to provide;

"credit facilities" includes loans, advances, lines of credit, commitment letters, stand-by facilities, letters of credit and any other facilities or arrangements whereby a licensee agrees to provide funds, financial guarantees or commitments to a customer, or the licensee undertakes on behalf of a customer, a financial liability to another person;

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"declared agreement" means the 1989 TIEA as defined in section 5 of the Tax Information Exchange Agreements (United States of America) Act and the IGA as defined in section 9 of the Tax Information Exchange Agreements (United States of America) Act.

Ch. 76:51.
4 of 2017.

"deposit" means a sum of money paid to a person, whether or not evidenced by any entry in a record of the person receiving the sum of money, on terms under which the sum of money will be repaid or transferred to another account, with or without interest or a premium, either on demand or at a time or in circumstances agreed to by or on behalf of the depositor and that person;

"electronic money" means monetary value represented by a claim on the issuer, which is—

(a) stored on an electronic device;

(b) issued on receipt of funds of an amount not less in value than the monetary value issued; and

(c) accepted as a means of payment by persons other than the issuer,

so however that the funds referred to in *(b)* above shall not be treated as a deposit under this Act;

"financial entity" means a licensee, a person registered under the Insurance Act, and any company or unincorporated body whether incorporated or constituted in Trinidad and Tobago or elsewhere that carries on a business that includes the provision of any financial service and includes the holding company of any such financial entity;

Ch. 84:01.

"financial group" means a related group of companies whose activities are limited to any one or more of the following:

(a) the business of banking;

(b) business of a financial nature;

(c) insurance business or insurance brokerage;

(d) the business of brokering and dealing in securities;

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(e) subject to the approval of the Central Bank, the provision of necessary services in support of the activities of the group,

and includes a financial holding company and any other holding company administering its holdings as set out in paragraphs *(a)* to *(e)*;

"financial holding company" means a company required to obtain a permit in accordance with sections 67(4) and 68(2);

"financial institution" or "institution" means a company which carries on or used to carry on all or any aspects of banking business or business of a financial nature;

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

"foreign financial institution" means a financial institution incorporated in a jurisdiction other than Trinidad and Tobago which is authorised to carry on banking business or business of a financial nature in Trinidad and Tobago;

"former licensee" means a company which was a former licensed institution whether under this Act or any other Act repealed by this Act;

"Governor" means the Governor of the Central Bank of Trinidad and Tobago;

"holding company" means a company that owns more than fifty per cent of the voting shares in another company;

"independent director" has the meaning assigned to that expression under section 36(6)*(c)*;

"Inspector" means the Inspector of Financial Institutions appointed under section 7 and includes any person appointed to act temporarily for him;

"large exposure" means the aggregate of all credit exposures to a person or a borrower group, which amounts to twenty-five per cent or more of the capital base or assigned capital of a licensee;

"licence" means a licence issued under this Act;

"licensed domestic institution" means a company that is incorporated or continued in Trinidad and Tobago under the Companies Act and is duly licensed under this Act;

Ch. 81:01.

"licensed foreign institution" means a foreign financial institution that is authorised to carry on business or business of a financial nature in Trinidad and Tobago through licensed branches;

"licensee" or "licensed institution" means a licensed domestic institution or a licensed foreign institution and includes a financial institution which is deemed to be licensed under this Act;

"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 and includes indicators such as balance sheet totals, premiums, loans portfolio or subset of the loans portfolio such as credit card loans;

"merger" means the amalgamation of two or more companies pursuant to sections 220 to 226 of the Companies Act;

"Minister" means the Minister to whom responsibility for finance is assigned;

"officer" means—

(a) in relation to a company or unincorporated body, a chief executive officer, chief operating officer, president, vice-president, corporate secretary, treasurer, chief financial officer, chief accountant, chief auditor, chief investment officer, chief compliance officer or chief risk officer and 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;

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(b) any other individual who performs functions for the company or other unincorporated body similar to those performed by a person referred to in paragraph *(a)*, whether or not the individual is formally designated as an officer, and includes a principal representative appointed pursuant to section 18(2);

"oversight", in relation to a payment system, means a public policy activity principally intended to ensure the safety, soundness, reliability and efficiency of the payment system in order to promote the effectiveness of monetary policy, contribute to the stability of the financial system by limiting the risk of systemic crises, and ensure the preservation of public confidence in money, money transfer mechanisms and the use of payment instruments;

"ownership interests" means the units of value, however designated, into which an unincorporated body is divided;

"payment card business" means the issuing of payment, credit, debit or charge cards in co-operation with other persons including other financial institutions, operating a payment, credit or charge card plan, but does not include the issuance of electronic money;

"payment instrument" means every paper-based electronic or other means of effecting the transfer or withdrawal of money;

"payment system" means any organised set of infrastructure, persons, procedures and rules allowing the transfer of money, including by means of payment instruments, or the discharge of obligations on a gross or net basis;

"prescribed" means prescribed by any written law;

"prescribed liabilities" means such liabilities as may, by notice, from time to time be specified by the Central Bank;

"principal representative" means in the case of a branch of a licensed foreign institution, the person appointed pursuant to section 18(2), and in the case of a representative office of

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a licensed foreign institution, the person appointed pursuant to section 50(7);

"proliferation financing" means the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, transshipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials, including both technologies and dual-use goods used for non-legitimate purposes, in contravention of any written law or, where applicable, international obligations;

"prudential criteria" means the criteria and standards established under this Act, for the purpose of setting limits and constraints on licensees for the protection of depositors and potential depositors and for ensuring the safety and soundness of the system;

"related group" means—

(a) two or more companies with the same controlling shareholder or holding company;

(b) a company in which any of the companies referred to in paragraph *(a)* has a significant shareholding;

(c) the direct and indirect subsidiaries of the companies referred to in paragraph *(a)*;

(d) a company in which any of the companies referred to in paragraph *(c)* has a significant shareholding; and

(e) the controlling shareholder or holding company referred to in paragraph *(a)*;

"relative" in respect of any person means the spouse, a cohabitant as defined in the Cohabitational Relationships Act, parent, grandparent, brother, sister, children, the children of a cohabitational relationship, adopted children and step-children of the person;

Ch. 45:55.

"representative office" has the meaning assigned in section 50(2);

"security" has the meaning assigned to it in the Securities Act;

Ch. 83:02.

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"significant shareholder" means a person who either alone or with one or more affiliates or relatives or connected parties is entitled, whether by agreement or otherwise, to directly or indirectly exercise twenty per cent or more of the voting power at any general meeting of the licensee and the terms "significant" and "significant interest" shall be construed accordingly;

"subsidiary" means a company, fifty per cent or more of the shares of which are held, directly or indirectly, by another company;

"tangible asset" means real property or personal property, such as buildings and machinery.

Ch. 81:01.

(2) For the purposes of this Act, "stated capital" has the meaning assigned to it in the Companies Act.

Meaning of "connected party" and "connected party group".

3. (1) For the purposes of this Act, a person is a connected party of a licensee where the person is—

(a) a financial holding company, holding company, controlling shareholder or significant shareholder of the licensee;

(b) a person who holds ten per cent or more of any class of shares of the licensee or of a person referred to in paragraph *(a)*;

(c) an affiliate of the licensee;

(d) an affiliate of a person referred to in paragraph *(a)*;

(e) a director or officer of the licensee or of a person referred to in paragraph *(a)*;

(f) a relative of a director or officer of the licensee; and

(g) a company or unincorporated body that is controlled by a person referred to in paragraphs *(e)* and *(f)*.

(2) For the purposes of this Act, "connected party group" of a licensee means—

(a) in the case where a connected party is a company referred to in subsection (1)*(a)*—

(i) the connected party;

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(ii) a connected party who is an affiliate of the connected party referred to in subparagraph (i), where applicable; and

(iii) a connected party that is an unincorporated body controlled by any connected party referred to in subparagraphs (i) and (ii);

(b) in the case where the connected party is a director or officer referred to in paragraph (1)*(e)*—

(i) the connected party;

(ii) a connected party who is a relative of the connected party referred to in subparagraph (i); and

(iii) a connected party that is a company or unincorporated body controlled by any connected party referred to in subparagraphs (i) and (ii).

(3) For the purposes of this Act, in addition to the connected parties referred to in subsection (1) and the connected party groups referred to in subsection (2), the Inspector may determine that any other person is a connected party of a licensee or that any other group of persons is a connected party group of a licensee, where in the opinion of the Inspector, their relationship may create a conflict of interest or may pose regulatory risk.

Restriction on the use of certain titles.

4. (1) Except with the approval of the Minister, a company or foreign financial institution shall not be licensed under this Act if its name or description includes the words “central bank” or “reserve bank”.

(2) Except with the approval of the Central Bank, a person other than a bank shall not trade or carry on any business or undertaking under any name or title of which the word “Bank” or any variation of the word forms part.

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PART II

GENERAL PROVISIONS CONCERNING REGULATION, SUPERVISION, GUIDELINES AND PENALTIES

Central Bank

Objectives of supervision. [4 of 2018].

5. (1) The Central Bank shall be responsible for the general administration of this Act, the supervision of licensees and the oversight of payment systems, and shall have the powers and duties conferred on it by this Act and the Central Bank Act.

Ch. 79:02.

(2) The primary objective of the Central Bank, in respect of licensees shall be to maintain confidence in, and promote the soundness and stability of, the financial system in Trinidad and Tobago.

(3) Other objectives of the Central Bank, in respect of licensees are to—

(a) promote the existence of efficient and fair banking and financial services markets;

(b) supervise licensees to determine whether they are in sound financial condition;

(c) maintain an appropriate level of protection for depositors of licensees; and

(d) ensure compliance of licensees with legislation to combat money laundering and terrorist financing.

(4) The Governor shall keep the Minister informed of all developments and activities which affect the business of banking and the business of a financial nature in Trinidad and Tobago.

(5) The Governor shall provide a written report to the Minister on an annual basis with respect to the performance of the Central Bank in meeting its objectives under this Act.

Inconsistency.

Ch. 79:02.

6. In the case of any inconsistency or conflict between this Act and any other written law, with the exception of the Central Bank Act, the provisions of this Act shall prevail and take precedence over such other law, unless expressly provided to the contrary in this Act or such other written law.

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Inspector

Appointment of Inspector.

7. (1) The President shall, upon the recommendation of the Governor, appoint a fit and proper person to be Inspector of Financial Institutions who shall be an officer of the Central Bank.

(2) The Inspector shall be appointed to hold office for such period as the President may fix in the instrument of appointment, which term may be extended until his successor is appointed.

(3) The Inspector shall be paid such remuneration and allowances as may be determined by the Central Bank.

(4) Subject to this Act and any other written law, the Inspector, while holding office, shall not occupy any other office or employment, whether remunerated or not, but the Inspector, with the approval of the Central Bank, may become a director or member of the Board of any international bank, monetary authority or other agency to which the government subscribes, contributes or gives support or become a director of any company, corporation or other body in which the Central Bank holds stock, shares or otherwise participates and may be appointed by the Central Bank to hold an office including the office of receiver or manager, or to perform any function under section 44D of the Central Bank Act.

Ch. 79:02.

(5) Where a person, at the time of his appointment as Inspector or his appointment pursuant to subsection (9) is a shareholder, whether directly or indirectly, in any licensee, he shall notify the Governor forthwith in writing of such shareholding and the Governor may, if he thinks fit, require such person to dispose of any such shareholding or interest within a specified time.

(6) The President may, upon the recommendation of the Governor terminate the appointment of the Inspector if he—

(a) becomes of unsound mind or incapable of carrying out his duties;

(b) becomes bankrupt or compounds with, or suspends payment to, his creditors;

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(*c*) is convicted of an offence and sentenced to a term of imprisonment;

(*d*) is convicted of an offence involving dishonesty;

(*e*) is guilty of misconduct in relation to his duties;

(*f*) contravenes any provision of any prescribed Code of Ethics in respect of which he is liable to termination of his appointment; or

(*g*) fails to carry out any of the duties or functions conferred or imposed on him under this Act.

(7) The Inspector may resign his office by giving to the President six months notice in writing, or such shorter period as the President may agree to accept, of his intention to do so, and at the expiration of such period he shall be deemed to have resigned his office.

(8) Where the Inspector ceases to act as Inspector, notice of that fact shall be published in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago.

(9) In the event of the absence or inability of the Inspector from whatever cause arising, to perform his duties, or where the office of Inspector is vacant, the Governor may appoint any qualified person to act temporarily in his place.

(10) A person appointed under this section shall not borrow money from any licensee unless he obtains the permission of the Governor to do so.

Confidentiality

Prohibition against disclosure. [4 of 2017 4 of 2018].

8. (1) 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 depositor, customer or other person dealing with a licensee, that is obtained in the course of official duties.

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

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

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

(c) the Financial Intelligence Unit established under the Financial Intelligence Unit of Trinidad and Tobago Act,

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.

(2A) The Central Bank may disclose information referred to in subsection (1) to the Board of Inland Revenue in order to give effect to the Tax Information Agreements (United States of America) Act.

(2B) The information referred to in subsection (1) may be utilised by the Central Bank as required to give effect to its powers under the Tax Information Exchange Agreements (United States of America) Act. [4 of 2017].

(3) Further to subsections (2), (2A) and (2B), the Central Bank may enter into a Memorandum of Understanding with the Board of Inland Revenue, the Deposit Insurance Corporation, the Financial Intelligence Unit, or any local or foreign regulatory agency or body that regulates financial entities with respect to sharing information, but the absence of such Memorandum of Understanding shall not prevent the disclosure of information by the Central Bank to such person.

(4) In giving effect to subsection (3), the Central Bank shall have regard to the international standards for the supervision of international banking groups and their cross-border establishments referred to in Fifth Schedule.

Fifth Schedule.

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(5) A director, officer or employee of the Central Bank or any person acting under the direction of the Central Bank may disclose, at such times and in such manner as it deems appropriate, such information obtained by the Central Bank under this Act as the Central Bank considers ought to be disclosed for the purposes of the analysis of the financial condition of a financial institution and that—

(a) is contained in any return, statement or other document required to be filed with the Central Bank pursuant to this Act and the Regulations and Guidelines made under this Act; or

(b) has been obtained as a result of any industry-wide or sectoral survey conducted by the Central Bank in relation to an issue or circumstance that could have an impact on the financial condition of financial institutions generally or the financial system of Trinidad and Tobago.

(6) Where the Central Bank determines that the disclosure of further information concerning a licensee in addition to that referred to in subsection (5) would be in the best interests of—

(a) the financial system of Trinidad and Tobago; or

(b) the depositors, other customers, creditors or shareholders of such licensee,

the Central Bank or any person acting under the direction of the Central Bank may disclose such information by publication in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago or by any other means that the Central Bank considers appropriate.

(7) Nothing in this section authorises the Central Bank or any person acting under the direction of the Central Bank to disclose information about a particular depositor or creditor of a licensee, except where such disclosure is required by any written law or ordered by the Court.

(8) This section does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources or to information in the form

of a summary or collection of information so framed as not to enable information relating to any particular individual to be ascertained from it.

(9) No action shall lie against the Central Bank or any person acting under the direction of the Central Bank for the disclosure of information authorised under this section.

(10) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and to imprisonment for two years.

Regulations, Guidelines and Penalties

9. (1) The Minister may, after receiving recommendations from the Central Bank, make Regulations for— Regulations.

(a) any matter required to be prescribed under this Act;

(b) the transfer of funds by electronic means;

(c) prudential criteria;

(d) the oversight of payment systems;

(e) generally giving effect to the provisions of this Act.

(2) Regulations made under subsection (1) shall be subject to a negative resolution of Parliament.

(3) Regulations made under subsection (1)*(c)* may include, but shall not be limited to—

(a) capital adequacy and solvency requirements and capital ratios in relation to licensees, financial holding companies and members of financial groups;

(b) liquidity requirements and ratios;

(c) treatment of credit exposures;

(d) treatment of assets and investments;

(e) treatment of interest;

(f) transactions with connected parties and connected party groups;

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(g) risks relating to self dealing;

(h) profiting from insider information;

(i) risks relating to foreign exchange transactions, sectoral and business risks and off balance sheet transactions;

(j) reporting requirements for large deposits;

(k) reporting requirements for transactions referred to in paragraph *(f)*;

(l) other reporting requirements;

(m) information required in published financial statements;

(n) new financial instruments;

(o) relationships with holding companies controlling shareholders, significant shareholders, subsidiaries and other affiliates as they may affect the capital position of the licensee; and

(p) issuing electronic money.

(4) Capital adequacy and solvency requirements and capital ratios shall apply—

(a) to a licensee on an individual basis, and on a consolidated basis to include where applicable, all the domestic and foreign—

(i) subsidiaries of the licensee;

(ii) companies in which the licensee is a significant shareholder; and

(b) on a consolidated basis, to a financial holding company and all of the domestic and foreign members of the financial group that the financial holding company controls.

(5) Regulations pertaining to the oversight of payment systems may include but shall not be limited to—

(a) access regimes;

(b) operating rules;

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(c) standards of compliance for payment systems;

(d) standards of compliance for participants to the payment systems;

(e) risk-control and risk-limitation mechanisms;

(f) disclosure requirements; and

(g) procedures for the processing of applications.

(6) A person who contravenes Regulations made under this section commits an offence and where the person—

(a) is an individual, the person is liable on summary conviction to a fine of five million dollars and to imprisonment for five years and in the case of a continuing offence to a fine of five hundred thousand dollars for every day on which the offence continues;

(b) is a company—

(i) every director and officer of such company is liable on summary conviction to a fine of five million dollars and to imprisonment for five years and in the case of a continuing offence to a fine of five hundred thousand dollars for every day on which the offence continues; and

(ii) the company is liable on summary conviction to a fine of five million dollars and in the case of a continuing offence to a fine of five hundred thousand dollars for every day on which the offence continues.

Guidelines. [4 of 2017 12 of 2019].

10. (1) The Central Bank may issue guidelines on any matter it considers necessary to—

(a) give effect to this Act;

(b) enable the Central Bank to meet its objectives;

(c) aid compliance with the Proceeds of Crime Act, the Anti-Terrorism Act, Economic Sanctions

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Ch. 12:07.

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Act or Orders made thereunder as they relate to proliferation financing, or any other written law relating to the prevention of money laundering, combating the financing of terrorism and proliferation financing;

(d) regulate the market conduct of licensees; and

(e) to give effect to a declared agreement.

(2) Guidelines made under subsection (1)*(e)* shall be subject to the approval of the Minister and laid in Parliament at the earliest opportunity.

Draft Regulations.

11. (1) Before Regulations are made pursuant to section 9, the Central Bank shall submit the Regulations in draft form to the licensees and other persons who may be affected by them, and shall, in that regard, consult with the licensees and other affected persons.

(2) Where, in the opinion of the Minister, any matter proposed to be dealt with in Regulations or by an amendment thereof has become urgent, the Minister may proceed to effect promulgation of the Regulations or an amendment thereof without following the process referred to in subsection (1), in which case the Central Bank shall publish in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago the reasons for its action.

Contravention of guidelines.

12. Contravention of a guideline referred to in section 10 shall not constitute an offence, but this shall not prevent the Central Bank or the Inspector from taking action under section 86.

Amendment to Schedules.

13. The Minister, by Order, subject to negative resolution of Parliament, may, after receiving the recommendations of the Central Bank, amend the First, Second, Third, Fifth and Sixth Schedules.

Delegation and exercise of powers through authorised officers.

14. In the exercise of their functions, powers and duties under this Act, the Central Bank, the Governor and the Inspector may delegate any such function to, and exercise any of their powers and duties through, any officer, employee or agent of the Central Bank.

Delegation of functions.

15. In the exercise of its functions under this Act, the Board may delegate all or any of its functions to a committee appointed by the Board comprising a minimum of three members of the Board.

PART III

LICENSING OF FINANCIAL INSTITUTIONS

Restriction on business of banking.

16. (1) No person other than—

(a) a company incorporated or continued in Trinidad and Tobago under the Companies Act and licensed by the Central Bank for that purpose; or

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(b) a foreign financial institution licensed by the Central Bank for that purpose pursuant to section 18,

shall carry on banking business in Trinidad and Tobago.

(2) "Banking business" or "business of banking" means the business of soliciting and receiving sums of money from the public on current or deposit account which may be withdrawn on demand, by cheque, draft, order or notice, and the solicitation and granting of credit exposures, by a person whether as principal or agent and includes payment card business and, generally, the undertaking of any business appertaining to the business of commercial banking.

(3) A person intending to carry on the business of banking shall, before commencing such business, apply for a licence under section 20.

(4) A person shall not carry on banking business without having in cash a minimum stated capital of fifteen million dollars or such larger amount as may be specified from time to time by Order of the Minister on the advice of the Central Bank.

(5) An institution which at the commencement of this Act holds or is deemed to hold a valid licence under the Financial Institutions Act, 1993 shall be deemed to have been issued a licence under section 21.

18 of 1993.

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(6) Notwithstanding subsection (4), a licensee may be required by the Inspector to provide additional capital in cash or approved securities for the businesses it is conducting and may be required to satisfy the Inspector that its capital base is adequate in accordance with the capital adequacy requirements imposed by prudential criteria regulations.

(7) Where the Central Bank has reasonable grounds to believe that a person is carrying on any aspect of the business of banking without a licence issued under this Act, it may require information from, inquire into and examine the affairs of, that person, and may take any action that the Central Bank sees fit to ensure that the person discontinues the activity in question, including, without limitation, the issue of a compliance direction to cease the activity under section 86.

(8) Where a person carries on business of banking without a licence issued or deemed to be issued under this Act, the person commits an offence and—

(a) where the person is an individual, the person is liable on summary conviction to a fine of five million dollars and to imprisonment for five years and in the case of a continuing offence to a fine of five hundred thousand dollars for every day on which the offence continues;

(b) where the person is a company—

(i) every director and officer of such company is liable on summary conviction to a fine of five million dollars and to imprisonment for five years and in the case of a continuing offence, to a fine of five hundred thousand dollars for every day on which the offence continues; and

(ii) the company is liable on summary conviction to a fine of five million dollars and in the case of a continuing offence, to a fine of five hundred thousand dollars for every day on which the offence continues; or

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(c) where the person is an unincorporated body, every officer or member of the governing body of such unincorporated body is liable on summary conviction to a fine of five million dollars and to imprisonment for five years and in the case of a continuing offence, to a fine of five hundred thousand dollars for every day on which the offence continues.

Restriction on business of a financial nature.

17. (1) No person other than—

(a) a company incorporated or continued in Trinidad and Tobago under the Companies Act and licensed by the Central Bank for that purpose;

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(b) a foreign financial institution licensed by the Central Bank for that purpose pursuant to section 18; or

(c) a person licensed under this Act to carry on the business of banking,

shall carry on any business of a financial nature in Trinidad and Tobago.

(2) "Business of a financial nature" means the solicitation and collection of funds in the form of deposits, shares, loans and premiums and the investment of such funds in loans, shares and other securities and includes—

(a) the performance for reward of the functions and duties of a trustee, administrator, executor or attorney; and

(b) the issue of electronic money,

but does not include the business of banking.

(3) A person shall not carry on business of a financial nature of any of the classes specified in the First Schedule unless he is licensed by the Central Bank in respect of that class of business.

(4) The Minister may, by Order, on the advice of the Central Bank, prescribe—

(a) the category of persons other than licensees, which may issue electronic money, subject to the approval of the Central Bank; and

(b) the requirements and criteria applicable to such persons.

(5) The Central Bank may—

(a) impose such terms and conditions as it sees fit on any person approved to issue electronic money;

(b) issue directions, including compliance directions pursuant to section 86, to persons approved to issue electronic money as the Bank sees fit;

(c) revoke an approval to issue electronic money if the person—

(i) fails to meet the prescribed category, requirements or criteria; or

(ii) is in breach of any terms and conditions imposed or directions including compliance directions issued by the Central Bank.

(6) A person who—

(a) issues electronic money without the approval of the Central Bank;

(b) continues to so issue after his approval is revoked; or

(c) is in breach of any terms and conditions imposed by the Central Bank,

commits an offence.

(7) A person other than a bank licensed under this Act, intending to carry on business of a financial nature shall, before commencing such business, apply for a licence under section 20.

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(8) A person shall not carry on business of a financial nature without having in cash a minimum stated capital of fifteen million dollars, or such larger amount as may be specified by Order of the Minister on the advice of the Central Bank.

(9) An institution which at the commencement of this Act holds or is deemed to hold a valid licence under the Financial Institutions Act, 1993 shall be deemed to have been issued a licence under section 21 to carry on the class of business for which it was licensed.

18 of 1993.

(10) Notwithstanding subsection (8), a licensee may be required by the Inspector to provide additional capital in cash or approved securities for the business it is conducting and may be required to satisfy the Inspector that its capital base is adequate in accordance with the capital adequacy requirements imposed by Regulations made under this Act.

(11) Where the Central Bank has reasonable grounds to believe that a person is carrying on any aspect of the business of a financial nature without a licence issued under this Act, it may require information from, inquire into and examine the affairs of that person, and may take any action that the Central Bank sees fit to ensure that the person discontinues the activity in question, including, without limitation, the issue of a compliance direction to cease the activity under section 86.

(12) Where a person carries on business of a financial nature without a licence issued or deemed to be issued under this Act, the person commits an offence and—

(a) where the person is an individual, he is liable on summary conviction to a fine of five million dollars and to imprisonment for five years and in the case of a continuing offence, to a fine of five hundred thousand dollars for every day on which the offence continues;

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(b) where the person is a company—

(i) every director and officer of such company is liable on summary conviction to a fine of five million dollars and to imprisonment for five years and in the case of a continuing offence, to a fine of five hundred thousand dollars for every day on which the offence continues; and

(ii) the company is liable on summary conviction to a fine of five million dollars and in the case of a continuing offence, to a fine of five hundred thousand dollars for every day on which the offence continues; or

(c) where the person is an unincorporated body, every officer or member of the governing body of such unincorporated body is liable on summary conviction to a fine of five million dollars and to imprisonment for five years and in the case of a continuing offence, to a fine of five hundred thousand dollars for every day on which the offence continues.

(13) A person licensed under this section shall not—

(a) accept a deposit upon terms that it is repayable on demand or in less than one year, and shall inform the depositor of this limitation at the time when a deposit is made;

(b) without the written permission of the Central Bank repay any deposit within less than one year from the date on which the deposit was received by the licensee; or

(c) grant loans for periods of less than one year.

(14) Subsection (13) shall not apply to deposits taken from, and loans granted to other licensees, insurance companies, the Central Bank and the National Insurance Board.

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Licence for branch of foreign financial institution.

18. (1) The Central Bank may grant a licence to a foreign financial institution to carry on banking business or business of a financial nature in Trinidad and Tobago on a branch basis, where such foreign financial institution is subject to regulation and supervision in its home jurisdiction that is satisfactory to the Central Bank.

(2) A foreign financial institution licensed pursuant to subsection (1) shall—

(a) appoint an employee who is ordinarily resident in Trinidad and Tobago to be its principal representative for the purposes of this Act, and who shall be responsible for the day to day management of the branch of the foreign financial institution;

(b) provide the principal representative with a power of attorney expressly authorising him to receive all notices from the Central Bank and shall without delay submit a copy of the power of attorney to the Central Bank; and

(c) where a vacancy occurs in the position of principal representative, without delay, fill the vacancy and submit a copy of the new power of attorney to the Central Bank.

(3) A power of attorney filed or deposited under this section shall be valid although not registered under the Registration of Deeds Act.

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(4) A foreign financial institution licensed pursuant to subsection (1) shall maintain assigned capital—

(a) in an amount equivalent to the minimum share capital that would be required of a licensed domestic institution under section 16(4) or 17(7) as applicable; or

(b) such larger amount as may be specified from time to time by the Central Bank.

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Guidelines for approved securities.

19. The Central Bank shall issue Guidelines with respect to securities that are approved for the purposes of sections 16(6), 17(10), 18(4) and 47(2).

Application for licence.

20. Every application for a licence to carry on business of banking or a licence to carry on business of a financial nature shall be made to the Central Bank in writing and shall be accompanied by—

(a) a statement of the applicant's name and the address of its—

(i) registered office in Trinidad and Tobago, in the case of an application by or on behalf of, a local company; or

(ii) principal office outside Trinidad and Tobago in the case of an application by a foreign financial institution;

Second Schedule.

(b) the name, address, nationality, experience, and other relevant information, including the information specified in the Second Schedule pertaining to—

(i) each director and officer or proposed director and officer and all existing and proposed shareholders holding five per cent or more of any class of shares in the case of an application by or on behalf of a company; or

(ii) the principal representative or proposed principal representative under section 18(2) and any other officers who will be resident in Trinidad and Tobago in the case of an application by a foreign financial institution;

(c) a concise history of the applicant's business experience, proposed business dealings, including the type of business which it proposes to carry on, and the management arrangements for the proposed licensed institution;

(d) a certified statement or where this cannot be produced, such proof as the Central Bank may require of the applicant's ability to meet the requirement of a minimum stated capital or assigned capital of not less than fifteen million dollars or such increased amounts as may be required pursuant to section 16(4), 17(7) or 18(4);

(e) a certified copy of the articles of incorporation or continuance, Bye-laws or other constituent document under which the applicant is incorporated, continued or constituted;

(f) in the case of an application by or on behalf of a company that has been carrying on business prior to the application, a copy of its financial statements and the auditor's report thereon for the three consecutive years immediately preceding the application, except that where the local company has been functioning for less than three years, a copy of financial statements and the auditor's report thereon for each year it has been in operation shall be sufficient;

(g) such further information as the Central Bank may require.

Approval and issue of licence.

21. (1) The Central Bank may, on an application duly made in accordance with section 20, and after being provided with all such information and documents as it may require under that section, after being satisfied that this Act, in particular the criteria set out in the Second Schedule and any Regulations made hereunder have been complied with, and after consultation with the Minister, approve or refuse the application.

Second Schedule.

(2) Where the decision is made to refuse a licence, the Central Bank shall give reasons for the said refusal to the applicant within fourteen days of the date of refusal.

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(3) The Central Bank shall upon approval of an application and upon payment of the fee specified in section 22, issue a licence to the applicant duly signed by the Governor.

(4) A licence to carry on the business of banking or a licence to carry on the business of a financial nature may contain such terms and conditions as the Central Bank considers advisable taking into account the particular circumstances of the proposed licensed institution.

(5) Notice of the issue of a licence by the Central Bank shall be published in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago and notwithstanding the date of publication the licence shall take effect on the date specified therein.

(6) A licence issued under this Act shall be valid until it is revoked.

(7) A licensee who wishes to vary a type and class of business for which it is licensed or carry on a type and class of business for which it is not licensed, shall first obtain the approval of the Central Bank so to do and the Central Bank may require the licensee to increase its stated capital and to satisfy such additional prudential criteria and requirements as to management, as the Central Bank considers necessary.

(8) It shall be a condition of every licence that the licensee shall—

(a) comply with such terms and conditions as may be specified in the licence; and

(b) within seven days of any change in the directors or officers, including a principal representative under section 18(2) in the case of a licensed foreign institution, notify the Central Bank in writing of such change.

Annual Fees.
Sixth Schedule.

22. (1) Annual fees set out in the Sixth Schedule shall be payable to the Central Bank by each licensee—

(a) in respect of its licence;

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(b) in the case of a licensed domestic institution, in respect of each of its branches and representative offices; and

(c) in the case of a licensed foreign institution, in respect of each of its branches and representative offices in Trinidad and Tobago.

(2) The annual fees referred to in subsection (1) shall be payable not later than the thirty-first day of 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 or representative office 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) Application fees set out in the second column of the Sixth Schedule respecting the matters set out in the first column of the said Schedule shall be payable to the Central Bank by each licensee at the time of the relevant application.

Sixth Schedule.

Revocation of licence. [4 of 2018 3 of 2020]. Second Schedule.

23. (1) The Board may revoke a licence where—

(a) any of the criteria except paragraph A specified in the Second Schedule, is not or has not been fulfilled or is unlikely to be or may not have been fulfilled in respect of the licensee;

(b) the licensee has failed to comply with any obligation imposed on it by or under this Act or any other written law;

(c) the Central Bank has been provided with false, misleading or inaccurate information by or on behalf of the licensed institution or, in connection with an application for a licence, by or on behalf of a person who is or is to be a director or officer of the licensee;

(d) in the opinion of the Central Bank, the interests of depositors or potential depositors of the licensee are in any way threatened, whether by the manner in which the licensee is conducting or proposes to conduct its affairs or for any other reason;

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(e) the licensee has not accepted a deposit in Trinidad and Tobago within the period of twelve months from the day on which the licence was issued or having accepted a deposit or deposits, has subsequently not done so for any period of more than six months;

(f) a receiver or manager of the undertaking of the licensee has been appointed;

(g) the licensee fails to comply with a direction under section 24 or 27 or with a compliance direction issued by the Central Bank under section 86;

(h) the capital or liquidity of the licensee is inadequate or insufficient to meet its liabilities;

(i) possession has been taken by or on behalf of the holder of any debenture secured by a charge on any property of the licensee comprised in or subject to the charge;

(j) the licensee has merged or has been amalgamated with another company or licensed institution and the licence is no longer required;

(k) the business of the licensee is no longer the business for which it was licensed; or

(l) the licensee has failed to pay its premium to the Deposit Insurance Fund established under the Central Bank Act; and

(m) the licensee has failed to comply with any obligation imposed on it by any written law for the prevention of money laundering or terrorist financing including the Proceeds of Crime Act, the Anti-Terrorism Act, the Financial Intelligence Unit of Trinidad and Tobago Act and any Regulations made thereunder, respectively.

(2) Subject to section 29, before a licence is revoked by the Board, the Central Bank shall give to the licensee written

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notice of the intention of the Board to do so, specifying the grounds upon which the Board proposes to revoke the licence and the date on which such proposed revocation is to take effect, and shall require the licensee to submit to the Central Bank within a specified period a written statement of any objections to the revocation of the licence.

(3) The Central Bank shall inform the licensee, by notice in writing, of the final decision of the Board.

(4) After serving a notice of intention to revoke a licence, and after taking into account any objection under subsection (2), the Board shall decide whether to—

(a) revoke the licence;

(b) take further action; or

(c) restrict the licence instead.

(5) Where the Board decides to revoke the licence, the notice of revocation shall include the date on which the revocation takes effect, a statement of the grounds for the decision and the rights of the licensee under subsection (9) and section 112.

(6) When the Board serves a notice of intention to revoke a licence under this section, it may direct the Inspector to take charge of all books, records and assets of the licensee or any portion thereof or direct the Inspector to apply to a Judge in Chambers to appoint a Receiver or Manager, and to do all such things as may be necessary to safeguard the interests of depositors, creditors and shareholders of the licensee until any appeal filed pursuant to subsection (9) has been determined.

(7) The Inspector may incur expenses to carry out the provision of subsection (6), including, without limitation, costs in connection with—

(a) utilities;

(b) rent; and

(c) necessary expenses of maintaining the business of the licensee,

and any such costs shall be paid by the licensee.

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(8) Where the licensee does not have adequate liquidity to meet the costs referred to in subsection (7), the Central Bank may provide funding to cover such costs, which funding shall be treated as a loan by the Central Bank to the licensee and shall be repaid out of the funds of the licensee or, in the event that the licensee is liquidated, shall be a first charge on the assets of the licensee.

(9) Where any licensee is aggrieved by a decision of the Board to revoke its licence pursuant to subsection (3), that licensee may appeal to a Judge in Chambers within fourteen days of the date of receipt of the notice of revocation setting forth the grounds of such appeal.

(10) Where a decision is made to revoke a licence under subsection (3), the licensee shall cease carrying on business as from the date notified to it as the date on which the revocation shall take effect.

(11) When a decision is made to revoke a licence and such decision is not set aside by a Judge, the Inspector may apply to the Judge for an order for the winding-up of the licensee.

(12) Where in the case of a licensee having an affiliate located outside Trinidad and Tobago, the relevant supervisory authority in that country has withdrawn from the affiliate an authorisation or licence corresponding to any which may be conferred by this Act, the Board may restrict or revoke the licence granted under this Act.

(13) Where in the case of an affiliate, wherever incorporated, of a licensee—

(a) a winding-up order has been made;

(b) a resolution for its voluntary winding-up has been passed in accordance with section 66; or

(c) an order for the appointment of a receiver has been made,

the Board may restrict or revoke the licence if it considers that the winding-up of the affiliate is likely to adversely affect the licensee or its depositors.

(14) The Board shall revoke the licence of a licensee if—

(a) a winding-up order has been made against it;

(b) all its assets have passed into the ownership of another person; or

(c) a resolution for its voluntary winding-up has been passed in accordance with section 66.

Restriction of licence.

24. (1) Where it appears to the Board that there are grounds on which its power to revoke a licence is exercisable but the circumstances are not such as to justify revocation, it may place restrictions on the licence instead of revoking it.

(2) A licence may be restricted by issuing such directions as the Board thinks necessary to protect the interests of the licensee's depositors or potential depositors.

(3) The directions issued under this section may, in particular—

(a) require the licensee to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;

(b) stipulate limitations on the acceptance of deposits, the incurring of credit exposures or the distribution of profit;

(c) prohibit the licensee from soliciting deposits, either generally or from persons who are not already depositors;

(d) prohibit the licensee from entering into any other business of banking or business of a financial nature;

(e) require the removal of any director or officer; or

(f) specify such other requirements as the Board may think fit.

(4) A direction imposed under this section may be varied or withdrawn by the Board.

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(5) A licensee or any director or officer thereof who fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section, commits an offence and is liable on summary conviction, in the case of a licensee, to a fine of six hundred thousand dollars and in the case of a director or officer to a fine of six hundred thousand dollars and to imprisonment for two years.

(6) The provisions of section 86(8) shall apply to this section *mutatis mutandis*.

Notice of restriction.

25. (1) Where the Board proposes to—

(a) restrict a licence; or

(b) vary the restrictions imposed on a licence otherwise than with the agreement of the licensee,

it shall serve written notice of intention to do so on the licensee.

(2) A notice of intention to restrict or to vary a restriction shall specify the proposed restriction or the proposed variation as the case may be, and shall state the grounds on which the Board proposes to act and particulars of the licensee's rights under subsection (4).

(3) Where—

Second Schedule.

(a) the ground for a proposed restriction or variation of a restriction is that it appears to the Board that the criteria in paragraph A of the Second Schedule is not or has not been fulfilled, or is unlikely to be or may not have been fulfilled in the case of any person; or

(b) a proposed restriction consists of or includes a condition requiring the removal of any person as director or officer,

the Board shall serve on that person a copy of the notice of intention to restrict or vary a restriction together with a statement of his rights under subsection (4).

(4) A licensee which is served with a notice of intention to restrict or vary a restriction, and a person who is served with a copy of it under subsection (3) may, within the period of

fourteen days commencing from the day after which the notice was served, make representation to the Board.

(5) After serving a notice of intention to restrict or vary a restriction, and after taking into account any representations made under subsection (4) the Board shall decide whether to—

(a) proceed with the action proposed in the notice;

(b) take further action;

(c) restrict or vary the restriction, in a different manner.

(6) The Board shall serve on the licensee and on any such person served with notice in subsection (3), written notice of its decision and, except where the decision is to take no further action, the notice shall state the reasons for the decision and shall give particulars of the rights conferred by sections 26(2) and 112.

(7) A notice under section 25(6) shall be served within the period of twenty-one days commencing on the day after which the notice of intention to restrict or vary a restriction was served and if no notice is served under that section, within that period, the Board shall be treated as having at the end of that period served a notice under that subsection to the effect that no further action is to be taken.

Restriction or variation.

26. (1) A notice under section 25(6) of a decision to restrict or to vary the restrictions on a licence shall have the effect of restricting the licence or varying the restrictions in the manner specified in the notice.

(2) Where the decision notified under subsection (1) is to restrict the licence or to vary the restrictions on a licence otherwise than as stated in the notice of intention to restrict or vary a restriction the licensee may, within the period of seven days commencing on the day after which the notice was served under section 25(6), make written representations to the Board with respect to the restrictions and the Board may, after taking those representations into account, alter the restrictions.

(3) Where the Board varies a restriction on a licence with the licensee's agreement or withdraws a restriction consisting of a condition the variation or withdrawal shall be effected by written notice to the licensee.

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(4) Where a licence is restricted or varied and the licensee fails to comply with any of the terms of the restriction or variation, as the case may be, the licensee commits an offence.

Directions to licensee.

27. (1) The Board may give a licensee directions—

(a) when giving notice of intention to revoke its licence under section 23(2), that the Board proposes to revoke its licence;

(b) at any time after such notice of intention to revoke its licence has been given to the licensee, whether before or after its licence is revoked; or

(c) when giving a notice of revocation of its licence under section 29(2) in the case of the voluntary winding-up of the licensee as referred to in section 23(13)*(b)*.

(2) Directions under this section shall be such as appear to the Board to be desirable in the interests of the depositors or potential depositors of the licensee, whether for the purpose of safeguarding its assets or otherwise, and may, in particular—

(a) require the licensee to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;

(b) impose limitations on the acceptance of deposits and the incurring of credit exposures;

(c) prohibit the licensee from soliciting deposits either generally or from persons who are not already depositors;

(d) prohibit the licensee from entering into any other transaction or class of transactions;

(e) require the removal of any director or officer; or

(f) contain such other requirements as may be considered necessary in any particular case.

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(3) Where the Board gives a licensee notice that it does not propose to take any further action pursuant to the notice under section 23(2) it shall not give any directions and any directions previously given shall cease to have effect.

(4) Under this section no direction shall be given to a licensee or former licensee after it has ceased to have any liability in respect of deposits for which it had a liability at a time when it was licensed and any such direction which is in force with respect to a licensee or former licensee shall cease to have effect when it ceases to have any such liability.

(5) A licensee or any director or officer thereof who fails to comply with any requirement or contravenes any prohibition imposed by a direction under this section commits an offence and is liable on summary conviction, in the case of a licensee, to a fine of five million dollars and in the case of any director or officer, to a fine of five million dollars and to imprisonment for five years.

(6) Section 86(8) shall apply, *mutatis mutandis* to this section.

Notification and confirmation of directions.

28. (1) Directions under sections 24 and 27 shall be given by notice in writing, and shall state the reasons for which the directions are given, and may be varied by a further notice containing directions, or cancelled by the Board by notice in writing to the licensee or former licensee.

(2) Where a direction requires the removal of a person as director or officer, the Board shall serve on that person a copy of the direction together with a statement of his rights under subsection (3).

(3) A licensee to which a direction is given and a person who is served a copy of it under subsection (2) may, within the period of fourteen days commencing from the day after which the direction is given, make written representations to the Board and the Board shall take any such representations into account in deciding whether to confirm the direction.

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(4) Where the Board decides to confirm the direction it shall serve written notice of such confirmation on the licensee or former licensee and such notice shall state particulars of the rights of the licensee or former licensee under section 112.

Mandatory revocation and restriction in cases of urgency.

29. (1) No notice of intention need be given—

(a) under section 23(2) in respect of the revocation of a licence in any case in which revocation is mandatory under subsection 23(14); or

(b) under section 25(1) in respect of the imposition or variation of a restriction on a licence in any case in which the Board considers that the restriction should be imposed or varied as a matter of urgency.

(2) In any such case as is mentioned in subsection (1), the Board may by written notice to the licensee revoke the licence or impose or vary the restriction.

(3) A notice under subsection (2) shall state the reasons for which the Board has acted and, in the case of a notice imposing or varying a restriction, give particulars of the licensee's rights conferred by section 112.

(4) Where—

Second Schedule.

(a) the ground for a proposed restriction or variation of a restriction is that it appears to the Board that the criteria in paragraph A of the Second Schedule is not or has not been fulfilled, or is unlikely to be or may not have been fulfilled in the case of any person; or

(b) a proposed restriction consists of or includes a condition requiring the removal of any person as director or officer,

the Board shall serve on that person a copy of the notice to restrict or vary a restriction together with a statement of his rights under subsection (5).

(5) A licensee which is served with a notice to restrict or vary a restriction, and a person who is served with a copy of it under subsections (2) and (4) may, within the period of fourteen days commencing from the day after which the notice was served, make representation to the Board.

(6) After serving a notice under subsection (2) or (4) imposing or varying a restriction and taking into account any representations made in accordance with subsection (5) the Board shall decide whether to—

(a) confirm or rescind its original decision; or

(b) impose a different restriction or to vary the restriction in a different manner.

(7) The Board shall, within the period of twenty-one days commencing from the day after which the representations have been made, give the licensee concerned written notice of its decision under subsection (6) and, except where the decision is to rescind the original decision, the notice shall state the reasons for the decision.

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

(9) Where a notice of intention to revoke a licence under section 23(2) is followed by a notice revoking a licence under this section, the latter notice shall have the effect of terminating any right to make representations in respect of the proposed revocation.

Information as to licensed institutions.

30. (1) Not later than the thirty-first day of March in each year, the Central Bank shall publish in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago a list of institutions licensed to carry on banking business or business of a financial nature in Trinidad and Tobago.

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(2) The Central Bank shall make available to any person on request and on payment of such fee, if any, as it may reasonably require, a list of the licensees licensed either at the date of the request or at such earlier date, being not more than thirty days earlier, as may be specified in the request.

(3) Within seven days of a person ceasing to hold a licence the Central Bank shall publish notice of that fact in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago.

Amendment of articles of incorporation and other constituent documents.

31. (1) A licensee shall not make any alteration to its articles of incorporation or continuance, Bye-laws or any other constituent document under which it is incorporated, continued or constituted, unless it has notified the Inspector, in writing, that it proposes to make the alteration and has submitted the proposed alteration and the Inspector either—

(a) has, in writing, approved the proposed alteration; or

(b) has not, within thirty days of receipt of the notification, indicated in writing to the licensee any disapproval of the proposed alteration.

(2) The Inspector shall not disapprove a proposed alteration unless such proposed alteration is, or is likely to result in a breach of—

(a) the terms and conditions of the licensee's licence; or

(b) the provisions of this Act or any Regulations made thereunder.

(3) Notwithstanding any written law to the contrary an alteration made to the articles of incorporation or continuance, Bye-laws or any other constituent document of a licensee in contravention of subsection (1) shall be void.

(4) Every licensee shall within fourteen days of the date on which any alteration is made to its articles of incorporation or

continuance, Bye-laws or other constituent document, submit to the Inspector a copy of the altered articles of incorporation or continuance, Bye-laws and other constituent documents.

(5) A licensee that contravenes subsections (1) and (4) commits an offence.

False statements as to licensed status.

32. (1) A person other than a licensee shall not—

(a) describe himself as a licensed institution; or

(b) so hold himself out as to indicate or be reasonably understood to indicate that he is a licensed institution.

(2) A person shall not falsely state, or do anything which falsely indicates, that he is entitled, although not a licensed institution, to carry on the business of banking or the business of a financial nature.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction, in the case of a company, to a fine of ten million dollars and in the case of an individual, to a fine of ten million dollars and to imprisonment for ten years.

(4) A person who contravenes subsection (2) commits an offence and is liable on summary conviction, in the case of a company, to a fine of five million dollars and in the case of an individual, to a fine of five million dollars and to imprisonment for five years.

PART IV

DIRECTORS AND MANAGEMENT

Persons debarred from management. [12 of 2019].

33. (1) A person who has been—

(a) a director or officer of a company in the ten years immediately preceding a winding-up order being made by a Court or the date that the company has been placed in receivership;

(b) adjudged bankrupt under the Bankruptcy Act; Ch. 9:70.

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(c) a director or officer of a former licensee, the licence of which has been revoked, unless such revocation was due to—

(i) its amalgamation with another licensed institution or company; or

(ii) its voluntary winding-up,

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

(2) A person who—

(a) has been convicted by a Court for an offence involving fraud, dishonesty, a contravention of the Economic Sanctions Act and any Orders made thereunder as they relate to proliferation financing, the Anti-Terrorism Act and the Proceeds of Crime Act or any Regulations made thereunder or such other statutory provision in relation to the prevention of money laundering, the combating of terrorist financing and proliferation financing as may be in force from time to time;

Ch. 11:27.

(b) is or was convicted of an offence under this Act; or

(c) is not a fit and proper person in accordance with the criteria specified in the Second Schedule,

Second Schedule.

shall not act or continue to act as a director or officer of, or be concerned in any way in the management of a licensed institution or financial holding company.

(3) Subject to subsection (4), a director or officer of a company that is a licensed domestic institution shall not act or continue to act as a director or officer or be concerned in any way in the management of another financial entity except with a permit from the Central Bank.

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(4) Where a licensed domestic institution is a member of a financial group, a director or officer—

(a) of the licensed domestic institution; or

(b) of a company that is part of the financial group,

may act or continue to act as a director or officer or be concerned in the management of a financial entity where that financial entity is part of the financial group.

(5) Where for the purpose of subsection (2)*(c)* a person is not regarded, or is no longer regarded, as fit and proper by the Central Bank, the Central Bank shall serve a notice on the licensee or financial holding company and where appropriate the person concerned informing them that the Central Bank proposes to disqualify the person from being a director or officer, stating the reasons for its decision and particulars of the rights conferred by subsection (6) and by section 112.

(6) The licensee or financial holding company and the person concerned may, within the period of fourteen days, commencing from the day after which the notice under subsection (5) is served, make written representations to the Central Bank which shall take such representations into account in deciding whether or not to disqualify the person from acting as a director or officer.

(7) The Central Bank shall inform the licensee or financial holding company and the person concerned, by notice in writing, of the final decision of the Central Bank.

(8) Where the decision of the Central Bank referred to in subsection (7) is to disqualify the person, that person shall forthwith cease to be a director or officer of the licensee or financial holding company.

(9) Where—

(a) the Central Bank places a restriction on the licence of a licensee;

(b) it appears to the Central Bank that a licensee's capital or liquidity is inadequate to meet its liabilities and the Bank has so notified the licensee; or

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(c) the Central Bank has exercised any of its powers in relation to the licensee under section 44D of the Central Bank Act,

Ch. 79:02.

the licensee and any financial holding company of the licensee shall notify the Central Bank at least thirty days before the effective date of election or appointment of any director or officer and shall not elect to the board such director or appoint such officer if within the thirty-day period the Central Bank disapproves of such appointment or employment.

(10) Notwithstanding the liability of a person under subsection (13), it shall be the duty of every licensee and financial holding company to ensure that its directors and officers do not act or continue to act in contravention of this section.

(11) A licensee or financial holding company that contravenes subsections (9) and (10) commits an offence.

(12) A—

(a) person who contravenes subsection (1), (2)*(a)* or *(b)* or (3); or

(b) licensee or financial holding company upon which notice has been served under subsection (7) and which permits a person who contravenes subsection (1) or (2) to act or continue to act as a director of or be concerned in any way in the management of the licensee or financial holding company,

commits an offence and is liable on summary conviction in the case of an individual to a fine of five million dollars and to imprisonment for five years and to a fine of five hundred thousand dollars for each day that the offence continues, and in the case of a licensee or a financial holding company to a fine of five million dollars and to a fine of five hundred thousand dollars for each day that the offence continues.

(13) A person referred to in subsection (2)*(c)* who contravenes subsection (8) commits an offence and is liable on summary conviction to a fine of five million dollars and

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imprisonment for five years and to a fine of five hundred thousand dollars for each day that the offence continues.

Restriction on voting power of director.

34. (1) A director of a licensee or of a financial holding company shall not be present, or vote at a meeting of the Board of Directors or a committee of the Board of Directors of that licensee or financial holding company when a contract including a loan, an advance or other credit facility which would result in a direct or indirect financial benefit accruing to—

(a) the director or a relative of the director;

(b) a company of which the director or a relative is an officer; or

(c) a company in which the director or a relative holds a beneficial interest,

is being considered, unless such contract is with a company controlled by the licensee or financial holding company and all the issued shares except the qualifying shares, if any, of directors are owned by that licensee or financial holding company.

(2) A person who contravenes this section commits an offence.

Duties of directors.

35. (1) The directors of a licensee or of a financial holding company shall notify the Inspector of any developments that pose material risks to the licensee or financial holding company.

(2) A director who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars.

(3) A director of a licensee or of a financial holding company who—

(a) resigns;

(b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office; or

(c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office upon his resignation or removal

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from office or because his term of office has expired or is about to expire,

may submit to the licensee or financial holding company and shall submit to the Central Bank a written statement giving the reasons for his resignation or departure from office, or, where applicable, the reasons that he opposes any proposed action or resolution.

(4) A person who contravenes subsection (3) commits an offence.

Audit committee.

36. (1) The Board of Directors of a licensee shall appoint from among their number an audit committee, which shall consist of at least three directors—

(a) a majority of whom must be independent directors; and

(b) at least one of whom must be a financial expert.

(2) A licensee that contravenes subsection (1) commits an offence.

(3) The chair of the audit committee shall be an independent director.

(4) Subsection (1)*(a)* shall not apply in respect of a licensed domestic institution that is licensed under section 21 immediately prior to the day that this Act comes into force, until the day that is three years from the day that this section comes into force.

(5) The duties of the audit committee shall include, without limitation—

(a) the review of, and a report to the Board of Directors on the annual financial statements and other returns prior to approval by the Board;

(b) the review of such returns of the licensee as the Inspector may specify; and

(c) ensuring that an appropriate framework for internal control procedures is in place.

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(6) For the purposes of this section—

(a) a "financial expert" means a person who has the necessary financial education and substantive experience as—

(i) a qualified accountant;

(ii) an auditor;

(iii) a chief financial officer; or

(iv) a comptroller,

who otherwise possesses a sound understanding of generally accepted accounting principles, financial statements and the way in which financial statements are prepared and audited;

(b) a "qualified accountant" means a person who is a member of the Institute of Chartered Accountants of Trinidad and Tobago or such other professional association as may be approved by the Central Bank; and

(c) an "independent director" means a director who—

(i) is not the holder of five per cent or more of the shares of the licensee or of a connected party of the licensee;

(ii) is not a current officer of the licensee or of a connected party of the licensee;

(iii) is not a relative of a current officer or director, or of a person who was an officer or director of the licensee or a connected party of the licensee within two years prior to his appointment;

(iv) is not the auditor, nor has been employed by the auditor of a licensee nor the auditor of any of the connected parties of the licensee within three years prior to his appointment;

(v) has not been employed by the licensee or any of its connected parties within three years prior to his appointment;

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(vi) is not an incorporator of the licensee or of a connected party of the licensee;

(vii) is not a professional adviser of the licensee or of a connected party of the licensee;

(viii) is not a supplier to the licensee or of a connected party of the licensee;

(ix) is not indebted to the licensee or any of its affiliates, other than by virtue of—

(A) a fully collateralised loan; or

(B) an outstanding credit card balance not exceeding sixty thousand dollars.

Annual reports.

37. (1) Each licensee and each financial holding company shall submit to the Inspector, annually and at such time as requested, a report which contains—

(a) a statement, signed by its chief executive officer and chief financial officer, which acknowledges management's responsibility for—

(i) preparing financial statements;

(ii) establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(iii) complying with this Act and any Regulations made thereunder and any guidelines issued by the Central Bank in accordance with this Act; and

(b) a statement, signed on behalf of its Board of Directors as to whether it is satisfied that the risk management systems and internal controls are adequate for managing its risks and are being properly applied.

(2) A licensee that contravenes this section commits an offence.

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Policies and procedures for transactions with connected parties and employees.

38. (1) The Board of Directors of a licensee shall—

(a) establish and maintain written policies and procedures for transactions between the licensee and—

(i) connected parties;

(ii) connected party groups; and

(iii) employees who are not connected parties; and

(b) review annually such policies, procedures and transactions, to ensure compliance.

(2) The Board of Directors of a licensee shall provide to the Inspector—

(a) upon request, copies of the licensee's polices and procedures; and

(b) annually, the results of the compliance reviews,

referred to in subsection (1).

(3) The Board of Directors that fails to comply with subsections (1) and (2) commits an offence for which the licensee is liable.

(4) Where, in the opinion of the Inspector, the policies and procedures referred to in this section are inadequate, the Inspector may require the Board of Directors of a licensee to take such action to change the policies and procedures.

(5) The Board of Directors of a licensee that fails to make the changes required by the Inspector referred to in subsection (4) commits an offence for which the licensee is liable on summary conviction to a fine of six hundred thousand dollars.

Information systems for credit exposures. [19 of 2018].

39. (1) The Board of Directors of a licensee shall establish and maintain documented information systems that identify and monitor the credit exposures referred to in sections 42(1) and (1A), 42(3), 43(1) and 43(4).

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(2) The Board of Directors of a licensee that fails to comply with subsection (1) commits an offence for which the licensee is liable.

Internal controls.

40. (1) The Board of Directors of a licensee shall establish and maintain adequate internal controls, safety and security measures and documented operational standards to deal with automatic payments and transfers, authentication of financial transactions and electronic messaging.

(2) A licensee that contravenes subsection (1) commits an offence.

(3) Where the Board of Directors of a licensee fails to comply with subsection (1), the Inspector shall require the Board of Directors to take such action, within a specified period, to effect compliance therewith.

(4) The Board of Directors of a licensee that fails to take the necessary action in accordance with subsection (3) commits an offence and the licensee is liable on summary conviction to a fine of six hundred thousand dollars.

PART V

RESTRICTIONS AND PROHIBITIONS

Prohibitions. [19 of 2018].

41. (1) Subject to this Act—

(a) a bank shall not engage in or carry on any business other than business of banking or business of a financial nature;

(b) a licensee other than a bank shall not engage in or carry on any business other than business of a financial nature;

(c) a licensee shall not use or cause its premises or any part thereof to be used for any purpose other than for which it is licensed under this Act save that a licensee may permit a financial holding company, a regulated subsidiary or a subsidiary approved by the Central Bank to occupy a separate part of the

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premises so, however, that the entrance to and exit from that subsidiary or financial holding company are separate from that of the licensee and the location and signage of the subsidiary and financial holding company are such that there is a clear distinction between the office and operations of the licensee and those of the subsidiary or financial holding company.

(2) For the purposes of subsection (5), sections 42(1), (1A) and (3), 43(1) and (3) and 45(1), (2), (5) and 46, and without limiting the generality of those sections and subsections, a licensee is deemed indirectly to have undertaken a course of action, entered into a transaction or incurred a credit exposure where the action is undertaken, the transaction entered into or the credit exposure incurred, by a subsidiary of the licensee.

(3) Subject to subsection (4), a licensee shall not directly or indirectly—

(a) engage in any trade except so far as may be necessary in the ordinary course of business operations and services, including the satisfaction of debts due to such licensee and the due performance of its functions as a trustee, executor, administrator or attorney;

(b) acquire or hold land or any interest in land except so far as may be necessary—

(i) for the purpose of conducting its business or housing its officers or employees;

(ii) for the satisfaction of debts due to it and the due performance of its functions as a trustee, executor, administrator or attorney;

(iii) for the purpose of carrying out a project financing agreement;

(c) beneficially hold land or any interest in land acquired in the course of satisfaction of debts

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due to it for longer than five years from the date of acquisition or such extended period as may be determined by the Central Bank pursuant to subsection (6);

(d) acquire its own shares or the shares of a holding company, financial holding company or subsidiary of the licensee so, however, that a licensee shall be allowed to acquire and cancel shares issued by it pursuant to the Companies Act;

Ch. 81:01.

(e) deal, underwrite or grant credit exposures on the security of its own shares or the shares of a holding company, financial holding company or subsidiary of the licensee; or

(f) own a subsidiary which is an unregulated entity except that the Central Bank may approve the ownership of a company by a licensee or its financial holding company if the business of that company is the provision of necessary support services to the licensee and to the financial entities held by the financial holding company.

(4) Subsection (3)*(f)* does not apply to a subsidiary owned directly or indirectly by a licensee or a financial holding company for a period of three years after the coming into force of this Act but applies to a new subsidiary owned directly or indirectly by a licensee or a financial holding company, after the coming into force of this Act.

(5) A licensee that contravenes subsection (3)*(b)*, *(c)*, *(d)* and *(e)* commits an offence.

(6) A licensee shall dispose of any land acquired or held in contravention of subsection (3)*(b)* and *(c)* within such time as may be stipulated by the Central Bank in writing.

(7) The Central Bank may direct that the time specified in subsection (3)*(c)* for the sale or disposal of land be extended for such further period as may be determined.

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(8) The restriction imposed under subsection (3)*(d)* shall not prevent a licensee from acting as trustee of a pension fund plan, or from investing the assets of the plan in securities of the licensee or in a financial holding company, holding company or subsidiary of the licensee up to a limit of ten per cent of the assets of the pension fund plan, inclusive of revaluation gains on the shares.

(9) The Minister may make Regulations to ensure that any transaction referred to in this subsection will not materially affect the risk of exposure of the licensee or constitute inappropriate market conduct.

(10) A licensee that contravenes subsection (6) commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars, and in the case of a continuing offence, to a fine of sixty thousand dollars for each day that the offence continues.

Limits on credit exposures. [19 of 2018].

42. (1) Subject to subsection (1A), a licensee shall not, directly or indirectly, incur a credit exposure to a person, borrower group or related group in an aggregate amount that exceeds twenty-five per cent of its capital base, other than a credit exposure that is—

(a) fully guaranteed by the Government of Trinidad and Tobago that is explicit, unconditional, legally enforceable and irrevocable over the life of the credit exposure in question;

(b) fully guaranteed by a sovereign State, other than the Government of Trinidad and Tobago, with an investment grade rating from a credit rating agency approved by the Central Bank, which said guarantee is explicit, unconditional, legally enforceable and irrevocable over the life of the credit exposure in question;

(c) extended directly to the Central Government of Trinidad and Tobago;

(d) fully secured at all times by cash in Trinidad and Tobago dollars or other currencies readily

convertible to Trinidad and Tobago dollars, delivered to the licensee and placed with it in a pledged special account;

(e) for a period of less that one month and fully secured by investments than are investment grade, as rated by a credit rating agency approved by the Central Bank, so, however, that the licensee shall give the Central Bank prior notice of such exposure being incurred;

(f) an interbank exposure of less than one month; or

(g) an exposure arising from the underwriting of securities that are held for less than ninety days.

(1A) The Inspector may grant approval to a licensee, to directly or indirectly, incur a credit exposure to a person, borrower group or related group in the form of an investment in a bond in an aggregate amount of up to fifty per cent of its capital base where such bond—

(a) is issued by a company incorporated in Trinidad and Tobago, wholly owned and controlled by Corporation Sole;

(b) is fully funded and denominated in Trinidad and Tobago dollars;

(c) has an investment grade rating from a credit rating agency approved by the Central Bank;

(d) is collateralised by highly marketable assets where the value of the collateral is at least 180 per cent of the value of the bond;

(e) is supported by a sinking fund or other appropriate creditor protection arrangement; and

(f) satisfies any other condition which the Inspector may require.

(2) A licensee that contravenes subsections (1) and (1A) commits an offence.

(3) A licensee shall not, directly or indirectly, incur any large exposure to a person, borrower group or related group if by

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so doing the aggregate principal amount of all such large exposures would exceed eight hundred per cent of the capital base of the licensee.

(4) A licensee that contravenes subsection (3) commits an offence.

(5) The aggregate principal amount referred to in subsection (3) shall include the aggregate principal amount referred to in section 43(1)*(b)*.

(6) Where, in any particular case—

(a) a licensee is in contravention of the limits referred to in subsections (1) and (3); or

(b) in the opinion of the Inspector, after consultation with the Governor, a credit exposure of a licensee is not prudent,

the Inspector may require a licensee to reduce its credit exposure, increase its capital pursuant to section 16(6) or 17(10), or, where applicable, make adequate provisions for potential losses.

(7) A licensee that fails to comply with a requirement of the Inspector pursuant to subsection (6)*(b)* commits an offence.

(8) Within three months of the coming into force of this Act, a licensee shall notify the Inspector of—

(a) all credit exposures to persons and borrower groups which are in excess of the limits fixed under this section; and

(b) the measures that the licensee shall take in order to—

(i) reduce within a period of three years the excess credit exposures granted so that they are within the limits laid down in subsections (1) and (3); or

(ii) to provide within a period of two years, additional capital in accordance with the capital adequacy requirements under this Act.

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(9) Any licensee that contravenes subsection (8) commits an offence.

(10) Any modification of, addition to, or renewal or extension of a credit exposure referred to in subsection (8) shall be subject to the limits imposed by this section.

(11) The Central Bank may, from time to time, establish criteria to be taken into account in determining exposure to risk, by publication of a notice in the *Gazette* and in two daily newspapers published and circulated in Trinidad and Tobago or through directions to a particular licensee.

(12) The requirements of this section shall apply—

(a) to a licensee on an individual basis, and on a consolidated basis to include where applicable, all the domestic and foreign—

(i) subsidiaries of the licensee; or

(ii) companies in which the licensee is a significant shareholder; and

(b) on a consolidated basis, to a financial holding company and all of the domestic and foreign members of the financial group that the financial holding company controls.

Limit on credit exposures to connected parties. [19 of 2018].

43. (1) A licensee shall not, directly or indirectly, incur credit exposures—

(a) to any connected party or connected party group in a principal amount exceeding ten per cent of its capital base; or

(b) to all connected parties and connected party groups in an aggregate principal amount exceeding twenty-five per cent of its capital base.

(2) Subject to section 42(1), (1A) and (3), subsection (1)*(a)* shall not apply where the connected party referred to in that subsection is—

(a) a subsidiary of the licensee where no other connected party holds any share in such subsidiary; or

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(b) a holding company or financial holding company of the licensee that is itself a licensee or permit holder under this Act.

(3) For the purposes of subsections (1) and (2), equity investments in wholly-owned subsidiaries that are financial institutions shall not be taken into account in the determination of credit exposure.

(4) Notwithstanding subsection (1), a licensee shall not incur credit exposures to—

(a) a director of the licensee; or

(b) an officer of the licensee; or

(c) a relative of a person referred to in paragraph *(a)*,

in an amount greater than two per cent of the capital base of the licensee or two years' emoluments of the director or officer, whichever is the lesser.

(5) The limit referred to in subsection (4) shall not apply to a loan made on the security of a mortgage on the principal residence in Trinidad and Tobago of a director or officer of the licensee where the amount of the loan together with the amount then outstanding of any mortgage having an equal or prior claim against the property, does not exceed ninety per cent of the value of the property at the time the loan is made.

(6) Any credit exposure incurred by a licensee, connected parties and connected party groups under this section shall be—

(a) on terms and conditions no less favourable to the licensee than the terms and conditions on which such credit exposure is offered to the public; and

(b) subject to the approval of the Board of Directors.

(7) Within three months of the coming into force of this Act, a licensee shall notify the Inspector of all credit exposures

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to connected and connected party groups which are in excess of the limits fixed under this section or not in accordance with subsection (1).

(8) With the exception of subsections (7) and (9), this section does not apply in respect of any credit exposure incurred by a licensee to a connected party or a connected party group prior to the coming into force of this Act, but after such coming into force, any modification of, addition to, renewal or extension of such credit exposure is subject to this section.

(9) Where, in the opinion of the Inspector, a credit exposure incurred by a licensee to a connected party or to a connected party group exposes the licensee to excessive risk, or does not accord with the terms and conditions referred to in subsection (6)*(a)*, the Central Bank may require the licensee to set aside or require that changes be made to the credit exposure, or require the licensee to limit or reduce the credit exposure.

(10) A licensee that contravenes subsections (1), (4), (6) and (7) or fails to comply with the requirement referred to in subsection (9) commits an offence.

(11) This section shall apply—

(a) to a licensee on an individual basis, and on a consolidated basis to include where applicable, all the domestic and foreign—

(i) subsidiaries of the licensee; and

(ii) companies in which the licensee is a significant shareholder; and

(b) on a consolidated basis, to a financial holding company and all of the domestic and foreign members of the financial group that the financial holding company controls.

Governments and Companies wholly owned and controlled by Corporation Sole. [19 of 2018].

43A. For the purposes of section 43(1) and (2) and subject to sections 42(1), (1A) and (3), the Government of Trinidad and Tobago or any company wholly owned and controlled by Corporation Sole shall not be considered a connected party or a

member of a connected party group by reason of its holding of shares in a licensee directly or indirectly through a company, body corporate, unincorporated body or trust.

Reporting contravention of credit exposure limits. [19 of 2018].

44. Where a licensee has contravened the limitations on credit exposures referred to in sections 42(1), (1A) and (3) and 43(1), (3) and (4), the licensee shall forthwith inform the Inspector.

Limits on acquisition of shares or ownership interests by a licensee.

45. (1) A licensee shall not, directly or indirectly, acquire or hold shares or ownership interests in any company or unincorporated body, if such acquisition or holding would result in—

(a) the licensee having the power to—

(i) exercise twenty per cent or more of the voting rights at any general meeting of the company or unincorporated body;

(ii) elect twenty per cent or more of the directors or officers of the company or unincorporated body; or

(iii) exercise significant influence over the conduct of the business and affairs of the company or unincorporated body;

(b) the licensee acquiring or holding shares in a company or ownership interests in an unincorporated body of a value equal to twenty-five per cent or more of the capital base of the licensee; or

(c) the aggregate value of all such shareholdings and ownership interests referred to in paragraph *(b)* exceeding one hundred per cent of the capital base of the licensee.

(2) Notwithstanding subsection (1), a licensee shall not allow the aggregate value of investments made by it in real estate or property development companies to exceed twenty-five per cent of its capital base.

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(3) The restrictions imposed under subsection (1) shall not apply where such shareholding or ownership interest is acquired in the administration of the estate of a deceased person or pursuant to an underwriting arrangement or in the course of the satisfaction of debts due to the licensee but such shareholding or ownership interest shall be disposed of at the earliest possible time but in any event, not later than five years from the date of acquisition or such further period as the Central Bank may permit.

(4) The restrictions imposed under subsections (1) and (3) shall not apply to a company of which a licensee is a significant shareholder or a subsidiary of the licensee that is registered under the Securities Act with respect to the acquisition or holding of shares or ownership interests by that company permitted under that Act in the ordinary course of business of that company under that Act.

Ch. 83:02.

(5) A licensee shall not, without first obtaining the approval in writing of the Central Bank, acquire or hold shares in such number that would equal ten per cent or more in any class of shares in an insurance company registered under the Insurance Act.

Ch. 84:01.

(6) Subsection (1)*(a)* shall not apply to the direct or indirect acquisition or holding of shares or ownership interests by a licensee in a financial institution or an insurance company registered under the Insurance Act.

(7) Within three months of the coming into force of this Act, a licensee shall notify the Inspector of—

(a) any shares held by it in any insurance company referred to in subsection (5); and

(b) any shares and ownership interests held by it in excess of any limit imposed by this subsection,

and the Inspector shall either approve the holding of any shares referred to in paragraph *(a)* or any excess shares and ownership interests referred to in paragraph *(b)*, or require the licensee to dispose of such shares or excess shares and ownership interests within such time as the Inspector shall specify.

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(8) A licensee that contravenes subsections (5) and (7) commits an offence.

Approval for certain transactions.

46. (1) A licensee shall not without prior approval of the Central Bank—

(a) directly or indirectly establish or acquire a subsidiary in or outside of Trinidad and Tobago;

(b) enter into an agreement for sale or other transfer of—

(i) a subsidiary of the licensee; or

(ii) a controlling or significant interest of the licensee in a financial entity.

(2) A licensee shall not without prior approval of the Inspector—

(a) enter into an agreement for sale or other transfer of ten per cent or more of the assets of—

(i) the licensee;

(ii) a subsidiary of the licensee; or

(iii) a company or unincorporated body in which the licensee has a controlling or significant interest; or

(b) undertake any other restructuring that would result in a reduction in the capital of the licensee.

Restriction on dividends and requirements to maintain assets.

47. (1) The directors of a licensed domestic institution shall not declare or propose payment of a dividend to shareholders except where the following circumstances apply:

(a) all capitalised expenditure of the licensee not represented by tangible assets and all prior losses have been written off;

(b) any impairment of the stated capital has been corrected;

(c) the requirement for the annual payment to the Statutory Reserve Fund has been met in accordance with section 56(1)*(a)*;

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(d) having regard to the licensee's liabilities, it is not imprudent to do so;

(e) the requirements of this Act relating to reserves have been met;

(f) all sums due and payable to the Central Bank by the licensee have been paid, unless the prior approval in writing of the Central Bank has been obtained; and

Ch. 79:02.

(g) in the event of the Central Bank's intervention under section 44D of the Central Bank Act, prior approval in writing of the Central Bank has been obtained.

(2) A licensed foreign institution shall, at all times, maintain assets in Trinidad and Tobago, in cash or approved securities, of a value equal to one hundred and five per cent of its liabilities in Trinidad and Tobago.

(3) A licensee that contravenes this section commits an offence.

Limits on financing for shares held in trust.

48. (1) Nothing in this Part shall prohibit a licensee from providing in accordance with any scheme for the time being in force, money for the purchase by trustees of shares in that licensee, its financial holding company, holding company or subsidiary to be held by or for the benefit of employees of the licensee, financial holding company, holding company or subsidiary, including any director holding a salaried employment or office, so, however, that the licensee shall not provide financing for the purchase of such shares in excess of twenty per cent of any class of shares of the licensee, the financial holding company, holding company or subsidiary except with the prior approval of the Inspector.

(2) Within three months of the coming into force of this Act, a licensee shall notify the Inspector of any holding by a trustee of shares in the licensee, its financial holding company, holding company or subsidiary, purchased with financing provided by the licensee in excess of the limit imposed under

subsection (1), and the Inspector shall either approve the holding of such excess shares by the trustees or require the trustees to dispose of the excess shares within such time as the Inspector specifies and to repay to the licensee the portion of the proceeds of disposition that relates to the sum provided by the licensee in connection with the purchase of the excess shares, so that the licensee is in compliance with subsection (1).

(3) A licensee that contravenes this section commits an offence.

Contravention.

49. (1) Where a licensee contravenes any provision of sections 41 to 48, the Central Bank may—

(a) require the Board of Directors of the licensee to convene a meeting and direct the board to comply with such measures as the Central Bank may require to prevent any further contravention, and may issue compliance directions under section 86;

(b) require the Board of Directors to convene a special meeting of shareholders to report on the failure of the licensee to take the required measures and the actions taken or to be taken by the Central Bank, and may issue compliance directions under section 86; and

(c) impose conditions on the licence of the licensee,

and a representative of the Central Bank may attend and be heard at any such meeting.

(2) A licensee that contravenes sections 41(1) or (3)*(a)*, 45(1), (2), (3) and (5) or 46 commits an offence and is liable on summary conviction to a fine of five million dollars, and where such offence is committed with the consent or connivance of, or attributable to any negligence on the part of, any director or officer of the licensee responsible for the granting of credit exposures or any person purporting to act in any such capacity, he

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commits an offence and is liable on summary conviction to a fine of five million dollars and to imprisonment for five years and in the case of a continuing offence, to a fine of five hundred thousand dollars for each day that there is non-compliance.

Branches and representative offices.

50. (1) In this section, "branch" means—

(a) an office or place of business, whether in Trinidad and Tobago or elsewhere, where a licensed domestic institution carries on all or any part of its business of banking or business of a financial nature, other than its principal place of business in Trinidad and Tobago; or

(b) an office or place of business in Trinidad and Tobago where a licensed foreign institution carries on all or any part of its business of banking or business of a financial nature in Trinidad and Tobago.

(2) In this section, "representative office" means—

(a) an office established in Trinidad and Tobago by a foreign financial institution through which no banking business, business of a financial nature or other business activity is carried on other than—

(i) promoting the services of the foreign financial institution or an affiliate of the foreign financial institution that carries on activities of a financial group as defined in section 2, other than an affiliate incorporated in Trinidad and Tobago; or

(ii) acting as a liaison between clients of the foreign financial institution and other offices of the foreign financial institution or its affiliates that carry on activities of a financial group as defined in section 2, other than affiliates incorporated, or an office located in Trinidad and Tobago; or

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(b) an office established in or outside Trinidad and Tobago by a licensed domestic institution through which no banking business, business of a financial nature or other business activity is carried on other than—

(i) promoting the services of the licensed domestic institution or an affiliate of the licensed domestic institution that carries on activities of a financial group as defined in section 2; or

(ii) acting as a liaison between clients of the licensed domestic institution and other offices of the licensed domestic institution or its affiliates that carry on activities of a financial group.

(3) A licensed domestic institution shall not, without the prior approval in writing of the Central Bank—

(a) establish, acquire or open a branch or representative office outside Trinidad and Tobago; or

(b) close or relocate a branch outside Trinidad and Tobago.

(4) A licensed domestic institution shall not, without at least seven days' prior notice in writing to the Central Bank—

(a) establish, acquire or open a branch or representative office in Trinidad and Tobago; or

(b) close or relocate—

(i) a branch in Trinidad and Tobago; or

(ii) a representative office in or outside Trinidad and Tobago.

(5) A foreign financial institution shall not—

(a) without the prior approval in writing of the Central Bank, establish, acquire or open a representative office or an additional branch in Trinidad and Tobago;

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(b) without the prior approval in writing of the Central Bank close or relocate a branch in Trinidad and Tobago; or

(c) without at least seven days' prior notice in writing to the Central Bank, close or relocate a representative office in Trinidad and Tobago.

(6) A licensee that contravenes subsections (3), (4) and (5) commits an offence.

(7) A foreign financial institution applying for approval to establish, acquire or open a representative office pursuant to subsection (5) shall—

(a) appoint a person who is ordinarily resident in Trinidad and Tobago to be its principal representative for the purposes of this Act and who shall be responsible for the day to day management of the representative office of the foreign financial institution;

(b) provide the principal representative with a power of attorney expressly authorising the principal representative to receive all notices from the Central Bank and shall without delay submit a copy of the power of attorney to the Central Bank; and

(c) where a vacancy occurs in the position of principal representative, without delay, fill the vacancy and submit a copy of the new power of attorney to the Central Bank.

(8) A power of attorney filed or deposited under this section shall be valid although not registered under the Registration of Deeds Act.

Ch. 19:06.

(9) In determining whether to grant approval under subsection (3) or (5), the Central Bank shall take into account the financial condition of the licensee and such other criteria as the Minister may prescribe by Regulations.

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(10) In determining whether to grant approval under subsection (5), the Central Bank shall take into account whether—

(a) a principal representative appointed by the foreign financial institution pursuant to subsection (7) is a fit and proper person in accordance with the criteria in the Second Schedule;

Second Schedule.

(b) the foreign financial institution has paid the annual fee set out in the Sixth Schedule; and

Sixth Schedule.

(c) the foreign financial institution has complied with the terms and conditions imposed by the Central Bank.

(11) The Central Bank may issue guidelines with respect to—

(a) the closing or relocation of branches in Trinidad and Tobago pursuant to subsections (4) and (5); and

(b) the terms and conditions referred to in subsection (10)*(c)*.

Notification of new products and services. [4 of 2018].

51. (1) Where a licensee wishes to offer to the public—

(a) a new product or service; or

(b) a product or service that is materially different from existing products and services offered by the licensee,

the licensee shall, at least one month prior to the date of introduction of such product or service, notify the Inspector in writing, providing a detailed description of the product or service and any documentation in connection therewith.

(2) The Inspector shall, where appropriate, and within seven days of receipt of the notification and all documentation including any further documentation requested by him in writing, issue a notice acknowledging receipt of the notification and all related documentation.

(3) Where the Inspector objects to the product or service he shall issue to the licensee the appropriate notice within fourteen days of the acknowledgment referred to in subsection (2).

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(4) Where the licensee does not receive the notice referred to in subsection (3), within the time prescribed, the licensee may proceed to offer the product or service to the public.

Inspector to approve product.

(4A) Notwithstanding that a licensee has offered a new or materially different product or service in accordance with subsection (4), the Inspector may subsequently prohibit the licensee from continuing to offer the new or materially different product or service, if in the opinion of the Inspector the continued use of the new or materially different product or service will be fraudulent, unjust, imprudent, or not in the public interest and the Inspector shall give written reasons for the prohibition.

(5) A licensee that offers a new or materially different product or service to the public after receiving a notice of objection from the Inspector commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars.

(6) The Central Bank may issue guidelines as to what constitutes a new product or a product that is "materially different" for the purposes of subsection (1).

(7) A licensee that offers a product or service referred to in subsection (1) in contravention of that subsection commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars.

Restriction on an officer or employee of licensee acting as insurance agent.

***52.** (1) A licensee, officer or other employee of a licensee shall not exercise pressure or undue influence upon a borrower to place insurance for the security of the licensee in any particular insurance company.

(2) Nothing in subsection (1) precludes the licensee from—

(a) requiring such insurance to be placed with insurance companies approved by it; or

(b) acting as agent for an insurance company.

(3) A licensee, officer or other employee of a licensee that contravenes this section commits an offence and is liable on

**See* Note on page 2 regarding commencement of subsection (2)*(b)*.

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summary conviction, in the case of a licensee, to a fine of six hundred thousand dollars and in the case of an officer or other employee, to a fine of six hundred thousand dollars and to imprisonment for two years.

Advertisements.

53. (1) A person other than a licensee shall not issue or cause to be issued any advertisement inviting the public to deposit money with that person or with some other person or licensee.

(2) A licensee shall not issue or cause to be issued any advertisement which in the opinion of the Inspector is misleading or objectionable.

(3) A licensee that contravenes subsection (2) commits an offence.

(4) The Minister may make Regulations governing the issue of advertisements.

(5) For the purpose of this section—

(a) an advertisement issued by any person by way of display or exhibition in a public place shall be treated as issued by him on every day on which he causes or permits it to be displayed or exhibited;

(b) an advertisement issued by any person on behalf of or to the order of another person shall be treated as an advertisement issued by that other person; and

(c) an advertisement inviting deposits with a person specified in the advertisement shall be presumed, unless the contrary is proved, to have been issued by that person.

(6) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and in the case of a continuing offence to a fine of sixty thousand dollars for each day that the offence continues.

(7) In any proceedings for an offence under this section it shall be a defence for the person charged to prove that he is a

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person whose business it is to publish or to arrange for the publication of advertisements and that he received the advertisement in the ordinary course of business and did not know and had no reason to suspect that the publication would constitute such an offence.

Misleading or objectionable advertisements.

54. Where in the opinion of the Inspector, an advertisement referred to in section 53 is misleading or objectionable, the Inspector may require the correction or withdrawal of the advertisement or any part thereof.

Information not to be disclosed. [10 of 2020 25 of 2020].

55. (1) No licensee, financial holding company, controlling shareholder, significant shareholder or affiliate of a licensee, and no director, officer, employee or agent of a licensee, financial holding company or other controlling shareholder or affiliate who receives information relating to the business or other affairs of a depositor or customer of the licensee or of any other person shall disclose the information unless–

(a) the disclosure is required under compulsion of law;

(b) there is a duty to the public to disclose the information;

(c) the interest of the licensee requires disclosure; or

(d) the depositor or customer expressly or impliedly consents to the disclosure.

(2) No person who obtains information referred to in subsection (1) directly or indirectly from a person referred to in subsection (1) shall disclose the information without the consent of the person to whom it relates and the person from whom it was received.

(3) Notwithstanding subsection (1), a licensee or a person authorised by the licensee may, with the consent of the depositor, customer or other person concerned, exchange information with another licensee.

(4) This section does not apply to—

(a) information which, at the time of disclosure, is or has already been made available to the public from other sources;

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(*b*) information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it; or

(*c*) the provision of a witness statement to—

(i) a police officer of the rank of Superintendent or above for the purposes of any criminal investigation or criminal proceedings; or

(ii) the Police Complaints Authority for the purposes of an investigation of criminal offences involving police officers, police corruption and serious police misconduct being conducted by it,

where the witness statement—

(iii) relates to information disclosed under compulsion of law, this Act or any other written law; and

(iv) is requested, in writing, by that police officer or the Police Complaints Authority with the prior written consent of the Director of Public Prosecutions.

(5) A person who discloses information in contravention of this section commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and to imprisonment for two years.

(6) Notwithstanding any law to the contrary, it shall not be a contravention of any law, or a breach of contract or any duty of confidentiality, for a person or entity to disclose information pursuant to this section by way of a witness statement referred to in subsection (4)(*c*).

(7) No action or other proceeding shall be brought against a person or entity with respect to the disclosure by him or it, in good faith, of any information pursuant to this section.

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PART VI

RESERVES AND OTHER REQUIREMENTS

Statutory Reserve Fund.

56. (1) Every licensee shall hold and maintain a reserve fund to be known as the Statutory Reserve Fund into which shall be transferred at the end of each financial year, after deduction of taxes no less than—

(a) ten per cent of the net profit of a licensed domestic institution; or

(b) ten per cent of the net profit of a licensed foreign institution related to its business in Trinidad and Tobago,

until the amount standing to the credit of the Statutory Reserve Fund is not less than the stated capital or assigned capital, as the case may be, of the licensee.

(2) A licensee that contravenes subsection (1) commits an offence.

Reserve Account.

57. (1) Every licensed domestic institution shall hold and maintain as a deposit with the Central Bank a cash reserve balance to be known as the Reserve Account, which shall bear a ratio to the total prescribed liabilities of that licensed domestic institution in such form and to such extent as the Central Bank may stipulate by notice published in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago.

(2) Notwithstanding subsection (1), the Central Bank may, by notice published in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago, require every licensed domestic institution conducting the classes of business specified in the notice, to hold as a deposit with the Central Bank a Secondary Reserve Account in such form and to such extent and bearing such ratio to the total prescribed liabilities of that licensed domestic institution as the Central Bank may determine.

(3) For the purpose of this section, the Central Bank may, by notice published in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago—

(a) define the classes of prescribed liabilities;

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(b) stipulate different ratios in respect of each class of prescribed liabilities;

(c) permit licensed domestic institutions to count all or part of their notes and coins as part of the cash reserve balance required under subsection (1);

(d) stipulate the permissible instruments which may be held in the Secondary Reserve Account required under subsection (2);

(e) decide to pay interest at such rate as it may determine on the balance or such part or parts thereof held by a licensed domestic institution in the Reserve Account or the Secondary Reserve Account or both; or

(f) when in the opinion of the Central Bank, special monetary conditions so warrant, set additional ratios in respect of increases in total prescribed liabilities.

(4) For purposes of determining the amount of the cash reserve balance required to be maintained by any licensed domestic institution in the Reserve Account during a period of one week—

(a) the amount of the prescribed liabilities of such licensed domestic institution shall be the average of its prescribed liabilities at the close of business on Wednesday in each of the four preceding consecutive weeks ending with the last Wednesday but one;

(b) the amount of the cash reserve balance of such licensed domestic institution with the Central Bank shall be the average amount of such balance at the close of business on each day of the current week.

(5) Subject to subsection (6), where a licensed domestic institution fails to maintain the balance in the Reserve

Account or the Secondary Reserve Account required to be maintained under this section, the Central Bank shall notify such licensed domestic institution of the deficiency, and the institution shall pay to the Central Bank interest on the amount of the deficiency at such rate, not in excess of one-tenth of one per cent per day, as the Central Bank may set by notice published in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago.

(6) If a licensed domestic institution fails to maintain the amount in the Reserve Account required by this section for a period longer than one week, the Central Bank may require such licensed domestic institution to pay additional interest not in excess of three times the amount of interest set in accordance with subsection (5).

(7) When the Central Bank has assisted in the restructuring of a licensed domestic institution which is in financial difficulties, or it has provided financial assistance to support a licensed domestic institution in financial difficulties, it may waive all or any of the requirements under section 56 or 57 or both for a specified period of time and on such conditions as it may determine.

Selective credit control.

58. (1) In order to determine what steps, if any, are necessary to be taken to encourage the expansion of credit in any or all sectors of the economy, the Central Bank may consult with licensees.

(2) The Central Bank may, after consultation with licensees and with the approval of the Minister, impose controls in respect of the volume, terms and conditions upon which credit may be made available to all or any sectors of the economy, when in its judgment, the imposition of such controls is necessary to restrict or prevent an undue expansion of credit.

(3) The imposition of any control under subsection (2) shall be by notice published in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago and the provisions of any such notice shall take effect on

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or after the date of publication as may be stated in the notice and shall apply uniformly to all licensees.

Central Bank may fix maximum working balances.

59. (1) The Central Bank may—

(a) permit a licensee to hold working balances in any specified foreign currency in excess of the maximum amount set or determined for such currency under subsection (2);

(b) from time to time prescribe the manner of determination of the maximum amount of the working balances which licensees may hold in foreign currencies generally or in any specified currency or currencies.

(2) In ascertaining whether the working balances of any licensee in any foreign currency are in excess of the maximum amount fixed or determined in subsection (1)*(a)* and *(b)*, there may be deducted from such balances the net liabilities of that licensee in currencies into which such currency is convertible.

Maximum liability.

60. (1) No licensee shall incur, in Trinidad and Tobago, deposit liabilities of an amount exceeding twenty times the sum of its stated capital or assigned capital and Statutory Reserve Fund.

(2) A licensee that contravenes subsection (1) commits an offence.

(3) The Central Bank may, by notice published in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago, determine the minimum ratio that after the expiration of six months from the date of service of the notice, Trinidad and Tobago assets held by licensees will bear to their respective liabilities in Trinidad and Tobago, but any variation of such ratio shall not exceed ten percentage points in any one period of six months.

(4) A licensee may apply to the Central Bank to be exempted from complying with this section and the Central Bank may grant the application if it is satisfied that the financial position of the licensee is sound.

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Preference to Trinidad and Tobago securities and fixing of ratio.

61. (1) A licensee shall so conduct its business as to ensure that in the placing of its liquid assets preference is at all times given to short-dated instruments of originating in Trinidad and Tobago.

(2) The Central Bank may fix the percentage which the liquid assets of a licensee should bear to its respective total prescribed liabilities and the percentage which its respective liquid assets originating in Trinidad and Tobago should bear to the total of its liquid assets.

PART VII

INSPECTION, INVESTIGATION AND WINDING-UP

Duties of Inspector. [4 of 2018].

62. (1) The Inspector shall examine all applications for approvals, licences and permits to be granted or issued under this Act and make recommendations thereon to the Central Bank.

(2) The Inspector shall make or cause to be made such examination and inquiry into the affairs or business of each—

(a) licensee;

(b) financial holding company;

(c) subsidiary of a licensed domestic institution in Trinidad and Tobago; and

(d) subsidiary and branch of a licensed domestic institution located outside Trinidad and Tobago,

as he considers necessary or expedient, for the purpose of satisfying himself that the provisions of this Act are being observed and that the licensee or financial holding company or subsidiary is in a sound financial condition.

(3) The Inspector shall make or cause to be made such examination and inquiry into the affairs or business of a member of a financial group if, in the opinion of the Inspector, such examination and inquiry is necessary to assess any risk that such member may pose to the licensee.

(4) The Inspector shall make or cause to be made such examination and inquiry into the affairs of any representative office of a foreign financial institution located in Trinidad and

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Tobago, if in the opinion of the Inspector, such examination and inquiry is necessary to verify that no business activity other than that referred to in section 50(2)*(a)* is being carried on.

(5) The Inspector shall report to the Governor at the conclusion of each examination and inquiry referred to in subsections (2), (3) and (4).

(6) For the purpose of determining the condition of a licensee or a financial holding company, and its compliance with this Act, the Central Bank may call upon any present or former auditor, director or officer of the licensee or financial holding company, or of any controlling shareholder, significant shareholder or affiliate of the licensee to provide such information that is related to or may affect—

(a) the financial condition of the licensee, financial holding company or other member of a financial group; and

(b) any transaction between the licensee and its financial holding company or controlling shareholder and any member of its financial group,

in order to be satisfied that the licensee or financial holding company is in compliance with the provisions of the Act.

(7) In the performance of its duties under this Act, the Central Bank or the Inspector shall at all reasonable times have access to all books, records, accounts, vouchers, minutes of meetings, securities and any other documents, including documents stored in electronic form, of any licensee or financial holding company and the right to call upon any director, officer, auditor or employee of any such licensee or financial holding company for any information or explanation it considers necessary for the due performance of its duties.

(8) If an on-site or off-site examination of the affairs of a licensee, financial holding company or other member of a financial group reveals that the licensee, financial holding company, or other member of a financial group is conducting its

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business in an unlawful or unsound manner or is otherwise in an unsound condition the Inspector may require that the licensee or financial holding company forthwith or within such time as may be specified, take all such measures as he may consider necessary to rectify the situation.

(9) Where a person fails to comply with a request to provide information under subsection (6), the Inspector shall restrict any further transactions among the licensee and the financial holding company, controlling shareholder, significant shareholder or affiliate and take such other measures as he may think fit against the licensee, financial holding company, controlling shareholder, significant shareholder or affiliate, if he considers that the transactions or relationship among the licensee, financial holding company, controlling shareholder, significant shareholder and other affiliate may expose the licensee to undue risk and could prejudice the interests of depositors or potential depositors of the licensee.

(10) A person who fails to comply with a request under subsection (6) or (7) or with a restriction or measure imposed by the Inspector pursuant to subsection (9) or who obstructs a person in the performance of his duties under this section commits an offence and is liable on summary conviction, in the case of a licensee or financial holding company, to a fine of six hundred thousand dollars and in the case of a director, officer or employee of the licensee or financial holding company, to a fine of six hundred thousand dollars and to imprisonment for two years.

(11) Where a person fails to comply with a request under subsection (6), (7) or (9) or with a restriction or measure imposed by the Inspector pursuant to subsection (9) the Inspector may, in addition to any other action that may be taken under this Act, apply to a Judge in Chambers for an order requiring the person to comply with the restriction or measure imposed, and on such application, the Judge may so order and make any other order he thinks fit.

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(12) A licensee or financial holding company that fails to take measures required by the Inspector pursuant to subsection (8), commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and in the case of a continuing offence to a fine of sixty thousand dollars for each day that the offence continues.

(13) The Inspector or a person authorised by the Central Bank may, subject to subsection (17) enter into the premises of any licensee or financial holding company—

(a) to inspect any books, records, accounts, vouchers, minutes of meetings, securities and any other documents, including documents stored in electronic form pursuant to this Act and the Regulations made thereunder and ask any relevant questions and to make any notes or take any copies of the whole or any part of any such record; and

(b) to determine whether there is compliance with this Act or any Regulations made thereunder.

(14) Where the books, records, accounts, vouchers, minutes of meetings, securities and any other documents, including documents stored in electronic form referred to in subsection (7) are not in the possession of the licensee or the financial holding company or any director, officer, auditor or employee of any such licensee or financial holding company, the Central Bank or the Inspector shall have the access set out in subsection (7) except that where the person in possession is in such possession by way of a lien, production to the Central Bank or to the Inspector of the books, records, accounts, vouchers, minutes of meetings, securities and any other documents, including documents stored in electronic form, shall be without prejudice to the lien.

(15) The Inspector and any person authorised by the Central Bank shall regard and deal with all information and documents obtained in the course of his duties as confidential.

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(16) If the Inspector or any person authorised by the Central Bank communicates or attempts to communicate such information to any person anything contained in such document or copies to any person—

(a) other than a person to whom he is authorised to communicate it; or

(b) otherwise than for the purposes of this Act or any other written law,

that person is guilty of an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for three years.

(17) Where the Inspector or a person authorised by the Central Bank is—

(a) prevented from exercising the powers given to him under subsection (13) (hereinafter referred to as "the powers");

(b) required to exercise the powers outside of normal working hours; or

(c) required to exercise the powers urgently,

he shall apply for and obtain an *ex parte* order of a Judge of the High Court, which order shall consititute the warrant for the designated authority to enter into the premises of the licensee or financial holding company.

(18) The application referred to in subsection (17) shall show reasonable cause for the Inspector or a person authorised by the Central Bank to enter into the premises of the licensee to fulfil the requirements of subsection (13).

(19) Where the provisions of this Act require anything to be done within a specified period of time and the person who is required to comply with the time limit prescribed is unable to do so because of circumstances beyond his control, including but not limited to the occurrence of any hurricane, storm, fire, flood or any similar natural disaster or events such as industrial unrest, riot, public disorder or the like, the Inspector shall grant such extension of time as may be reasonably sufficient for the doing of the act or thing.

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Inspector to report on insolvency.

63. (1) Where the Inspector is satisfied after an on-site or off-site examination of the affairs of a licensee or financial holding company that it is insolvent or unable to meet the minimum capital adequacy requirement stipulated in the prudential criteria or is unlikely to meet the demands of the depositors of the licensee or that its continuation in business is likely to involve a loss to the depositors of the licensee or to the creditors of the licensee or financial holding company, he shall advise the Board accordingly.

(2) The Board may, after receiving the advice of the Inspector and after considering all the relevant facts and circumstances, order the licensee or financial holding company to suspend business forthwith for a period of sixty days and may direct the Inspector to take charge of all the books, records, other documents, including electronically stored information, and assets of the licensee or financial holding company and to take all such measures as may be necessary to prevent the continuation in business by that licensee or financial holding company during the period of suspension and preserve the assets of the licensee or financial holding company and all costs incurred shall be a first charge on the assets of the licensee or financial holding company.

(3) Notwithstanding the provisions of any other law, no action or proceedings may be instituted in any Court for the purpose of securing the enjoining, review or revocation of any order made or direction given under subsection (2) or in respect of any loss or damage incurred or likely to be or alleged to be incurred by reason of such order or direction.

(4) An order made under subsection (2) shall cease to have effect—

(a) if the Board makes a further order permitting the licensee or financial holding company to resume business either unconditionally or subject to such conditions as it may consider necessary in the public interest

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or in the interests of the depositors and potential depositors of the licensee and other creditors of the licensee or financial holding company; or

(b) upon the expiration of the period of sixty days from the day on which it is made, unless—

(i) the Board extends the order for a period not exceeding a further sixty days;

(ii) in the case of a licensee or a financial holding company, an application is made to the Court for the appointment of a receiver or manager on behalf of the depositors; or

(iii) in the case of a licensee that is a licensed domestic institution or in the case of a financial holding company, a petition is made to the Court by the Inspector, on authorisation of the Board, for the winding-up of the licensee or the financial holding company on behalf of its depositors.

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(5) For the purposes of subsection (4)*(b)*(iii), the Court may order the winding-up of a licensee in accordance with the Companies Act subject to the modification that a licensed domestic institution may be ordered to be wound up on the petition of the Inspector on behalf of its depositors.

(6) Any person who directly or indirectly prevents the Central Bank from having access to a licensee or financial holding company, its books, records or other documents, including electronically stored information, or fails to make them available, commits an offence and is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

Winding-up.

64. (1) In any case where a petition is made by the Inspector to the Court for the winding-up of a licensee—

(a) the licensee shall remain in suspension and shall not carry on business during the

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pendency of the petition unless it is authorised to do so by the Court and except in accordance with such conditions, if any, as may be specified by the Court; and

(b) the Court, if it is of the opinion after such inquiry as it may consider necessary, that the licensee—

(i) is not insolvent;

(ii) is able to meet the minimum capital adequacy requirement; and

(iii) is able to meet the demands of its depositors and its continuation in business is not likely to involve a loss to its depositors or creditors,

may permit the licensee to resume business either unconditionally or subject to such conditions as the Court may consider necessary in the public interest or the interests of the depositors and other creditors of the licensee but shall otherwise order that the licensee be wound-up.

(2) In any case where an order of the Court is made, whether in pursuance of any petition made under this section or otherwise, for the winding-up of any licensee or for the appointment of a Receiver or Manager then, notwithstanding the provisions of any other law, such person as may be nominated by the Central Bank shall be appointed as Liquidator, Receiver or Manager as the case may be.

(3) The appointment of the person nominated by the Central Bank under subsection (2) as Liquidator, Receiver or Manager does not in any way absolve any director or officer of the licensee from liability arising from wilful neglect, fraudulent transactions, abuse of depositors' funds and from breach of the provisions of this Act.

Rules as to proceedings in Court.

65. (1) Notwithstanding the preceding sections, the Central Bank may take a direct petition to the Court for the winding-up of a licensee, in accordance with the Companies Act.

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(2) A petition shall not be presented except by leave of the Court, and such leave shall not be granted unless—

(a) a *prima facie* case has been established to the satisfaction of the Court; and

(b) security for costs for such amount as the Court may think reasonable has been given.

(3) The procedure governing petitions made to the Court under sections 64 and this section and for the enforcing of orders made thereunder and for all matters incidental thereto shall be such as is provided for by the Companies Act or such other legislation for the time being in force.

(4) Notwithstanding subsection (1), a petition by the Inspector pursuant to section 63(4)*(b)*(iii) and referred to in section 64 may be heard *ex parte*.

Voluntary winding-up.

66. (1) A licensee or financial holding company shall not commence a voluntary winding-up without the approval of the Central Bank.

(2) A licensee or financial holding company that wishes to commence a voluntary winding-up, shall submit to the Central Bank—

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(a) the statutory declaration filed pursuant to section 410 of the Companies Act;

(b) financial statements of the licensee or financial holding company;

(c) the auditor's report in relation to the financial statements referred to in paragraph *(b)*; and

(d) such other information as the Central Bank may require,

within two days of the filing of the statutory declaration.

(3) The Central Bank shall not provide the approval referred to in subsection (1) unless it is satisfied that the voluntary winding-up will be effected in a manner that would not pose undue risks to depositors and customers of the licensee or adversely affect public confidence in the financial system of Trinidad and Tobago.

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(4) The Central Bank shall, within twenty-one days of receipt of the documents referred to in subsection (2), communicate to the licensee, its approval or non-approval of the voluntary winding-up of the licensee.

(5) Where a licensee or financial holding company passes a resolution for voluntary winding-up, it shall—

(a) within fourteen days, give notice of the resolution by advertisement in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago and in writing to the Registrar of Companies; and

(b) in the case of a licensee, give notice of such resolution to its depositors and customers, in such form and containing such information as the Central Bank may require.

(6) A person who contravenes subsection (5) commits an offence.

(7) A licensee or financial holding company that contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine of six hundred thousand dollars and every director who votes for or consents to a resolution authorising a voluntary winding-up in contravention of this section also commits an offence and is liable, on summary conviction, to a fine of six hundred thousand dollars and to imprisonment for two years.

PART VIII

OWNERSHIP OF LICENSEES

Restructuring of ownership may be required.

67. (1) Where a related group comprises companies that engage in non-financial activities and no fewer than two financial entities, at least one of which is a licensed domestic institution, the Central Bank may, in writing, direct the controlling shareholder of the licensed domestic institution to engage in restructuring to form a financial holding company, such that—

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

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(b) the other financial entities are either directly or indirectly controlled by the financial holding company or the licensed domestic institution referred to in paragraph *(a)*.

(2) In lieu of or in addition to a restructuring under subsection (1), the Central Bank may direct the controlling shareholder of the licensed domestic institution to undertake any other measures that it determines are necessary or appropriate to identify, assess and manage—

(a) the relationship among the licensed domestic institution and other members of the related group; and

(b) the risks resulting from such relationship.

(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 related group.

(4) A financial holding company required under subsection (1) shall apply to the Central Bank for a permit pursuant to section 70.

(5) A restructuring directed under subsection (1) shall be carried out within twelve months of the date of the direction, so however, that the Central Bank may, in its discretion, extend this period by notice in writing to the licensed domestic institution to a maximum of two years from the date of such direction.

(6) A person who contravenes this section commits an offence.

Restructuring not required in certain cases.

68. (1) The Central Bank shall not require a restructuring under section 67—

(a) where a licensed domestic institution is a member of a financial group that is directly controlled by a foreign financial institution or foreign holding company, that—

(i) is subject to regulation and supervision acceptable to the Central Bank; and

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(ii) except for its link through common ownership by the person who controls, directly or indirectly, the foreign financial institution or foreign financial holding company and its affiliates, is not affiliated directly or indirectly with a company or unincorporated body that carries on any business other than an activity permitted to a member of a financial group;

(b) where—

(i) the licensed domestic institution is already controlled by a holding company;

(ii) all of the financial entities in the group are already either directly or indirectly controlled by the holding company or the licensed domestic institution referred to in subparagraph (i); and

(iii) such holding company only controls, whether directly or indirectly, financial entities.

(2) A holding company, including a holding company referred to in subsection (1)*(b)*, that only controls, whether directly or indirectly, financial entities and is not itself a licensed domestic institution shall apply for a permit under section 70.

(3) A person who contravenes subsection (2) commits an offence.

Restriction on activities of financial holding company.

69. (1) A financial holding company shall not engage in or carry on any business other than—

(a) establishing or acquiring financial entities and administering the holdings of the financial group; and

(b) providing management, advisory, financing, accounting, information processing services to entities in the financial group as well as such other services approved by the Central Bank.

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(2) A financial holding company shall not guarantee on behalf of any person the payment or repayment of any sum of money, except where the person is a member of the financial group.

(3) Subject to and in accordance with the limits permitted under sections 42, 43 and 45 on a consolidated basis, a financial holding company may invest its funds in the shares or ownership interests in any entity or make any other investment that its directors consider necessary or advisable to manage the financial holding company's liquidity.

(4) A financial holding company that contravenes this section commits an offence and is liable on summary conviction to a fine of five million dollars, and where such offence is committed with the consent or connivance of, or attributable to any negligence on the part of, any director or officer of the financial holding company, he commits an offence and is liable on summary conviction to a fine of five million dollars and to imprisonment for five years and in the case of a continuing offence, to a fine of five hundred thousand dollars for each day that there is non-compliance.

Requirements for licence.

70. (1) An application for a permit to carry on the business of a financial holding company shall be accompanied by the following information:

(a) capital resources and capital structure, including the identity of its controlling shareholder and significant shareholders;

(b) organisational, managerial and legal structures;

(c) composition of the Board of Directors;

(d) fitness and propriety of directors, officers, controlling shareholder and significant shareholders in accordance with the criteria in the Second Schedule;

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(e) audited financial statements for the past three years, if applicable;

(f) strategic and operational business plans;

(g) financial plans, including projections for the next three years;

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(*h*) sources of funds for initial and ongoing costs; and

(*i*) any other information that the Central Bank may require.

(2) In determining whether to grant a permit, the Central Bank shall—

(*a*) take into account the information referred to in subsection (1), and in particular, whether the applicant has satisfied the criteria in the Second Schedule, or may be as such to prejudice the interests of the depositors of the licensee;

(*b*) determine whether ownership of shares by the applicant, given the corporate affiliations or structure of the applicant, will hinder effective supervision under this Act or would be likely to prejudice the interests of depositors of the licensee.

(3) If the applicant is a foreign financial institution or a foreign holding company, the Central Bank must be satisfied that the applicant is subject to regulation and supervision acceptable to the Central Bank and that there are no obstacles to obtaining information from the applicant or the other regulatory authority.

(4) The Central Bank may attach conditions to a permit under this section, including, without limitation, conditions to ensure that—

(*a*) the capital available to the financial group is adequate or will not jeopardise the financial position of the licensee or licensees and any insurance company registered under the Insurance Act, within the financial group;

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(*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;

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

(*e*) activities or operations of subsidiaries or affiliates that may be injurious to the licensee or licensees and any insurance company registered under the Insurance Act that are members of the financial group are prevented,

and may, at any time, vary or remove such conditions, or add further conditions to such permit.

(5) Where a financial holding company fails to comply with any condition of its permit, the Central Bank may issue directions to the financial holding company and section 86(8) shall apply *mutatis mutandis* to this section.

(6) A financial holding company that fails to comply with any condition of its permit commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and in the case of a continuing offence, to a fine of sixty thousand dollars for each day that the offence continues.

(7) Where a related group is described in both this section and in the relevant section of the Insurance Act, the Central Bank shall determine which Act shall take precedence for purposes of requiring a restructuring based on the relative size of activities of the group in the banking sector and in the insurance sector.

Requirements for controlling shareholder. [3 of 2020].

71. (1) Notwithstanding any other law but subject to section 74 a person or a person on whose behalf shares are held either in trust or by a nominee, shall not become a controlling shareholder of a licensee without first obtaining a written permit from the Central Bank.

(2) In the circumstances where a proposed controlling shareholder is an acquirer, the provisions of section 74 shall also apply and for the avoidance of doubt, where approval is granted for an acquirer to become a controlling shareholder, a permit shall be issued under this section in addition to the permit issued under section 74.

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(3) Where a person becomes beneficially entitled to shares under a will or by intestacy such as to make him a controlling shareholder, he shall apply for a permit within one month of this fact coming to his knowledge.

(4) The Central Bank may, by notice in writing, require any shareholder of a licensee to transmit to it written information—

(a) as to whether that shareholder holds any voting shares in the licensee as beneficial owner or as trustee; and

(b) if he holds them as trustee, the person for whom he holds them either by name or by such other particulars sufficient to enable those persons to be identified, and the nature of their interest,

and the shareholder shall comply with the requirement within such time as may be specified in the notice.

(5) A person who contravenes subsection (4) commits an offence.

(6) A person who, on the coming into force of this Act, holds shares that entitle him to exercise or control more than fifty per cent of the voting power at any general meeting of a licensee, is deemed to hold a permit under this section for such shares.

(7) In determining whether a permit should be granted, the Central Bank shall take into account, without limitation the criteria in the Second Schedule and in particular, whether the proposed shareholder is a fit and proper person in accordance with the criteria in the Second Schedule, or may be such as to prejudice the interests of the depositors of the licensee and whether ownership by a controlling shareholder who is—

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(a) part of a group of relatives each of whom is substantially dependent upon the same source of income; or

(b) in the case of a company, an affiliate of another company,

would be likely to prejudice the interests of depositors of the licensee.

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(8) 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 requires from time to time; and

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

(9) Where a controlling shareholder is no longer a fit and proper person in accordance with the criteria in the Second Schedule, or where a person under subsection (3) is not granted a permit, or where a person holds shares that require him to obtain a permit and no permit is obtained, he shall be notified in writing by the Central Bank of this fact and he shall be required to take such steps in such time as may be specified by the Central Bank to reduce his entitlement to exercise or control fifty per cent or more of the voting power of a licensee or prohibit him from exercising any controlling or significant interest in the licensee.

(10) 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.

(11) A person who—

(a) in response to a request under subsection (4), knowingly or wilfully supplies false information to the Central Bank; or

(b) contravenes any other provision of this section,

commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars or to imprisonment for two years and in the case of a continuing offence, to a fine of sixty thousand dollars for each day that the offence continues.

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(12) Shares required to be held under a permit and not so held or not disposed of pursuant to subsection (9), shall be subject to disposal in accordance with subsection (13), without prejudice to any other penalty which may be incurred by any party pursuant to this Act.

(13) Where the circumstances so warrant, the Central Bank may apply to the High Court for an order for the disposal of shares on such terms and conditions as the Court deems appropriate.

(14) Where shares referred to in subsection (13) are sold in pursuance of an order of the Court, the proceeds of sale, less the costs of the sale, shall be paid into Court or into such fund as the Court may specify for the benefit of the persons beneficially interested in the disposed shares, and any such person may apply to the High Court for the whole or part of the proceeds to be paid to him in satisfaction of his beneficial interest.

(15) Where a controlling shareholder fails to comply with any condition of its permit, the Central Bank may issue directions to the controlling shareholder and section 86(8) shall apply *mutatis mutandis* to this section.

Requirements for significant shareholder. [4 of 2018 3 of 2020].

72. (1) Notwithstanding any other law but subject to section 74 a person or a person on whose behalf shares are held either in trust or by a nominee, shall not become a significant shareholder of a licensee without first obtaining a written permit from the Central Bank.

(2) In the circumstances where a proposed significant shareholder is an acquirer, the provisions of section 74 shall also apply and for the avoidance of doubt, where approval is granted for an acquirer to become a significant shareholder, a permit shall be issued under this section in addition to the permit issued under section 54.

(3) Where a person becomes beneficially entitled to shares, under a will or by intestacy, such as to make him a significant shareholder, he shall apply for a permit within one month of this fact coming to his knowledge.

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

(5) In determining whether a permit should be granted, the Central Bank shall take into account, without limitation the criteria contained in the Second Schedule and in particular, whether the proposed shareholder is a fit and proper person in accordance with the criteria in the Second Schedule, or may be such as to prejudice the interests of the depositors of the licensee and whether ownership by a significant shareholder who is—

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(a) part of a group of relatives each of whom is substantially dependent upon the same source of income; or

(b) in the case of a company, an affiliate of another company,

would be likely to prejudice the interests of depositors of the licensee.

(6) It shall be a condition of every permit granted or deemed to be granted under this section that the significant shareholder shall—

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

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

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(7) Where a significant shareholder is no longer a fit and proper person in accordance with the criteria in the Second Schedule, or where a person under subsection (3) is not granted a permit, or where a person holds shares that require him to obtain a permit and no permit is obtained, he shall be notified in writing by the Central Bank of this fact and he shall be required to take such steps in such time as may be specified by the Central Bank to reduce his entitlement to exercise twenty per cent or more of the voting power of a licensee or prohibit him from exercising a significant interest in the licensee.

(8) Where a significant 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.

(9) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars or to imprisonment for two years and in the case of a continuing offence, to a fine of sixty thousand dollars for each day that the offence continues.

(10) Shares required to be held under a permit and not so held shall be subject to disposal in accordance with subsection (11), without prejudice to any other penalty which may be incurred by any party pursuant to this Act.

(11) Where the circumstances so warrant, the Central Bank may apply to the High Court for the disposal of shares on such terms and conditions as the High Court deems appropriate.

(12) Where shares referred to in subsection (10) are sold in accordance with an order of the Court, the proceeds of sale, less the costs of the sale, shall be paid into Court or into such fund as the Court may specify for the benefit of the persons beneficially interested in the disposed shares, and any such person may apply to the Court for the whole or part of the proceeds to be paid to him in satisfaction of his beneficial interest.

(13) Where a significant shareholder fails to comply with any condition of its permit, the Central Bank may issue directions to the significant shareholder and section 86(8) shall apply *mutatis mutandis* to this section.

Mergers.
[19 of 2018].

73. (1) Notwithstanding any other law, a merger shall not take place where one of the merging companies is a licensee or the financial 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).

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(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.

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

(4) In determining whether 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;

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(b) the criteria set out in the Second Schedule as it applies 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—

(i) the merging companies; or

(ii) 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

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prevent or lessen substantially, competition in the financial services industry in Trinidad and Tobago.

(6) Subject to subsection (7), 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 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 refusal shall be sent to the applicants referred to in subsection (2).

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(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 by the applicants to the Registrar of Companies who shall not issue a certificate of amalgamation under the Companies Act unless he receives a copy of the approval of the merger by the Central Bank or the Ministry of Finance, as the case may require.

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

(a) and 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;

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(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 sections 42(1), (1A) and (3), 43(1)*(a)* and *(b)*, 43(3) and 45(1) of the Act, subject to such terms and conditions as may be specified in the Order.

(13) A person who contravenes subsection (1) or (3) or who breaches any condition requirement or restriction attached to an approval under subsection (6)*(c)* or (9)*(c)*, commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and in the case of a continuing offence, to a fine of sixty thousand dollars for each day that the offence continues.

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(14) Where a person fails to comply with any condition, requirement or restriction of an approval under subsection (6)*(c)* or (9)*(c)*, the Central Bank may issue directions to the person and section 86(8) shall apply *mutatis mutandis* to this section.

(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.

Acquisitions.

74. (1) A financial entity or a significant or controlling shareholder of a financial entity shall not become an acquirer of a licensee or of the financial 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 to issue a permit to the proposed acquirer, the Central Bank shall take into account such relevant matters including, without limitation—

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(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, holding company or the financial holding company of the licensee; and

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

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(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) Subject to subsection (6), 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 in Trinidad and Tobago; and

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(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 subject to 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 refusal shall be sent to the applicant.

(10) The provisions of section 71(3) and (7) to (14) shall apply to this section *mutatis mutandis*.

(11) Where an acquirer fails to comply with any condition of its permit, the Central Bank may issue directions to the acquirer and section 86(8) shall apply *mutatis mutandis* to this section.

(12) A person who contravenes any provision of this section commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars or to imprisonment for two years and in the case of a continuing offence, to a fine of sixty thousand dollars for each day that the offence continues.

PART IX

ACCOUNTS, AUDITORS AND INFORMATION

Submission of statements and other information to Central Bank.

75. (1) Every licensee and financial holding company shall deliver to the Central Bank within such period as may be specified by the Central Bank, and in such form as the Central Bank may from time to time approve, returns containing statements of—

(a) its assets and liabilities;

(b) its loans and advances;

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(c) its earnings and expenses; and

(d) any other financial data that the Central Bank may require.

(2) The Central Bank may apply reporting requirements under this section—

(a) to a licensee on an individual basis, and on a consolidated basis to include where applicable, all the domestic and foreign—

(i) subsidiaries of the licensee;

(ii) companies in which the licensee is a significant shareholder; and

(b) on a consolidated basis, to a financial holding company and all of the domestic and foreign members of the financial group that the financial holding company controls.

(3) No statement or return shall in any case be required in respect of the affairs of any particular customer of a licensee.

(4) Every licensee and every financial holding company shall submit to the Inspector at the end of every quarter a list of—

(a) beneficial and nominee shareholders who hold directly or indirectly shareholdings of five per cent or more of its issued share capital; and

(b) any agreement with respect to the voting of shares of the licensee or financial holding company.

(5) A person who contravenes subsection (4) commits an offence.

(6) The Inspector may request that a licensee or financial holding company submit the lists referred to in subsection (4) at any time.

(7) A person who becomes the holder of five per cent or more of the issued share capital of a licensee or a financial holding company shall, within one month of becoming such holder, notify the Inspector.

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Publication of inactive accounts.

76. (1) Every licensee shall within sixty days after the end of its financial year publish in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago a statement showing all accounts payable by the licensee in respect of which during a period of seven years or any longer period, no transaction has taken place and no statement of account has been requested or acknowledged by the creditor.

(2) A person who contravenes subsection (1) commits an offence.

(3) Every statement published under subsection (1) shall require the person to whom the account is payable or his legal personal representative to submit a claim to the licensee within three months from the date of publication in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago, whichever is published later.

(4) Where any sum included in the statement published under subsection (1) remains unclaimed for a period of three months after the date of publication of the statement, such sum, after deduction therefrom of the cost of publication, shall be paid into the Central Bank and credited to the Consolidated Fund and thereafter interest shall cease to accrue to such sum.

(5) Nothing contained in this section shall be deemed to affect the rights of any depositor to recover a debt due to him by the licensee.

(6) Every licensee publishing the statement referred to in subsection (1) and thereafter paying any sums to the Central Bank under the provisions of this section shall be indemnified by the Government for any loss which it may incur as a result of any such payment.

Consolidated financial statements to be submitted to Inspector.

77. (1) Every licensee and financial holding company shall within three months after the close of its financial year, submit to the Inspector financial statements of all its operations both domestic and foreign as the case may be, prepared in accordance with international accounting standards and duly audited by a

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certified auditor, on an individual basis and on a consolidated basis, as determined by the Central Bank in accordance with section 75(2).

(2) A person who contravenes subsection (1) commits an offence.

(3) The Inspector may stipulate reporting requirements in addition to those referred to in subsection (1).

(4) The Inspector may require for regulatory purposes that a licensed domestic institution or a financial holding company exclude a subsidiary or other company in which it has a significant shareholding from the consolidated financial statements required under subsection (1).

(5) Every licensed foreign institution shall within three months after the close of its financial year, submit to the Inspector—

(a) audited financial statements of its operations in the jurisdiction of its incorporation; and

(b) management accounts of its operations in Trinidad and Tobago verified by its external auditors and signed by two directors of the foreign financial institution.

(6) A licensed domestic institution or financial holding company shall submit on the request of the Inspector in respect of any—

(a) subsidiary of the licensee or company in which the licensee is a significant shareholder; and

(b) member of the financial group which the financial holding company controls,

audited financial statements signed by two directors of that company or unincorporated body, as the case may be.

(7) A person who contravenes subsection (5) or (6) commits an offence.

(8) Every consolidated audited financial statement to be submitted by a licensed domestic institution or financial holding company shall be signed by two directors of the licensed domestic institution or financial holding company.

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(9) If in the opinion of the Inspector, the information contained in the consolidated audited financial statements of the licensed domestic institution or a financial holding company or in the audited financial statements of the companies referred to in subsection (6), indicates the likelihood of insolvency of any one of those companies, the Inspector may, after consultation with the licensed domestic institution and the financial holding company require the licensed domestic institution or financial holding company to take such measures as the Inspector may consider necessary to prevent the financial condition of the company from affecting the licensed domestic institution and, in particular, may require that the—

(a) stated capital of the company be increased;

(b) company or its business or part of its business be sold, transferred or otherwise disposed of;

(c) licensed domestic institution cease to make any advances or incur any credit exposures to the company; or

(d) licensed domestic institution make special provision for any potential losses which in the opinion of the Inspector, the company is likely to incur where such company has credit exposures with the licensed domestic institution.

(10) A licensed domestic institution or financial holding company that fails to comply with any measure imposed under subsection (9) commits an offence and is liable to a fine of five million dollars and in the case of a continuing offence, to a fine of five hundred thousand dollars per day for each day that the offence continues.

Power to require information. [4 of 2018 3 of 2020].

78. (1) The Central Bank may require a—

(a) licensee, its servant or agent;

(b) financial holding company, controlling shareholder, or significant shareholder acquirer of a licensee;

(c) subsidiary of the licensee;

(d) company or unincorporated body that is an affiliate of the licensee or an associate of the licensee, as defined by the Companies Act;

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(e) company that is a member of a related group or financial group of which a licensee is a member; and

(f) present or former director, officer, auditor or controlling shareholder or significant shareholder of any person referred to in paragraphs *(a)* to *(e)*,

to furnish such information in such form and within such period of time as the Central Bank may require.

(2) The Central Bank may—

(a) from time to time, require verification from the auditor of a licensee, financial holding company or any other company or unincorporated body referred to in subsection (1) with respect to the accuracy of information submitted pursuant to that subsection and may itself verify the accuracy of such information by inspecting such licensee, financial holding company or other company or unincorporated body;

(b) require an officer or any other person in charge of a licensee or a financial holding company to supply, within such time as may be specified, any information relating to the licensee or financial holding company, or any connected party or connected party group, or any person over which the licensee or financial holding company, or the directors or officers of the licensee or financial holding company have control.

(3) A request for information under subsections (1) and (2), shall be in writing.

(4) The Central Bank may exercise the powers under subsection (1) in relation to any person who is or is about to be elected or appointed as a director or officer of a licensee or financial holding company, to determine whether the person is a fit and proper person in accordance with the criteria of the Second Schedule to hold the particular position which he holds or to which he is about to be elected or appointed.

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(5) A person whom the licensee or a financial holding company proposes to elect as a director or appoint as an officer shall be entitled to refuse to supply the documents requested by the Central Bank pursuant to subsection (4) if he no longer intends to stand for election or take up the appointment and has so advised the Central Bank.

(6) Subject to subsection (5), a person who fails to supply information or produce the documents required under this section within the time specified in such request commits an offence.

(7) A person who provides false or misleading information under this section commits an offence and is liable, on summary conviction, in the case of a licensee to a fine of six hundred thousand dollars and in the case of a director or officer of a licensee, to a fine of six hundred thousand dollars and to imprisonment for two years.

Report on credit exposures.

***79.** (1) A licensee shall furnish the Inspector on a quarterly basis with a report on all credit exposures amounting to ten per cent or more of the capital base of the licensee.

(2) A person who contravenes subsection (1) commits an offence.

(3) The Central Bank shall issue the criteria for reporting on credit exposures, by notification in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago or through guidelines, with respect to the details to be provided by licensees under subsection (1).

**See* Note on Subsidiary Legislation on page 2.

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Consolidated audited financial statements to be open to publication and inspection. [4 of 2018].

80. (1) Every licensee and financial holding company shall within three months after the close of its financial year, publish in a daily newspaper printed and circulated in Trinidad and Tobago and exhibit in a conspicuous place in each of its offices, the audited financial statements referred to in section 77(1) or, in the case of a licensee that is a licensed foreign institution, the audited financial statements referred to in section 77(5).

(1A) The Central Bank may consult with licensees to create abridged financial statements for the purpose of publication.

(1B) Every licensee and financial holding company may publish abridged financial statements instead of its financial statements in accordance with the requirement under section 80(1).

(2) A licensee shall—

(a) keep at each of its offices, in addition to the audited financial statements referred to in subsection (1), such other information for the protection of deposit-holders and other customers as the Central Bank shall stipulate from time to time; and

(b) during normal business hours make copies of the documents referred to in paragraph *(a)* available for inspection by its depositors and other customers upon request.

(3) A person who contravenes this section commits an offence.

Appointment of auditor.

81. (1) For the purposes of this section a "firm of accountants" means a partnership, the members of which are accountants engaged in the practice of accounting.

(2) A licensed domestic institution and a financial holding company shall appoint annually, a firm of accountants satisfactory to the Central Bank to be the auditor of the licensee or financial holding company.

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(3) A licensed foreign institution shall appoint annually a firm of accountants satisfactory to the Central Bank to be the auditor of the licensed foreign institution.

(4) A firm of accountants is qualified to be the auditor of a licensee or financial holding company if—

(a) each member or partner of the firm of accountants is independent, within the meaning of subsection (5), of the licensee or the financial holding company; and

(b) at least one member or partner of the firm of accountants—

(i) is a practising member in good standing of the Institute of Chartered Accountants of Trinidad and Tobago or is the holder of a valid practising certificate from such other professional association of accountants or auditors as the Central Bank may approve; and

(ii) has knowledge and experience in the audits of banks and other financial institutions satisfactory to the directors of a licensed domestic institution or financial holding company, or to the principal officer of a licensed foreign institution, and the Central Bank.

(5) For the purposes of this section—

(a) independence is a question of fact;

(b) a member or partner of a firm of accountants shall be deemed not to be independent of a licensee or a financial holding company if he—

(i) is a connected party of the licensee or the financial holding company or of any of their respective affiliates;

(ii) has any business relationship with the licensee or the financial holding company

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or with any of their respective connected parties, other than in his capacity as the auditor thereof;

(iii) beneficially owns or controls, directly or indirectly, five per cent or more of the shares or other securities of the licensee or the financial holding company or of any of their respective affiliates;

(iv) is indebted to the licensee or any of its affiliates other than by virtue of—

(A) a fully collateralised loan; or

(B) an outstanding credit card balance not exceeding sixty thousand dollars; and

(v) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of any affiliate of the licensee or the financial holding company within two years immediately preceding the appointment of the firm of accountants, other than a subsidiary or affiliate acquired through a realisation of security.

(6) A licensee or financial holding company shall not appoint a firm of accountants to be the auditor of the licensee or financial holding company pursuant to subsection (2) or (3) unless—

(a) the licensee or financial holding company has served written notice on the Central Bank of its intention to make such appointment; and

(b) the Central Bank has failed to serve on the licensee or financial holding company a written notice of objection to the appointment within one month of the date on which the licensee or financial holding company served notice of its intention to make the appointment pursuant to paragraph *(a)*.

(7) A person who contravenes subsection (6)*(a)* commits an offence.

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(8) A partner of a firm of accountants shall not be the audit partner, having primary responsibility for the audit of a licensee or a financial holding company for a period of more than five consecutive years.

(9) The auditor of a licensee or financial holding company shall not provide to that licensee or financial holding company—

(a) book-keeping or other services related to its accounting records or financial statements;

(b) financial information systems design and implementation services;

(c) actuarial services;

(d) internal audit outsourcing services; or

(e) such other non-audit related services as the Central Bank may prescribe.

Notification in respect of auditors.

82. (1) A licensed domestic institution and a financial holding company shall forthwith give written notice to the Inspector if—

(a) the licensed domestic institution or financial holding company proposes to give special notice to its shareholders of a resolution to remove an auditor before the expiration of his term of office;

(b) the licensed domestic institution or financial holding company gives notice to its shareholders of a resolution to replace an auditor at the expiration of his term of office with a different auditor, together with the reasons for such removal or replacement; or

(c) a person ceases to be an auditor of the licensed domestic institution or financial holding company otherwise than in consequence of a resolution referred to in paragraphs *(a)* and *(b)*.

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(2) A licensed foreign institution shall forthwith give notice to the Inspector if its auditor—

(a) is removed before the expiration of his engagement;

(b) is replaced at the expiration of his engagement with a different auditor; or

(c) ceases to be its auditor in circumstances otherwise than those set out in paragraphs *(a)* and *(b)*.

(3) A person who contravenes subsections (1) and (2) commits an offence.

(4) The auditor of a licensee or a financial holding company shall forthwith give written notice to the Inspector and to the licensee or financial holding company if he—

(a) resigns before the expiration of his term of office; or

(b) does not seek to be reappointed,

together with the reasons for such resignation or decision not to seek reappointment.

(5) The auditor of a licensed domestic institution or of a financial holding company who—

(a) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing the auditor from office; or

(b) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed as auditor because the term of office of the auditor has expired,

is entitled to submit to the licensed domestic institution or financial holding company a written statement giving the reasons why the auditor opposes any proposed action or resolution, and shall submit a copy of any such statement to the Inspector.

(6) The auditor of a licensed foreign institution who receives a notice from the principal representative of the licensed foreign institution or otherwise learns—

(a) that he is to be removed from office; or

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(b) that another person is to be appointed as auditor of the licensed foreign institution because the term of office of the auditor has expired or is about to expire,

is entitled to submit to the licensed foreign institution a written statement giving the reasons why he opposes his proposed removal or the appointment of another person as auditor, and shall submit a copy of any such statement to the Inspector.

(7) Where the auditor of a licensee or of a financial holding company resigns as a result of a disagreement with the Board of Directors or the officers of a licensee or of a financial holding company, the auditor shall submit to the licensee or the financial holding company, and to the Inspector, a written statement setting out the nature of the disagreement.

(8) Where the auditor of a licensee or financial holding company has resigned or the appointment of the auditor has been revoked, no person shall accept an appointment as auditor of that licensee or financial holding company until the person has requested and received from the auditor who has resigned or whose appointment as auditor has been revoked, a written statement of the circumstances and reasons for such resignation or why, in the opinion of the former auditor, his appointment was revoked.

(9) Notwithstanding subsection (8), a person may accept an appointment as auditor of a licensee or financial holding company if, within fifteen days after a request under that subsection is made, no reply from the former auditor is received.

Duties of auditor to report to Board.

83. (1) Where the auditor of a licensee or of a financial holding company discovers, in the ordinary course of an audit, any irregular transactions or conditions which, in the opinion of the auditor meets one or more of the following criteria:

(a) any change in accounting policy or any presentation of or any failure to present facts or figures which, in the opinion of the auditor, has the effect of misrepresenting the financial position of the licensee or financial holding company;

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(b) transactions that have a significant or material impact on the financial position of the licensee or financial holding company;

(c) transactions or conditions giving rise to significant risks or large exposures that have the potential to jeopardise the financial viability of the licensee or financial holding company;

(d) transactions or conditions indicating that the licensee or financial holding company has significant weaknesses in internal controls which render it vulnerable to significant risks or exposures that have the potential to jeopardise its financial viability;

(e) transactions or conditions which contravene any provision of this Act or any Regulations made hereunder relating to capital adequacy or liquidity requirements; and

(f) any other transactions or conditions which, in the opinion of the auditor, should be included in a report under this section,

the auditor shall report such findings in writing to the chief executive officer and the Board of Directors of the licensee or financial holding company, or to the principal representative in the case of a licensee that is a licensed foreign institution and to the Inspector.

(2) Where the auditor of a licensee or of a financial holding company discovers, after receiving a request in writing from the Inspector for an examination, any such transactions or conditions as set out in subsection (1), the auditor shall report such findings to the Inspector, and the Inspector shall share those findings with the licensee at such time as he deems necessary.

Further duties of auditor.

84. (1) The auditor of a licensee or a financial holding company shall—

(a) report annually in writing to the Inspector on the adequacy of the accounting procedures, records

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and such internal control systems of the licensee or financial holding company as may be relevant to its financial reporting function; and

(b) audit the returns of the licensee or the financial holding company filed annually with the Central Bank.

(2) The Inspector may, by notice in writing to a licensee or financial holding company, require its auditor to comply with such other reporting requirements as the Inspector may stipulate in addition to generally accepted auditing standards with respect to the report and annual returns referred to in subsection (1).

(3) A licensee or financial holding company that contravenes subsection (2) commits an offence.

(4) The Inspector—

(a) shall, in relation to the audit of a licensee or financial holding company, have access to the working papers of the auditor of the licensee or financial holding company for a period not exceeding four years preceding the date of submission of the audit report; and

(b) may require the auditor of a licensee or financial holding company to provide him with any further information that he considers relevant.

(5) Every licensee and financial holding company shall pay the expenses incurred by its auditor in the performance of the duties and obligations set out in this Part.

Protection of auditor and other persons providing information.

85. (1) No duty to which an auditor or former auditor of a licensee or financial holding company may be subject shall be regarded as contravened by reason of his communication in good faith to the Central Bank or to the Inspector, whether or not in response to a request made by either of them, for any information or opinion on a matter to which this section applies and which is relevant to any function of the Central Bank and the Inspector under this Act or the Central Bank Act.

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(2) In relation to an auditor of a licensee or financial holding company this section applies to any matter of which an auditor becomes aware in his capacity as auditor and which relates to the business or affairs of the licensee or any of its affiliates or any director or officer or relative of such persons, or the principal representative in the case of a licensee that is a licensed foreign institution, in relation to which the information is given.

(3) This section applies to the auditor of a former licensee or former financial holding company as it applies to the auditor of a licensee or financial holding company.

(4) Subsection (1) applies to such other person required to give information under this Act in respect of any matter of which he becomes aware in his capacity as the person giving the information and which relates to the business or affairs of the licensee, its affiliate or any director, officer or relative of such persons, or the principal representative in the case of a licensee that is a licensed foreign institution, in relation to which the information is given.

PART X

COMPLIANCE DIRECTIONS AND INJUNCTIONS

Compliance directions. [4 of 2017].

86. (1) Notwithstanding any other action or remedy available under this Act, if in the opinion of the Inspector, a licensee or financial holding company, controlling shareholder or significant shareholder of a licensee, or any director, officer, other employee or agent of the licensee, financial holding company, controlling shareholder or significant shareholder of a licensee—

(*a*) is committing, or is about to commit an act, or is pursuing or is about to pursue any course of conduct, that is an unsafe or unsound practice in conducting the business of banking;

(*b*) is committing, or is about to commit, an act, or is pursuing or is about to pursue a course of

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conduct, that may directly or indirectly be prejudicial to the interest of depositors;

(c) has violated or is about to violate any of the provisions of this Act or Regulations made thereunder; or

(d) has breached any requirement or failed to comply with any measure imposed by the Central Bank or the Inspector in accordance with this Act or Regulations made thereunder,

the Inspector may direct the licensee, financial holding company, or the controlling shareholder, or significant shareholder and any such director, officer, other employee or agent, or principal representative to—

(i) cease and or refrain from committing the act, pursuing the course of conduct, or committing a violation; or

(ii) perform such acts as in the opinion of the Inspector are necessary to remedy the situation or minimise the prejudice.

(1A) Notwithstanding any other action or remedy available under this Act, if the Board of Inland Revenue indicates to the Inspector, that—

(a) a licensee or financial holding company;

(b) a controlling shareholder or significant shareholder of a licensee; or

(c) any director, officer, financial holding company, controlling shareholder or significant shareholder of a licensee,

has failed to give effect to or comply with a declared agreement, the Inspector may direct any person referred to in paragraph *(a)*, *(b)* or *(c)* to give effect to, comply with or perform such acts as may be necessary for compliance with a declared agreement.

(2) For the purposes of this section, the term "unsafe or unsound practices" shall include without limitation, any action or lack of action that is contrary to generally accepted standards of prudent operation and behaviour, the possible

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consequences of which, if continued, would be a risk of loss or damage to a licensee, its depositors, shareholders or the Deposit Insurance Corporation.

(3) Subject to subsection (6), before a direction is issued, the person to whom the direction is to be issued shall be served with a notice specifying—

(a) the facts of the matter;

(b) the directions that are intended to be issued; and

(c) the time and place at which the person served with the notice may make representations to the Inspector.

(4) If the person served with the notice referred to in subsection (3) fails to attend at the time and place stipulated by the said notice, the Inspector may proceed to issue directions in his absence.

(5) Where after considering the representations made in response to the notice referred to in subsection (3), the Inspector determines that the matters specified in the notice are established, the Inspector may proceed to issue directions to the person served with the notice.

(6) Notwithstanding subsection (3), if in the opinion of the Inspector, the length of time required for representations to be made might be prejudicial to the interests of depositors or to the stability of the financial system, the Inspector may make an interim direction with respect to the matters referred to in subsection (1) having effect for a period of not more than twenty working days.

(7) A direction made under subsection (6) continues to have effect after the expiration of the twenty-day period referred to in that subsection if no representations are made to the Inspector within that period or, if representations have been made, the Inspector notifies the person to whom the direction is issued that he is not satisfied that there are sufficient grounds for revoking the direction.

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(8) If a person to whom a direction is issued fails to comply with the said direction the Inspector may, in addition to any other action that may be taken under this Act, apply to a Judge in Chambers for an Order requiring that person to comply with the direction, cease the contravention or do any thing that is required to be done, and on such application the Judge may so order and make any other Order he thinks fit.

(9) A person who fails to comply with directions under this section commits an offence and is liable on summary conviction—

(a) in the case of a licensee or financial holding company, holding company, controlling shareholder, or significant shareholder to a fine of five million dollars and in the case of a continuing offence, to a fine of five hundred thousand dollars for each day that the offence continues; or

(b) in the case of a director or officer, other employee or agent, or principal officer of a licensee or financial holding company, to a fine of five million dollars and to imprisonment for five years.

(10) All directions issued under this section shall be referred to as "compliance directions".

Injunctive relief.

87. Where the Central Bank reasonably believes that a person is in violation of the Act, or is engaged in any activity or course of conduct described under section 86(1), the Central Bank may in addition to, or in lieu of other actions authorised under this Act—

(a) seek a restraining order or other injunctive or equitable relief, to prohibit the continued violation or to prevent the activity or course of conduct in question or any other action; or

(b) pursue any other remedy which may be provided by law.

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PART XI

FACILITATION OF TRANSFERS AND UNDERTAKINGS

Definitions.

88. In this Part—

"the appointed day" means such day as is appointed by a Vesting Order for the coming into force of that Order;

"customer" includes any person having a banking account or other dealing, transaction or arrangement with the transferee or transferor bank, as the case may be, in the course of business;

"existing" means existing or in force, as the case may require, immediately before the appointed day;

"security" includes a mortgage or charge, whether legal or equitable, debenture, guarantee, lien, pledge whether actual or constructive, hypothecation, indemnity, undertaking or other means of securing payment or discharge of a debt or liability or obligation whether present or future, actual or contingent;

"undertaking" means the business of banking and business of a financial nature carried on by a licensee or any part of the business so carried on;

"will" includes a codicil and any other testamentary writing.

Vesting Order.

***89.** (1) Where an agreement has been entered into for the acquisition by a person (hereinafter referred to as the "transferee"), of the undertaking of a licensee (hereinafter referred to as the "transferor"), the transferee may, for the purpose of effecting the transfer to and the vesting in the transferee of the undertaking, make a written application to the Minister, notice of which shall be published in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago.

(2) Upon the making of such an application, the Minister may, if he thinks fit, make an order under this Part called a

**See* Note on Subsidiary Legislation on page 2.

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"Vesting Order", transferring to and vesting in the transferee the undertaking, as from the appointed day, and thereupon all such existing property, rights, liabilities and obligations as are intended by the agreement to be transferred and vested shall, by virtue of this Act, and without further assurance be transferred to, and shall vest in the transferee, to the intent that the transferee shall succeed to the whole or such part of the undertaking of the transferor as is contemplated by the agreement.

(3) For the avoidance of doubt a Vesting Order shall take effect on the appointed day specified in the Order, whether or not the Vesting Order is published in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago, after the appointed day.

(4) No transfer or vesting effected by a Vesting Order shall—

(a) operate as a breach of covenant or condition against alienation;

(b) give rise to any forfeiture; or

(c) invalidate or discharge any contract or security.

(5) Notwithstanding any other law, a Vesting Order may in the discretion of the Minister, provide for the carrying forward by the transferee and setting off for corporation tax purposes of such of the losses of the transferor as may be specified, as if the undertaking of the transferor had not been permanently discontinued on the appointed day and a new undertaking had been set up and commenced by the transferee.

Supplementary provisions as to transfers.

90. (1) Without prejudice to the generality of section 91, the effect of a Vesting Order as regards the undertaking thereby transferred shall be that on and from the appointed day—

(a) every existing contract to which the transferor was a party, whether in writing or not, shall be construed and have effect as if—

(i) the transferee had been a party thereto instead of the transferor;

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(ii) for any reference however worded and whether express or implied, to the transferor there were substituted, as respects anything falling to be done on or after the appointed day, a reference to the transferee; and

(iii) for any reference however worded and whether express or implied, to the directors or to any director, officer, clerk or servant of the transferor were, as respects anything falling to be done on or after the appointed day, a reference as the case may require to the directors of the transferee or to such director, officer, clerk or servant of the transferee as the transferee may appoint or, in default of appointment, to the director, officer, clerk or servant of the transferee who corresponds as nearly as possible to the first mentioned director, officer, clerk or servant;

(b) any account between the transferor and customer shall become an account between the transferee and that customer;

(c) any existing instruction, direction, mandate, power of attorney or consent given to the transferor shall have effect as if given to the transferee;

(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, 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, or payable at the same place of business of the transferee;

(e) any security transferred to the transferee by a Vesting Order that immediately before the appointed day was held by the transferor as security for the payment or discharge of any

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debt or liability or obligation, whether present or future, actual or contingent, shall be held by, and be available to, the transferee as security for the payment or discharge of such debt or liability or obligation; and any such security which extends to future advances or liabilities shall, on and from the appointed day, be held by, and be available to, the transferee as security for future advances by and future liabilities to the transferee in the same manner and in all respects as future advances by or liabilities to, the transferor were secured thereby immediately before the appointed day;

(f) any judgment or award obtained by or against the transferor and not fully satisfied before the appointed day shall be enforceable by or against the transferee;

(g) unless the agreement provides to the contrary, any officer, clerk or servant employed by the transferor immediately before the appointed day shall become an officer, clerk or servant, as the case may be, of the transferee on terms and conditions not less favourable than those on which he was so employed immediately before the appointed day, and such employment with the transferor and transferee respectively shall be deemed for all purposes to be a single continuing employment, except that no director, officer, secretary or auditor of the transferor shall by virtue only of a Vesting Order become a director, officer, secretary or auditor, as the case may be, of the transferee.

(2) Subsection (1)*(a)*(ii) and (iii) shall apply to any statutory provision, to any provision of any existing contract to which the transferor was not a party and to 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.

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(3) Any property or rights transferred to, and vested in, the transferee which immediately before the appointed day were held by the transferor, 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 Judge;

(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 Judge; or

(e) in any other fiduciary capacity whatsoever,

shall, on and from the appointed day be held by the transferee, whether alone or jointly with such other person, in the same capacity, upon the trusts, and with the powers and subject to the provisions, liabilities and obligations applicable thereto, respectively.

Transfers subject to stamp duty.

Ch. 76:01.

91. (1) The transfer of and vesting in, the transferee of an undertaking by a Vesting Order shall, unless exempted, either generally or in some particular case, by the Order, be subject to the provisions of the Stamp Duty Act, as if the Order was, in each of the cases in which the duty is imposed on the several instruments specified in the Schedule to that Act, an instrument between party and party within the contemplation of the Act.

(2) Subject to subsection (3), a depositor of an institution which is affected by a Vesting Order being made under this Part, 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 of the Vesting Order as if the transfer had not taken place.

(3) The Minister may by Order, on the advice of the Governor, extend the period of two years referred to in subsection (2) in relation to a particular institution.

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PART XII

PAYMENT SYSTEMS

Division 1—*Framework for Oversight*

92. In this Part—

Definitions.

"Close-out Netting Arrangement" means—

(a) an arrangement under which, if a particular event happens, whether through the operation of Netting or otherwise—

(i) the obligations of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; and

(ii) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party; or

(b) such other type of arrangement as the Minister may by Regulations prescribe;

"External Administration" means any receivership, winding-up or reorganisation of a Participant or party under the Companies Act or this Act, or, in the case of a foreign Participant, under the written law of the jurisdiction of that Participant;

Ch. 81:01.

"External Administrator" means the person appointed to take control of the assets or undertaking of a Participant or party under External Administration;

"Financial Collateral" means cash, securities, such as but not limited to shares, bonds, money market instruments, other debt instruments, and any other securities which are normally dealt in and which give the right to acquire any

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such shares, bonds or other securities by subscription, purchase or exchange, as well as precious metals and commodities, including derivatives on such securities, precious metals and commodities;

"Financial Collateral Arrangements" means pledges and Transfer of Title Agreements, including repurchase agreements, which apply to Financial Collateral;

"Interbank Payment System" means any payment system between or among financial institutions which facilitates the transfer of money or the discharge of obligations on a gross or net settlement basis;

"Licensed Interbank Payment System" means an Interbank Payment System which is licensed under section 94;

"Netting" means an agreed offsetting of transfer orders, positions or obligations by trading partners or Participants resulting in one net claim or one net obligation per Participant or trading partner;

"Operator" means the Central Bank or the person operating an Interbank Payment System or a Licensed Interbank Payment System;

"Participant" means a person who participates in a Protected System in accordance with the Rules and Procedures of the protected system;

"Protected System" means either a Licensed Interbank Payment System, any payment system operated by the Central Bank or a securities settlement system for the settlement of transactions in book-entry securities of the Government of Trinidad and Tobago, including those of State Agencies or Enterprises and Statutory Authorities;

"Relevant Securities Account" means the securities account in which the securities are held by the owner or the holder, or, if the securities are subject to a Financial Collateral Arrangement, the securities account in which the securities are held in the possession or under the control of the collateral taker or a person acting on behalf of the collateral taker;

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"reliable" in relation to a payment system means apt to limit systemic and other risks, including liquidity, credit, legal and operational risks, that may jeopardise or negatively affect the proper and continuous operation of the payment system and public confidence in payment instruments and the word "reliability" shall be construed accordingly;

"Rules and Procedures" means the contractual documentation, in the widest sense of the term, governing the use and operation of a Protected System, including but not limited to terms and conditions, technical annexes, agreement letters, instructions and operating circulars and guidelines issued by the Central Bank;

"Settlement Account" means any cash or securities account, that is debited or credited by a Protected System in order to settle transfer orders processed within such system;

"Settlement Agent" means the person providing the Settlement Accounts through which the transfer orders within the Protected System are settled; and

"Transfer of Title Agreement" means any arrangement or agreement, including a repurchase agreement, under which a collateral provider transfers title of Financial Collateral to a collateral taker for the purpose of securing or otherwise covering the performance of obligations.

Restriction on operating payment system.

93. (1) Subject to subsection (3) no person shall operate an Interbank Payment System in Trinidad and Tobago unless the Central Bank has issued a licence for that purpose in accordance with this Part.

(2) A person intending to operate an Interbank Payment System shall, before commencing such operations, apply for a licence under section 94.

(3) Any Interbank Payment System, other than a system operated by the Central Bank, operating before the coming into force of this Act shall be issued a provisional licence and shall be given a period of six months to comply with the provisions of this Act and any Regulations made hereunder.

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Application for licence.

94. (1) Every application for a licence to operate an Interbank Payment System shall be made to the Central Bank in writing and shall be accompanied by—

(a) a statement of the name and the registered address of the applicant/Operator;

(b) a certified copy of the Articles of Incorporation/Continuance, Bye-laws or other constituent document of the applicant/Operator;

(c) the name, address, nationality, experience and other relevant information pertaining to each director and officer of the applicant/Operator;

(d) the latest audited Financial Statements of the Operator and its policies for risk management and internal controls;

(e) a statement outlining the organisational structure of the Operator;

(f) a statement establishing the identity of the Settlement Agent;

(g) the Rules and Procedures of the system; and

(h) such additional information as the Central Bank may require.

(2) In determining whether to approve an application under subsection (1), the Central Bank shall consider—

(a) the adequacy of the Rules and Procedures of the system;

(b) whether operations of the Interbank Payment System as proposed will be safe, sound, reliable and efficient;

(c) whether the Interbank Payment System will contribute to the stability of the financial system in Trinidad and Tobago; and

(d) such other matters as may be specified by the Central Bank.

(3) A licence to operate an Interbank Payment System may contain such terms and conditions as may be specified by the Central Bank.

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Suspension or withdrawal of licence.

95. (1) The Central Bank may suspend or withdraw the licence of the Operator of a Licensed Interbank Payment System where—

(a) the Operator has failed to comply with the rules and procedures of the system;

(b) any of the criteria set out in section 94(2) is not being fulfilled or is unlikely to be fulfilled;

(c) the Operator of a Licensed Interbank System has failed to comply with any term or condition imposed under section 94(3); or

(d) the Operator of a Licensed Interbank Payment System has failed to comply with any provision of this Act, any Regulations made hereunder or any requirement of the Central Bank made under this Part.

(2) Subject to subsection (4), before suspending or withdrawing the licence of a Licensed Interbank Payment System, the Central Bank shall give to its Operator notice in writing of its intention to do so, specifying the grounds upon which it proposes to suspend or withdraw the licence and shall require the Operator to submit to it within a specified period a written statement of objections to the suspension or withdrawal of the licence.

(3) Upon consideration of the written statement of objections referred to in subsection (2) the Central Bank shall give the Operator written notice of its decision to suspend, withdraw or continue the licence.

(4) Notwithstanding subsection (2), where the Central Bank is of the opinion that the safety, soundness, reliability or efficiency of a Licensed Interbank Payment System is or may be threatened, it may, without prior notice, suspend or withdraw the licence of the Operator of that system so, however, that the Central Bank publishes a notice in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago within fourteen days of the suspension or withdrawal, the circumstances and the basis for such action.

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(5) Except as provided in subsection (4), the Central Bank shall, within seven days of an Operator ceasing to hold a licence, publish notice of such cessation in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago.

Appeal.

96. Where an Operator is aggrieved by a decision of the Central Bank to suspend or withdraw its licence, that Operator may appeal to a Judge in Chambers within fourteen days of the date of notice in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago under section 95(4) or notice of suspension or withdrawal under section 95(3), setting forth the grounds of such appeal and the Judge may confirm or set aside the decision of the Central Bank.

Equal treatment.

97. (1) The Central Bank may give directions to an Operator—

(a) during the pendency of a provisional licence issued under section 93(4);

(b) where a notice of intention to suspend or withdraw is served under section 95(2); and

(c) where the Operator has violated or is about to violate a provision of this Part or any Regulations made under section 9.

(2) Section 86(9) applies *mutatis mutandis* to this section.

(3) A person who fails to comply with a direction given under subsection (1) commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and in the case of a continuing offence, to a fine of sixty thousand dollars for each day that the offence continues.

Oversight powers of the Central Bank.

98. In the performance of its duties of oversight under this Act, whether on-site or off-site, the Central Bank shall at all reasonable times have access to all books, records, accounts, minutes of meetings, statements and any other information regarding an Operator, including documents stored in electronic form and the right to call upon any director or officer of the Operator for any information or explanation as may be necessary.

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Sanctions.

99. An Operator who fails to comply with an obligation imposed under this Part or Regulations made under this Act commits an offence and is liable on summary conviction to a fine of five million dollars and where such offence is committed with the consent or connivance of or is attributable to any neglect on the part of any director or officer of the Operator, that person also commits an offence and is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

Inter-Institutional co-operation.

100. The Central Bank may enter into co-operation or information-sharing arrangements with any local or foreign regulatory agency or body that oversees payment systems where the Central Bank is satisfied that any information disclosed to such agency or body will be kept confidential and used strictly for the purpose for which it was disclosed.

Division 2— *Soundness of Payment Systems*

Notification of External Administration.

101. (1) Upon knowledge of External Administration in respect of any Participant the Inspector shall promptly notify the Governor of such fact.

(2) Upon receiving the notification referred to in subsection (1), the Central Bank shall promptly notify the relevant Operator of the commencement of the said External Administration.

No retroactive effect of External Administration.

102. (1) Notwithstanding the Companies Act and the Bankruptcy Act the commencement of External Administration in respect of a Participant shall have no retroactive effect on the subsisting rights and obligations of another Participant arising from, or in connection with its participation in a Protected System.

(2) External Administration in respect of a Participant shall only affect those rights and obligations of another Participant arising from, or in connection with its participation in a Protected System, from the time which the Operator of the Protected System was notified of the commencement of such External Administration pursuant to section 101.

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Definitive character of payments.

103. (1) Where, in a Protected System, the transfer orders of a Participant have been entered in accordance with the Rules and Procedures of that system prior to the notification of commencement of External Administration in respect of that Participant—

(a) the netting or settlement of such transfer orders shall be enforceable and binding on third parties, including the External Administrator and may not be undone, even where such netting or settlement occurs after the commencement of the External Administration; and

(b) neither the Participant, the External Administrator of the Participant nor a third party may revoke such transfer orders.

(2) Subsection (1)*(a)* does not prevent a Participant or a third party from exercising a right or claim resulting from the underlying transaction, which they may have in law, to recovery or restitution in respect of a transfer order which has entered the system.

Use of Settlement Account.

104. (1) Notwithstanding the commencement of External Administration in respect of a Participant, the Operator or Settlement Agent of a Protected System may use funds or securities available on the Settlement Account of that Participant in order to settle the transfer orders entered into the system prior to the Operator being notified of the commencement of such External Administration pursuant to section 101.

(2) Notwithstanding the commencement of External Administration in respect of a Participant, the Operator or Settlement Agent of a Protected System may use any credit facility of that Participant connected to the system, in order to settle the transfer orders entered into the system prior to the Operator being notified of the commencement of External Administration against the Participant pursuant to section 101.

(3) No Settlement Account, nor any amount credited on such account, or destined to be credited on such account, may be seized or attached by any party other than the Settlement Agent in whose books such account is held.

Validity and enforceability of Financial Collateral Arrangements.

105. Financial Collateral Arrangements, including pledges of cash, which are effected in relation to a Protected System and perfected prior to commencement of External Administration are valid, enforceable and binding on third parties, including the External Administrator of a party to such arrangements.

Validity and enforceability of Close-out Netting Arrangements.

106. Close-out Netting Arrangements which are effected in relation to a Protected System, are valid, enforceable and binding on third parties, including the External Administrator of a party to such arrangements, notwithstanding—

(a) the commencement or continuation of any External Administration in respect of a party to the Close-out Netting Arrangements; or

(b) any purported assignment, judicial or other attachment, the creation of any encumbrance or any other interest, in relation to the rights which are subject to the Close-out Netting Arrangement, or other disposition of or in respect of such rights.

Substitution and topping-up of Financial Collateral.

107. The provision of Financial Collateral, additional Financial Collateral, or substitute or replacement Financial Collateral, pursuant to an obligation or right to do so contained in the Financial Collateral Arrangement is not invalid and shall not be reversed or declared void on the sole basis that—

(a) such provision was made on the same day of, but prior to, the commencement of, External Administration in respect of the party making the provision; or

(b) the relevant financial obligations were incurred prior to the date of the provision of the Financial Collateral, additional Financial Collateral or substitute or replacement Financial Collateral.

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Perfection of pledged Financial Collateral.

108. The pledge of Financial Collateral is validly perfected between parties and against third parties once the Financial Collateral is delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of the collateral taker or a person acting on behalf of the collateral taker.

Enforcement of pledged Financial Collateral.

109. (1) Notwithstanding the commencement of External Administration in respect of the pledgor and subject to the terms of the pledge agreement, a pledgee may enforce Financial Collateral pledged in his favour in the following manner:

(a) where cash is pledged, by setting off the amount against or applying it in discharge of the guaranteed obligation; or

(b) where securities, precious metals or commodities, including derivatives on such securities, precious metals or commodities are pledged, by the sale thereof and by setting off the value against, or applying the value in discharge of the guaranteed obligation.

(2) No prior approval by the Court or any other formality is required for enforcement under subsection (1).

Private International Law.

110. Where securities are held in a securities account ("book-entry securities"), the following issues shall be governed by the law of the jurisdiction in which the Relevant Securities Account is maintained:

(a) the legal nature and proprietary effects of book-entry securities;

(b) the requirements for perfecting a Financial Collateral Arrangement relating to book-entry securities;

(c) the steps required for the enforcement of Financial Collateral Arrangements relating to book-entry securities; and

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(d) whether a person's title to or interest in book-entry securities is overridden or subordinated to a competing title or interest, or a good faith acquisition has occurred.

Governing law.

111. In the event of the commencement of External Administration in Trinidad and Tobago in respect of a Participant in a Protected System, the rights and obligations arising from, or in connection with the participation of that Participant in such system shall be entirely determined and governed by the laws of Trinidad and Tobago.

PART XIII

APPEALS

Jurisdiction to hear appeals.

112. (1) A Judge in Chambers shall have jurisdiction to hear and determine appeals in respect of the matters set out in subsection (2).

(2) Any person who is aggrieved by a decision of the Central Bank or the Inspector—

(a) to refuse an application for a licence;

(b) to revoke a licence otherwise than in a case in which revocation is mandatory under section 23(14);

(c) to restrict a licence in any particular manner or to vary any restrictions of a licence;

(d) which in the opinion of a licensee, might be contrary to any provision of this Act;

(e) to issue compliance directions under section 86;

(f) to give a direction under section 24(2) or 27(l);

(g) to disqualify any person under section 33(2), from being a director or officer on the ground that he is not a fit and proper person;

(h) to deem a controlling shareholder no longer fit and proper under section 71(9);

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(i) to require any person to reduce his entitlement to exercise or control fifty per cent or more of the voting power of a licensee or another company of which the licensee is a subsidiary under section 71(9);

(j) to refuse an application for a merger under section 73(6)*(b)*;

(k) to refuse to issue a permit to an acquirer under section 74(5)*(b)*;

(l) to deem an acquirer no longer fit and proper under section 74(10);

(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 74(10);

(n) to deem a significant shareholder no longer fit and proper under section 72(7); and

(o) 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 72(7),

may appeal against the decision to a Judge in Chambers.

(3) Any person who is aggrieved by a decision of the Minister to refuse—

(a) an application for a merger under section 73(9)*(b)*; or

(b) to issue a permit to an acquirer under section 74(8)*(b)*,

may appeal against the decision to a Judge in Chambers.

(4) During the pendency of an appeal, any order, decision or direction made or given by the Central Bank shall continue in force and be binding unless, on an *inter partes*

application, the Judge is satisfied that exceptional circumstances exist that warrant the grant of a stay of any further action by the Central Bank in respect of any such order, decision or direction, for such period as the Judge considers appropriate.

(5) Where—

(a) the ground for a decision under subsection (2)*(a)*, *(c)*, *(h)*, *(l)* or *(n)* is that the criterion in paragraph A of the Second Schedule is not or has not been fulfilled; or

Second Schedule.

(b) the effect of a decision under subsection (2)*(c)*, *(d)*, *(f)* or *(g)* is to require the removal of a person as director or officer of a licensee,

the person to whom the ground relates or whose removal is required may appeal to a Judge in Chambers against the finding that there is such a ground for the decision or, as the case may be, against the decision to require his removal.

(6) A person referred to in subsections (2), (3) and (5) may, within fifteen days of his receipt of the notification of the decision or the finding as the case may be, file with the Registrar of the Supreme Court, an appeal against such decision or finding, setting forth the ground of appeal.

Procedure on appeal.

113. Subject to this Part, the procedure for determining appeals shall be in accordance with the Civil Proceedings Rules of the Supreme Court of Judicature.

Determination of appeals.

114. (1) On an appeal, the appellant and the Central Bank as respondent may appear in person or be represented by an Attorney-at-law or by any other person.

(2) In determining an appeal, the Judge in Chambers may confirm, reverse or vary an order, decision or direction made or given by the Central Bank.

Costs or expenses on appeal.

115. The Judge in Chambers may give such directions as he thinks fit as to the payment of costs or expenses by any party to the appeal as he deems fit.

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PART XIV

SUPPLEMENTARY

Saving.

*****116.** Any Order, notice or other subsidiary legislation made pursuant to the Banking Act or the Financial Institutions (Non-Banking) Act, shall, if in force at the commencement of this Act, continue in force until replaced by other subsidiary legislation made under this Act.

Offences and penalty.

117. (1) Any person who, in purported compliance with any requirement under this Act or Regulations made thereunder, furnishes any information, provides any explanation or makes any statement which he knows or has reasonable cause to believe to be false or misleading in a material particular is guilty of an offence.

(2) A person who fails to comply with this Act or Regulations or Bye-laws made under this Act for which no penalty is expressly provided in the provisions of the Act or in the Fourth Schedule, commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and to imprisonment for two years.

Fourth Schedule.

(3) In any proceedings for an offence under this Act it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by any person under his control.

(4) In any proceedings for an offence under this Act or Regulations made thereunder where it is proved that the person charged intended to deceive, defraud or profit significantly from the offence, the penalty shall be a fine ten times the amount stipulated in subsection (2) or imprisonment for twenty years and this penalty shall be in addition to any other penalty under this Act.

(5) The Court may, in addition to any other punishment it may otherwise impose under subsection (4)—

(a) order the person to comply with the requirement in respect of which the person was convicted;

**See* Note on section 130 on page 2.

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(b) where it is satisfied that as a result of the commission of the offence the convicted person acquired any monetary benefits or that monetary benefits accrued to the convicted person's spouse or other dependant, order the convicted person to pay restitution to the party deceived or defrauded, in an amount equal to the Court's estimation of those monetary benefits.

(6) Where an offence committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director or officer of the company, or any person who was purporting to act in any such capacity, he, as well as the company, commits an offence and is liable to be proceeded against and punished accordingly.

(7) Where a person is convicted of an offence under this Act, the Court may, in addition to any punishment it may impose, order that person to comply or do anything that is required to be done to comply with any provision of this Act or any Regulations for the contravention of which he has been convicted.

Fraud on depositors.

118. (1) A person who perpetrates a fraud on depositors is guilty of an offence.

(2) A director or officer of a licensee that—

(a) falsifies the accounts of the licensee which leads to a loss of depositors' funds;

(b) uses depositors' funds for his own benefit or for the benefit of his relatives and persons connected with him which leads to a loss of depositors' funds;

(c) provides to the Central Bank false or misleading financial data or other relevant information with the intent to conceal the true financial position of a licensee;

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(d) does anything which is in contravention of this Act, Regulations or Bye-laws made thereunder and which leads to a loss to depositors,

commits a fraud on depositors.

(3) A person found guilty of an offence under this section is liable on summary conviction to a fine of ten million dollars and to imprisonment for ten years.

Jurisdiction and limitation. [4 of 2018].

119. (1) Summary proceedings for an offence under this Act may, without prejudice to any jurisdiction exercisable apart from this subsection, be taken against a licensee, including an unincorporated body, and a financial holding company in any place at which it has a place of business, and against an individual in any place at which he is for the time being located.

(2) Notwithstanding anything in any other law to the contrary, any complaint relating to an offence under this Act which is triable by a Magistrate's Court in Trinidad and Tobago may be so tried if it is laid at any time within seven years after the commission of the offence or within eighteen months after the relevant date.

(3) In this section, the "relevant date" means the date on which evidence sufficient in the opinion of the Central Bank to justify the institution of summary proceedings comes to its knowledge.

(4) For the purpose of subsection (3), a certificate as to the date on which evidence referred to in subsection (3) came to the knowledge of the Central Bank shall be conclusive evidence of that fact.

Evidence.

120. (1) In any proceeding, any document referred to in subsection (2) and certifying—

(a) that a particular person is or is not a licensee or was or was not licensed at a particular time;

(b) the date on which a particular licensee became or ceased to be licensed;

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(c) whether or not a particular licensee's licence is or was restricted;

(d) the date on which a restricted licence expires or expired; or

(e) any other fact or matter relating to a licensee,

shall be admissible in evidence and, shall be sufficient evidence of the facts stated in the document.

(2) The documents admissible in evidence pursuant to subsection (1) are—

(a) a certificate signed by the Governor;

(b) a true copy of or extract from a document certified as such by the Governor or a Deputy Governor; and

(c) a copy of the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago purporting to contain the document.

Exempted institutions.

121. (1) Subject to section 123, there are exempt from the provisions of this Act—

Third Schedule.

(a) the institutions listed in Part I of the Third Schedule;

(b) the types of business of a financial nature of the institutions set out in Part II of the Third Schedule.

(2) With effect from 31st December 1979 the provisions of the Moneylenders Act do not apply to licensees.

Ch. 84:04.

PART XV

MISCELLANEOUS

Offences and penalties.

Fourth Schedule.

122. (1) The Central Bank may issue to any person who, there is reasonable cause to believe, has committed an offence referred to in the Fourth Schedule, a Notice offering the person the opportunity to discharge any liability to conviction in respect of that offence by payment of the fixed penalty specified for the offence in the Fourth Schedule.

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(2) Where a person is given a Notice under this section, criminal proceedings shall not be taken against him for the offence specified in the Notice until the expiration of twenty-one days commencing from the day after which the Notice was served.

(3) Where a person fails to pay the fixed penalty referred to in subsection (1) or where he continues to commit the offence after the expiration of twenty-one days following the date of receipt of the Notice referred to in subsection (1) that person is liable on summary conviction for the original offence committed.

(4) Payment of a fixed penalty under this section shall be made to the Comptroller of Accounts and in any criminal proceedings against an offender referred to in this section. A certificate that payment of the penalty was or was not made to the Comptroller by the specified date shall, if the certificate purports to be signed by the Comptroller, be admissible as evidence of the facts stated therein.

(5) A Notice under subsection (1) 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—

(i) that criminal proceedings shall not be laid until the expiration of twenty-one days from the date of receipt of the Notice where payment of the fixed penalty is made and the commission of the offence is discontinued; and

(ii) the amount of the fixed penalty and the fact that it is to be paid to the Comptroller of Accounts whose address is to be stated.

(6) In any proceedings for an offence to which this section applies, no reference shall be made to the giving of any notice under this section or to the payment or non-payment of a fixed penalty thereunder unless in the course of the proceedings

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or in some document which is 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.

(7) The Minister may, by Order, provide for any matter incidental to the operation of this section, and in particular, any such Order may prescribe—

(a) the form of Notice under subsection (2);

(b) the nature of the information to be furnished to the Comptroller of Accounts along with any payment; and

(c) the arrangements for the Comptroller to furnish to the Inspector, information with regard to any payment or non-payment pursuant to a Notice under this section.

Power of Central Bank to require information.

Third Schedule.

123. Notwithstanding section 121, the Central Bank may, at the request of the Minister, require information from, enquire into, and examine the affairs of any financial institution mentioned in the Third Schedule.

Offence to suppress information.

124. A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with this Act or any Regulations thereunder, or which he is liable to be so required to produce, commits an offence and is liable on summary conviction to a fine of ten million dollars and to imprisonment for ten years.

Revocation of permit or licence.

125. The Central Bank may revoke the permit or licence of a person issued or granted to him in accordance with this Act where that person has breached a condition of the permit or licence.

Refusal *re* licence or permit.

126. The Central Bank may refuse to renew any licence or permit or grant approval or authorise any action pursuant to its powers under this Act where the applicant is in breach of or has not complied with any provision of this Act.

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Alternate Dispute Resolution Scheme.

127. A licensee shall, no later than three months after this Act comes into force, enroll in an Alternate Dispute Resolution Scheme approved by the Central Bank.

Transactions and rights intact.

128. Subject to this Act and notwithstanding that it may constitute an offence, no transaction shall be invalid and the rights of any party to the transaction shall not be affected by reason only of a contravention of the provisions of this Act.

Act No. 18 of 1993 repealed.

129. The Financial Institutions Act, 1993 is repealed.

Act No. 49 of 1981 repealed.

***130.** Notwithstanding section 116, the Financial Institutions (Non-Banking) Regulations, 1981 and the Banking Regulations are repealed.

Commencement of section 52(2)*(b)*.

†**131.** Section 52(2)*(b)* shall come into force on a date to be appointed by the President by Order published in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago.

Section 17.

FIRST SCHEDULE

Class	*Activities*
1. Confirming House or Acceptance House	Confirming, accepting or financing import and export bills
2. Finance Company	Hire Purchase and Installment Credit Accounts receivable Trade and inventory financing factoring Block discounting
3. Leasing Corporation	Lease financing

**See* Note on section 130 on page 2.
†*See* Note on section 52(2)*(b)* at page 2.

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Class	*Activities*
4. 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 Financing
	Lease financing
	Foreign exchange dealing
	Inter-bank financing
5. Mortgage Institutions	Mortgage lending
6. Trust Company	Managing Trust Funds
	Performing duties of trustees, executor or administrator and attorney
	Administration of Pension Funds
	Mortgage lending
7. 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
8. Financial Services	Providing financial services relating to future and contingent liabilities in relation to foreign exchange and commodities

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SECOND SCHEDULE

Sections 20*(b)*, 23(1)*(a)*, 25(3), 29(4), 33(2)*(c)*, 50(10)*(a)*, 70(1)*(d)*, 70(2)*(a)*, 71(7) and (9), 72(5) and (7), 73(4)*(b)*, 74(3)*(a)*, 78(4) and 112(5)*(a)*.

A. *Fit and Proper*

Directors controlling shareholders, significant shareholders, acquirers and officers to be fit and proper persons.

(1) Every person who is, or is to be, a director, controlling shareholder, significant shareholder, acquirer or officer of the licensee must be a fit and proper person to hold the particular position which he holds or is to hold.

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

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

(a) been convicted of an offence involving fraud or other dishonesty or violence;

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

(c) engaged in any business practices appearing to the Central Bank to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise discredit his method of conducting business;

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

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

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(4) In determining whether a company is a fit and proper person to be a controlling shareholder or significant shareholder, regard shall be had to, but not limited by, the following criteria:

(a) whether the directors of the company have satisfied the fit and proper criteria set out in paragraphs (1) to (3);

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

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

(d) whether in the opinion of the Central Bank the company has not carried on its business 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 has suspended or is about to suspend payment in respect of, or is unable to meet its obligations, as they fall due;

(g) whether in the opinion of the Central Bank the affairs of the company or any associated person are being conducted in a manner prejudicial to the soundness of the financial institution in question or the financial system of Trinidad and Tobago; and

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

(5) In determining whether a company has carried on its business in a prudent manner under paragraph 4*(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 licensee;

(b) loan concentration or proposed loan concentration and risk exposures or proposed risk exposures in the company and the licensee;

(c) separation of the business or proposed business of the company and the licensee from other business and from other interests of any controlling shareholder or 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 licensee;

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SECOND SCHEDULE—*Continued*

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

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

B. *Business to be directed by at least two individuals*

At least two individuals with sufficient experience and knowledge of the business to direct effectively the business of the licensee or the financial holding company.

C. *Composition of*

In the case of a company incorporated in Trinidad and Tobago the directors shall include such number (if any) of directors without executive responsibility for the management of its business as the Central Bank considers appropriate having regard to the circumstances of the licensee and the nature and scale of its operations. The directors shall be selected from amongst persons drawn from diverse occupations, and the overall composition of the board should reflect a reasonable mix of skills and experience, in matters relating to finance, economics, accountancy, industry, commerce, law or administration.

D. *Business to be conducted in prudent manner*

(1) The licensee must conduct, or, in the case of a company which is not yet carrying on the business of banking or business of a financial nature, will conduct its business in a prudent manner.

(2) A licensee shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain net assets which, together with other financial resources available to the licensee are of such nature and amount as are considered by the Central Bank to be—

(a) commensurate with the nature and scale of the licensee's operations;

(b) appropriate to the types and classes of business operations in which the licensee is involved; and

(c) sufficient to safeguard the interests of its depositors and potential depositors, having regard to the particular factors mentioned in subparagraph (3) and any other factors appearing to the Central Bank to be relevant.

(3) The particular factors referred to in subparagraph (2)*(c)* are—

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

(b) the type and class of business in which the licensee is involved; and

(*c*) the risks inherent in those operations and in the operation of any affiliate so far as is capable of affecting the licensee.

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

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

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

(7) A licensee will not be considered as having made adequate provision in respect of bad or doubtful debts where it does not establish an appropriate reserve (loss reserve) in respect of all such bad or doubtful debts.

(8) Where payment of principal or interest which is due and payable on any credit exposure granted by a licensee has not been made or effected for a period of three months, such credit exposure shall be considered non-performing unless it is fully secured and is in the process of collection.

(9) A licensee shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate systems of control of its business and records.

(10) Records and systems shall not be regarded as adequate unless they are such as to enable the business of the licensee to be prudently managed and the licensee to comply with the duties imposed on it by or under this Act; and in determining whether those systems are adequate, the Central Bank shall have regard to the functions and responsibilities in respect of them of any such directors of the licensee as are mentioned in paragraph C.

(11) Subparagraphs (2) to (10) are without prejudice to the generality of subparagraph (1).

(12) For the purposes of this paragraph "net assets", in relation to a company, means stated capital and reserves.

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SECOND SCHEDULE—*Continued*

E. *Integrity and skills*

The business of the licensee or financial holding company is, or in the case of an institution which has applied for a licence or a permit, will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.

F. *Minimum net assets*

(1) The institution will at any time when a licence is granted to it have net assets amounting to not less than fifteen million dollars (or an amount of equivalent value denominated wholly or partly in a currency acceptable to the Central Bank other than Trinidad and Tobago currency).

(2) In this paragraph "net assets", means stated capital.

(3) The Central Bank may vary the sum specified in paragraph (1).

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.

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THIRD SCHEDULE

Sections 121 and 123. [17 of 2012].

PART I

EXEMPTED INSTITUTIONS

(In respect of those institutions established by statute, this exemption applies to those activities which they are allowed to conduct under their constituent Acts).

Chap. 79:04	1. The Trinidad and Tobago Post Office Savings Bank established under the Post Office Savings Bank Act.
Chap. 79:07	2. The Agricultural Development Bank of Trinidad and Tobago established under the Agricultural Development Bank Act.
Chap. 33:04	3. Any Society registered under the Building Societies Act.
Chap. 32:50	4. Any Society registered under the Friendly Societies Act.
Chap. 81:03	5. Any undertaking registered under the Co-operative Societies Act.
Chap. 32:01	6. The Board of Management incorporated under the National Insurance Act.
	7. Caribbean Leasing Company Limited.
	8. The Trinidad and Tobago Mortgage Finance Company Limited.
Chap. 83:03	9. The Unit Trust Corporation of Trinidad and Tobago incorporated under the Unit Trust Corporation of Trinidad and Tobago Act.

PART II

EXEMPTED ACTIVITIES

Institutions	*Activities*
Export-Import Bank of Trinidad and Tobago Limited	*(a)* The business of a Confirming House, Acceptance House, Finance House or Finance Company;

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THIRD SCHEDULE—*Continued*

		(b) Financial Services Activities as described in paragraph 8 of the First Schedule.
Chap. 83:02	The following persons registered under the Securities Act:	
	(a) a broker-dealer;	*(a)* The business of repurchase agreements;
	(b) an investment adviser; or	*(b)* Lending and borrowing against securities as defined in the Securities Act;
	(c) an underwriter	*(c)* Providing advice with respect to an investment in, or the purchase, sale or holding of, a security; and
		(d) The business of an underwriter as defined under the Securities Act.
Chap. 84:01	Insurance Companies registered under the Insurance Act	*(a)* The collection of funds in the form of premiums for the purpose of insurance business;
		(b) The activities set out in paragraphs 5, 6 and 7 of the First Schedule.

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FOURTH SCHEDULE

ADMINISTRATIVE FINES

Offences in Respect of which Criminal Liability may be discharged by payment of an Administrative Fine

Section	*General Description of Offence*	*Criminal Penalty (Applicable only on summary conviction)*	*Administrative Fine (Licensee)*	*Administrative Fine (Individual)*
31(1)	Making an alteration to articles of incorporation, continuance, Bye-laws or other constituent documents without notifying and receiving the approval of the Inspector	$500,000 Plus $50,000 per day for each day that the offence continues	$125,000	
31(4)	Failure of a licensee to submit to the Central Bank copies of altered articles of incorporation, continuance, Bye-laws or other constituent documents	$500,000 Plus $50,000 per day for each day that the offence continues	$125,000	
34(1)	Director of a licensee or financial holding company voting at a meeting of the Board of Directors or a committee of the board of directors of that licensee or financial holding company on a contract which would result in a direct or indirect financial benefit	$500,000	$125,000	
35(3)	Failure of a Director of a licensee to submit to the Central Bank reasons for resignation or departure from office, or, the reasons why he opposes any proposed action or resolution	$500,000	$125,000	
36(1)	Failure of a licensee to appoint an audit committee as constituted under this section	$500,000	$125,000	
37(1)	Failure of a licensee or financial holding company to submit to the Central Bank the annual report as described under this section	$400,000 Plus $40,000 per day for each day that the offence continues	$100,000	

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FOURTH SCHEDULE—*Continued*

Section	*General Description of Offence*	*Criminal Penalty (Applicable only on summary conviction)*	*Administrative Fine (Licensee)*	*Administrative Fine (Individual)*
38(1)	Failure of a licensee to establish and maintain written policies and procedures for transactions between the licensee and connected parties, connected party groups, and employees who are not connected parties, and, failure to periodically review such policies, procedures and transactions to ensure compliance	$5,000,000	$125,000	
38(2)	Failure of a licensee to provide the Central Bank with the policies and procedures, and with the results of the compliance reviews referred to in section 38(1)	$400,000 Plus $40,000 per day for each day that the offence continues	$100,000	
39	Failure to establish and maintain documented information systems.	$500,000	$125,000	
40(1)	Failure of a licensee to establish and maintain adequate internal controls, safety and security measures and documented operational standards	$500,000	$125,000	
41(3)*(b)*	Acquisition by a licensee of land or any interest in land except as prescribed in this section	$500,000	$125,000	
41(3)*(c)*	Beneficially holding land or any interest in land acquired (by a licensee) in the course of satisfaction of debts due to it for longer than five years from the date of acquisition	$500,000 Plus $50,000 per day for each day that the offence continues	$125,000	
41(3)*(d)*	Acquisition by a licensee of its own shares or the shares of a holding company, financial holding company or subsidiary of the licensee	$500,000	$125,000	

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Section	*General Description of Offence*	*Criminal Penalty (Applicable only on summary conviction)*	*Administrative Fine (Licensee)*	*Administrative Fine (Individual)*
41(3)*(e)*	Dealing, underwriting, or granting credit exposures by a licensee on the security of its own shares or the shares of a holding company, financial holding company or subsidiary of the licensee	$500,000	$125,000	
42(1)	Incurring of a credit exposure by a licensee to a person or borrower group in an aggregate amount that exceeds twenty-five per cent of its capital base except as prescribed by this section	$500,000 Plus $50,000 per day for each day that the offence continues	$125,000	
42(1A)	Incurring of a credit exposure by a licensee to a person or borrower group in an aggregate amount that exceeds the amount approved by the Inspector or as prescribed by this section	$500,000 Plus $50,000 per day for each day that the offence continues	$125,000	
42(3)	Incurring, by a licensee of any large exposure where the aggregate principal amount of all large exposures would exceed eight hundred per cent of the capital base of the licensee	$500,000 Plus $50,000 per day for each day that the offence continues	$125,000	
42(6)*(b)*	Failure of a licensee to reduce credit exposure, increase capital, or make adequate provision for potential losses as prescribed by this section	$500,000	$125,000	
42(8)	Failure of a licensee to notify the Central Bank of all credit exposures to persons and borrower groups which are in excess of the fixed limits, and of the measures that shall be taken to reduce the credit exposures that are in excess of the fixed limits or to increase capital	$400,000 Plus $40,000 per day for each day that the offence continues	$100,000	

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FOURTH SCHEDULE—*Continued*

Section	*General Description of Offence*	*Criminal Penalty (Applicable only on summary conviction)*	*Administrative Fine (Licensee)*	*Administrative Fine (Individual)*
43(1)	Failure of a licensee to comply with the general limit on credit exposures to connected parties	$500,000 Plus $50,000 per day for each day that the offence continues	$125,000	
43(3)	Incurring of credit exposure, by a licensee, to a director or officer or their relatives in an amount greater than two per cent of the capital base of the licensee or two years' emoluments of the director or officer whichever is the lesser	$500,000	$125,000	
43(5)	Incurring of a credit exposure, by a licensee, to a connected party or connected party group on terms and conditions more favourable than the terms and conditions on which such credit exposure is offered to the public, or without the approval of the board of directors	$500,000	$125,000	
43(6)	Failure of a licensee to notify the Central Bank of all credit exposures to persons and borrower groups which are in excess of the limit on credit exposures to connected parties	$400,000 Plus $40,000 per day for each day that the offence continues	$100,000	
43(8)	Failure of a licensee to comply with the order of the Central Bank to set aside or give effect to a credit exposure, or reduce a credit exposure to a connected party	$500,000	$125,000	
45(7)	Failure of a licensee to notify the Central Bank of shares held in an insurance company and shares and ownership interests held in excess of any limit imposed by this section	$400,000 Plus $40,000 per day for each day that the offence continues	$100,000	
47(1)	Failure of a licensee to comply with the restrictions on dividends as set out in this subsection	$500,000	$125,000	

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Section	*General Description of Offence*	*Criminal Penalty (Applicable only on summary conviction)*	*Administrative Fine (Licensee)*	*Administrative Fine (Individual)*
47(2)	Failure of a licensed foreign institution to maintain assets in Trinidad and Tobago, in cash or approved securities, of a value equal to one hundred and five per cent of liabilities in Trinidad and Tobago	$500,000	$125,000	
48(1)	Failure of a licensee to comply with the limits on financing for shares held in trust as set out in this subsection	$500,000	$125,000	
48(2)	Failure of a licensee to notify the Central Bank of any holding by a trustee of shares in the licensee in excess of the limits on financing for shares held in trust as set out in section 48(1), and failure to dispose of such excess shares within such time as the Inspector Specifies to bring the licensee into compliance with section 48(1)	$400,000 Plus $40,000 per day for each day that the offence continues	$100,000	
50(3)	Failure of a licensed domestic institution to obtain the prior approval of the Central Bank before establishing, acquiring or opening a branch or representative office outside Trinidad and Tobago, or closing or relocating a branch outside Trinidad and Tobago	$500,000	$125,000	
50(4)	Failure of a licensed domestic institution to give notice in writing to the Central Bank before establishing, acquiring or opening a branch or representative office in Trinidad and Tobago, or closing or relocating a branch in Trinidad and Tobago or a representative office in or outside Trinidad and Tobago	$400,000	$100,000	

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FOURTH SCHEDULE—*Continued*

Section	*General Description of Offence*	*Criminal Penalty (Applicable only on summary conviction)*	*Administrative Fine (Licensee)*	*Administrative Fine (Individual)*
50(5)	Failure of a foreign financial institution to obtain the prior approval of the Central Bank before establishing, acquiring or opening a representative office or an additional branch in Trinidad and Tobago, or closing or relocating a branch in Trinidad and Tobago, and failure of a foreign financial institution to give notice in writing to the Central Bank before closing or relocating a representative office in Trinidad and Tobago	$500,000	$125,000	
53(2)	Issuing, by a licensee, of a misleading or objectionable advertisement	$500,000 Plus $40,000 per day for each day that the offence continues	$125,000	
56	Failure of a licensee to hold and maintain a Statutory Reserve Fund as prescribed by this section	$500,000	$125,000	
60 (1)	Incurring of deposit liabilities (by a licensee) of an amount exceeding twenty times the sum of stated capital or assigned capital and Statutory Reserve Fund	$500,000	$125,000	
66 (5)	Failure of a licensee or financial holding company to publish notice of the passing of a resolution for voluntary winding-up and to give notice, in the case of a licensee, to its depositors and customers	$500,000 Plus $50,000 per day for each day that the offence continues	$125,000	
71(4)	Failure of the shareholder of a licensee to provide the Central Bank with the information requested under this section within such time as may be specified	$400,000 Plus $40,000 per day for each day that the offence continues		$100,000

Section	*General Description of Offence*	*Criminal Penalty (Applicable only on summary conviction)*	*Administrative Fine (Licensee)*	*Administrative Fine (Individual)*
75(4)	Failure of a licensee or financial holding company to submit to the Inspector a list of beneficial and nominee shareholders who hold directly or indirectly shareholdings of five per cent or more of issued share capital, and any agreement with respect to the voting of shares of the licensee or financial holding company	$500,000 Plus $50,000 per day for each day that the offence continues	$125,000	
76(1)	Failure of a licensee to publish inactive accounts	$300,000 Plus $30,000 per day for each day that the offence continues	$75,000	
77(1)	Failure of a licensee or financial holding company to submit to the Central Bank consolidated financial statements duly audited by a certified auditor	$500,000 Plus $50,000 per day for each day that the offence continues	$125,000	
77(5)	Failure of a licensed foreign institution to submit to the Inspector within the prescribed time audited financial statements and management accounts verified by two directors	$500,000	$125,000	
77(6)	Failure of a licensed domestic institution or financial holding company to submit to the Inspector within the prescribed time audited financial statements signed by two directors of the affiliate or other company or unincorporated body	$500,000	$125,000	
78(1)	Failure to comply with a notice to require information issued by the Central Bank	$400,000	$100,000	$100,000
78(2)	Failure to comply with a notice to verify information	$500,000	$125,000	

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FOURTH SCHEDULE—*Continued*

Section	*General Description of Offence*	*Criminal Penalty (Applicable only on summary conviction)*	*Administrative Fine (Licensee)*	*Administrative Fine (Individual)*
79(1)	Failure of a licensee to furnish the Central Bank with a report on all credit exposures	$400,000 Plus $40,000 per day for each day that the offence continues	$100,000	
80(1)	Failure of a licensee or financial holding company to publish audited financial statements as prescribed by this section	$400,000 Plus $40,000 per day for each day that the offence continues	$100,000	
80(2)	Failure of a licensee to keep open to inspection audited financial statements as prescribed by this section	$500,000	$125,000	
81(6)*(a)*	Failure of a licensee or financial holding company to serve on the Central Bank notice of intention to appoint an accountant or firm of accountants to act as auditor	$500,000	$125,000	
82(1)	Failure of a licensed domestic institution or financial holding company to give notice to the Inspector of the removal or replacement of an auditor, and where a person ceases to be auditor, and failure to give reasons to the Central Bank for such removal or replacement	$500,000	$125,000	
82(2)	Failure of a licensed foreign institution to give notice to the Inspector of the removal or replacement of an auditor before the expiration of his engagement, and where a person ceases to be auditor, and failure to give reasons to the Central Bank for such removal or replacement	$500,000	$125,000 $100,000	
84(2)	Failure of a licensee or financial holding company to comply with additional reporting requirements as the Central Bank may prescribe in addition to generally accepted auditing standards	$300,000	$75,000	

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FIFTH SCHEDULE

Section 8(4).

International Standards for the supervision of international banking groups and their cross-border establishments.

1. All international banks to be supervised by a home country authority that capably performs consolidated supervision.

2. Creation of a cross-border banking establishment should receive the prior consent of both the host country and the home country authority.

3. Home country authorities should possess the right to gather information from their cross-border banking establishment.

4. If the host country supervisory authority considers that any of those three standards is not being met, it could impose restrictive measures or prohibit the establishment of banking offices.

SIXTH SCHEDULE

APPLICATION AND ANNUAL FEES

1. The following fees shall be payable in accordance with the provisions of this Act:

Matters in respect of which fee is payable	Application Fee	Annual Fee
Local Financial Institution licensed to carry on Banking Business in accordance with section 16(3) of this Act	TTD10,000	TTD100,000 payable no later than the thirty-first day of January or such later date as may be specified by the Central Bank
Foreign Financial Institution licensed to carry on Banking Business in accordance with section 18(1) of this Act	TTD10,000	TTD100,000 payable no later than the thirty-first day of January or such later date as may be specified by the Central Bank

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SIXTH SCHEDULE—*Continued*

Matters in respect of which fee is payable	Application Fee	Annual Fee
Local Financial Institution licensed to carry on Business of a Financial Nature in accordance with section 17(6) of this Act	TTD10,000	TTD50,000 payable no later than the thirty-first day of January or such later date as may be specified by the Central Bank
Foreign Financial Institution licensed to carry on Business of a Financial Nature in accordance with section 18(1) of this Act	TTD10,000	TTD50,000 payable no later than the thirty-first day of January or such later date as may be specified by the Central Bank
Establishment, acquisition or opening of a Representative Office or an additional Branch by a Foreign Financial Institution under section 50(5) of this Act	TTD10,000	TTD25,000 payable no later than the thirty-first day of January or such later date as may be specified by the Central Bank
Establishment, acquisition or opening of a Branch or Representative Office of a Licensed Domestic Institution under section 50(4) of this Act	Nil	TTD25,000 payable no later than the thirty-first day of January or such later date as may be specified by the Central Bank
Establishment, acquisition or opening of a Branch or Representative Office of a Licensed Domestic Institution under section 50(3) of this Act	TTD10,000	Nil

2. The Annual Fees within this Schedule shall be calculated on a *pro rata* basis, where—

(a) a licence is issued for the first time; or

(b) a branch is established,

after the first quarter of any year.

3. All fees quoted in this Schedule may be reviewed annually by the Central Bank and may be amended in accordance with section 13 of the Act.

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SUBSIDIARY LEGISLATION

FINANCIAL INSTITUTIONS ORDER

161/2011.

made under section 122(7)

1. This Order may be cited as the Financial Institutions Order. Citation.

2. In this Order, "the Act" means the Financial Institutions Act. Interpretation. Ch. 79:09.

3. The form of Notice required to be given pursuant to section 122 of the Act is prescribed in the Schedule to this Order. Form of Notice. Schedule.

SCHEDULE

NOTICE

MADE PURSUANT TO SECTION 122 OF THE FINANCIAL INSTITUTIONS ACT

(Name and Address of Alleged Offender)

Take Notice that the Central Bank of Trinidad and Tobago has reasonable cause to believe that you have *(description of alleged offence)* contrary to section *(insert section)* of the Financial Institutions Act, 2008 (the FIA). Section *(insert section)* of the FIA provides that a person who commits such an offence is liable on summary conviction to a fine of (*insert fine*) and imprisonment for a term of (*insert term of imprisonment*).

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You are hereby advised that in order to discharge any liability to summary conviction in respect of the offence stated above you must—

1. Pay the fixed penalty of (*insert Fourth Schedule administrative fine*) to the Comptroller of Accounts at Treasury Building, Independence Square, Port-of-Spain;

2. Submit to the Central Bank the certificate of payment received from the Comptroller as proof of payment;

3. Discontinue the commission of the said offence; and

4. Provide proof of discontinuance of the said offence,

within a period of twenty-one days commencing the day after which this Notice is served.

Please note that criminal proceedings shall not be laid against you until the expiration of twenty-one days as set out above.

Failure to pay the fixed penalty and to come into compliance within the stipulated time will result in the Central Bank proceeding to have a complaint of the alleged offence heard and determined by the Magistrate's Court.

Date of Issue

Central Bank of Trinidad and Tobago

Service

cc. Comptroller of Accounts.

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FINANCIAL INSTITUTIONS (CAPITAL ADEQUACY) REGULATIONS

ARRANGEMENT OF REGULATIONS

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1. Citation.
2. Commencement.
3. Interpretation.
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5. Pillar I–minimum capital requirements.
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14. Credit Risk.
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95/2020.
97/2020.

FINANCIAL INSTITUTIONS (CAPITAL ADEQUACY) REGULATIONS

made under section 9(1)

Citation.

1. These Regulations may be cited as the Financial Institutions (Capital Adequacy) Regulations.

Commencement.

2. Regulations 7, 18, 19 and 20 shall come into force by Notice published by the Minister in the *Gazette*.

Interpretation.

3. In these Regulations—

Ch. 79:09.

"Act" means the Financial Institutions Act;

"asset backed commercial paper program" means a program that predominantly issues commercial paper with an original maturity of one year or less that is backed by assets or other exposures held in a bankruptcy-remote, special purpose vehicle.

"capital charge" or "regulatory capital charge" means the capital that a financial organisation shall be required to hold for the purposes of these Regulations;

"clean-up call" means an option that permits securitisation exposures to be called before all of the underlying exposures or securitisation exposures have been repaid;

"credit-enhancing interest-only strip" means an on-balance sheet asset that—

(a) represents a valuation of cash flows related to future margin income; and

(b) is subordinated;

"credit enhancement" means a contracted arrangement in which the financial organisation retains or assumes a securitisation exposure and provides some degree of added protection to other parties to the transaction;

"credit rating" means an opinion or assessment of the creditworthiness of an entity, a credit commitment, a debt-like security or an issuer of such obligations, expressed

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using the Standard and Poor's or equivalent ratings as specified by Central Bank in a guideline;

"credit rating agency" means an external credit rating agency that is deemed to be eligible for the determination of capital charges by the Central Bank in accordance with a guideline issued by the Central Bank;

"credit risk" means the potential that a counterparty will fail to meet its obligations in accordance with agreed terms;

"currency mismatch" means a transaction in which the credit protection is denominated in a currency diffrent from that in which the exposure is denominated;

"delivery versus payment" means a settlement system that stipulates that cash payment be made prior to or simultaneously with the delivery of the security and includes payment versus payment transactions;

"early amortisation" means a mechanism that, once triggered, allows investors to be paid out prior to the originally stated maturity of the securites issued;

"excess spread" means gross finance charge collections and other income received by a trust or special purpose vehicle minus certificate interest, servicing fees, charge-offs, and other senior trust or special purpose vehicle expenses;

"financial organisation" means a licensee or financial holding company doing solely the business for which it has obtained a license or permit to do under the Act;

"gain on sale" means any increase in equity capital resulting from a securitisation transaction;

"guideline" means a guideline made under section 10 of the Act;

"implicit support" means an arrangement through which a financial organisation provides support to a securitisation in excess of its predetermined contractual obligation;

"liquidity facility" means a contractual agreement pursuant to which the financial organisation provides funding to a special purpose vehicle in respect of a securitization

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transaction to ensure the timeliness of cash flows to investors in the securitisation issues in the transaction;

"market risk" means the risk of losses in on-balance sheet and off-balance sheet positions arising from adverse movements in market prices;

"maturity mismatch" means a transaction structure in which the residual maturity of the hedge is less than that of the underlying exposure;

"non-delivery versus payment" means a system where cash paid is without receipt of the corresponding receivable or, conversely, deliverables are delivered without receipt of the corresponding cash payment;

"operational risk" means the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events;

"originator" means a financial organisation with regard to a securitisation where—

(a) the financial organisation originates directly or indirectly underlying exposures included in the securitisation; or

(b) the financial organisation acts as a sponsor of an asset-backed commercial paper conduit or similar programme that acquires exposures from third party entities such that in fact or in substance, it manages or advises the program, places securities into the market, or provides liquidity and credit enhancements;

"overlapping facilities" means the provision of several types of facilities by a financial organisation that can be drawn under various conditions whereby the same financial organisation may be providing two or more of these facilities thereby creating a scenario where the financial organisation provides duplicative coverage to the underlying exposures;

"payment versus payment" means a mechanism in a foreign exchange settlement system to ensure that a final transfer of

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one currency occurs only if a final transfer of the other currency or currencies also takes place;

"qualified valuator" means a person who—

(a) is a fellow or professional associate of the Royal Institution of Chartered Surveyors or a fellow or associate of the Incorporated Society of Valuers and Auctioneers or the Rating and Valuation Association and has knowledge of and experience in the valuation of land; or

(b) is approved for the time being by the Central Bank for the purpose of these Regulations;

"regulatory capital" means an amount of capital determined under regulation 9;

"repo-style transaction" means a repurchase agreement or a reverse repurchase agreement;

"repurchase agreement" means the sale of a security with a commitment by the seller to buy the same or equivalent security back from the purchaser at a specified price and at a designated date in the future;

"reverse repurchase agreement" means the purchase of a security with a commitment by the buyer to re-sell the security to the seller at a future date at a fixed price;

"risk weight" means the factor applied to an exposure to determine the risk weighted asset for the purpose of the calculation of the minimum capital adequacy ratios in these Regulations;

"risk weighted assets" means the aggregate of—

(a) risk weighted assets for credit risk determined in accordance with Schedule 2 of these Regulations; Schedule 2.

(b) the capital charge for operational risk determined in accordance with Schedule 3 of these Regulations multiplied by ten; and Schedule 3.

(c) the capital charge for market risk determined in accordance with Schedule 4 of these Regulations multiplied by ten; Schedule 4.

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"securities financing transactions" means transactions including, but not limited to repurchase agreements, reverse repurchase agreements, securities lending and borrowing, and margin lending transactions, where the value of the transactions depends on market valuations and the transactions are often subject to margin agreements;

"securitisation exposures" means an exposure arising from a traditional securitisation or synthetic securitisation including—

(a) asset-backed securities, including certificates of participation, mortgage-backed securities, credit enhancements, liquidity facilities, interest rates or currency swaps, credit derivatives, tranched covers, reserve accounts recorded as an asset by the originator, servicer cash advance facilities and obligations to acquire an investor's interest in the underlying exposures of the transaction if the transaction is subject to an early amortisation provision; or

(b) transactions which the Inspector determines should be classified as a securitisation exposure based on the economic substance;

"special purpose vehicle" means a corporation, trust or other entity organised for a specific purpose, the activities of which are limited to those appropriate to accomplish the purpose of the special purpose vehicle, and the structure of which is intended to isolate the special purpose vehicle from the credit risk of an originator or seller of exposures;

"synthetic securitisation" means a structure with at least two different stratified risk positions or tranches that reflect different degrees of credit risk where credit risk of an underlying pool of exposures is transferred, in whole or in part through the use of funded or unfunded credit derivatives or guarantees that serve to hedge the credit risk of the portfolio; and

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"traditional securitisation" means a structure where the cash flow from an underlying pool of exposures is used to service at least two different stratified risk positions or tranches reflecting different degrees of credit risk and where payments to the investors depend upon the performance of the specified underlying exposures, as opposed to being derived from an obligation of the entity originating those exposures.

Application.

4. In accordance with section 9(4) of the Act, these Regulations shall apply—

(a) to a licensee on an individual basis and on a consolidated basis, to include, where applicable, all domestic and foreign—
  (i) subsidiaries of the licensee; or
  (ii) companies in which the licensee is a significant shareholder; and

(b) on a consolidated basis, to a financial holding company and all the domestic and foreign members of the financial group that the financial holding company controls.

Pillar I—minimum capital requirements.

5. Every financial organisation shall—

(a) maintain on an individual and consolidated basis, in accordance with regulation 4—
  (i) a minimum common equity Tier 1 capital ratio of four and a half per cent;
  (ii) a minimum Tier 1 capital ratio of six per cent; and
  (iii) a minimum capital adequacy ratio of ten per cent; and

(b) comply with sections 16, 17 and any capital adequacy conditions imposed under section 70(4) of the Act.

Pillar II—Internal Capital Adequacy Assessment Process.

6. (1) Every financial organisation shall have in place an internal capital adequacy assessment process as set out in a

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guideline issued by the Central Bank that is proportional to their nature, scale, complexity and business strategy.

(2) Every financial organisation shall—

(a) document the internal capital adequacy assessment process which shall be approved by the board of directors and updated in such time and with such frequency as the Central Bank may specify in a guideline; and

(b) submit the documented internal capital adequacy assessment process to the Central Bank as specified by the Central Bank in such a manner as specified by the Central Bank in a guideline.

(3) Notwithstanding subregulation (2), where the Inspector is of the opinion that there have been changes in the business, strategy, nature, scale or complexity of activities or operational environment of a financial organisation, he may, require the financial organisation to document and submit an internal capital adequacy assessment process to the Central Bank.

(4) After review of the financial organisation's internal capital adequacy assessment process, the Inspector may impose a target capital adequacy ratio on the financial organisation that is higher than the minimum capital ratios set out in regulation 5.

(5) Notwithstanding regulation 6(4), where at any time the Inspector is of the opinion that a financial organisation is exposed to excessive risk, the Inspector may impose a target capital adequacy ratio on a financial organisation that is higher than the capital ratios set out in regulation 5.

Pillar III—Market disclosures.

7. Financial organisations shall disclose such information pertaining to their capital, risk exposures, risk assessment processes, credit risk mitigation and capital adequacy in such time, form, manner and frequency as the Central Bank may specify in a guideline.

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Capital Adequacy Ratios.

8. The minimum common equity Tier 1 capital ratio, Tier 1 capital ratio and capital adequacy ratio shall be calculated in the manner specified in Schedule 1.

Regulatory Capital.

9. Regulatory capital shall be the sum of Tier 1 and Tier 2 capital, as calculated in accordance with regulations 10 and 11, subject to the deductions stated in regulation 12 and the limits and restrictions stated in regulation 13.

Tier 1 Capital.

10. (1) Tier 1 capital shall comprise—

(a) common equity Tier 1 capital; and

(b) fully paid perpetual non-cumulative preference shares and related surplus.

(2) For the purpose of these Regulations, common equity Tier 1 capital shall comprise—

(a) fully paid issued ordinary share capital and related surplus;

(b) the statutory reserve fund of the licensee, referred to in section 56 of the Act;

(c) capital reserves, excluding asset revaluation reserves;

(d) general reserves, excluding those for losses on assets;

(e) retained earnings, as stated at the end of the last financial year in the audited financial statements of the financial organisation; and

(f) retained earnings as stated in audited interim financial statements of the financial organisation.

Tier 2 Capital.

11. For the purposes of these Regulations, Tier 2 capital shall comprise—

(a) fully paid issued perpetual cumulative preference shares, in respect of which the issuer has no right to defer or eliminate preferred dividends;

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(b) limited life preference shares, which are redeemable at the end of a stated period and the original maturity of which is not less than five years;

(c) capital instruments, which are essentially permanent in nature and consist of a combination of equity and debt;

(d) term debt, which is subordinated to general creditors and claims of depositors and which has an original maturity of no less than five years;

(e) undivided profits of the current year that are unaudited, and whether or not publicly disclosed; and

(f) general reserves or provisions for losses on assets, as follows:

(i) reserves set aside for future unidentified losses on assets, which reserves are normally reported as part of shareholders' equity; and

(ii) general provisions, or other provisions in such manner and quantities as the Central Bank may specify, that have been created for unidentified losses and form part of the accumulated provision account, but excluding specific reserves and provisions created against unidentified losses.

Deductions.

12. (1) Tier 1 capital shall be reduced by the following:

(a) losses made by the financial organisation in its current financial year that are audited or unaudited and whether or not publicly disclosed;

(b) bonus shares that have been issued from capitalisation of asset revaluation reserves;

(c) intangible assets, including goodwill arising from the acquisition of assets and capitalised preliminary expenses;

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(d) gain on sale resulting from a securitisation transaction; and

(e) fifty per cent of each of the following, where applicable:

(i) unsettled non-delivery versus payment trades which are five days or more late;

(ii) credit enhancing interest only strips net of gain on sale;

(iii) investor securitisation exposure assigned a credit rating of B+ and below by a credit rating agency;

(iv) originator securitisation exposure assigned a credit rating below investment grade by a credit rating agency; and

(v) unrated securitisation exposure subject to the following exceptions:

(A) eligible liquidity facilities;

(B) the most senior exposure in a securitisation; and

(C) exposures that are in a second loss position or better in asset-backed commercial paper programmes and meet the requirements set out in subregulation (2),

which shall not reduce or be deducted from Tier 1 capital.

(2) Unrated securitisation exposure under subregulation (l)*(e)*(v)(C) shall meet the following requirements in order to not be deducted from Tier 1 capital:

(a) the exposure is economically in a second loss position or better and the first loss position provides significant credit protection to the second loss position;

(b) the associated credit risk is the equivalent of investment grade or better; and

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(c) the financial organisation holding the unrated securitisation exposure does not retain or provide the first loss position.

(3) Deductions *(a)* to *(c)* in subregulation (1) shall be made specifically from common equity Tier 1 capital.

(4) Fifty per cent of each of the following shall, where applicable, be deducted from Tier 2 capital:

(a) unsettled non-delivery versus payment trades which are five days or more late;

(b) credit enhancing interest only certificates of participation net of gain on sale;

(c) investor securitisation exposure assigned a credit rating of B+ and below by a credit rating agency;

(d) originator securitisation exposure assigned a credit rating below investment grade by a credit rating agency; and

(e) unrated securitisation exposure, subject to the following exceptions:

(i) eligible liquidity facilities;

(ii) the most senior exposure in a securitisation; and

(iii) exposures that are in a second loss position or better in asset-backed commercial paper programmes and meet the following requirements:

(A) the exposure is economically in a second loss position or better and the first loss position provides significant credit protection to the second loss position;

(B) the associated credit risk is the equivalent of investment grade or better; and

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(C) the financial organisation holding the unrated securitisation exposure does not retain or provide the first loss position,

which shall not reduce or be deducted from Tier 2 capital.

Limits and Restrictions on Regulatory Capital.

13. For the purposes of these Regulations, regulatory capital shall be subject to the following limits and restrictions:

(a) Tier 1 capital shall not be less than fifty per cent of regulatory capital;

(b) the aggregate of limited life redeemable preference shares referred to in regulation 11*(b)* and subordinated term debt referred to in regulation 11*(d)* shall not exceed fifty per cent of Tier 1 capital;

(c) limited life redeemable preference shares and subordinated term debt shall be discounted by twenty per cent of the last five years before maturity; and

(d) general provisions and reserves for losses on assets referred to in regulation 11*(f)* shall be limited to a maximum of one point two five per cent of risk weighted assets.

Credit risk.

14. (1) In determining its minimum capital requirements referred to in regulation 5, a financial organisation shall calculate capital for the credit risk to which it is exposed.

(2) Capital required for credit risk shall be calculated in the manner specified in Schedule 2.

Schedule 2.

Operational risk.

15. (1) In determining its minimum capital requirements referred to in regulation 5, a financial organisation shall calculate capital for the operational risk to which it is exposed.

(2) Capital required for operational risk shall be calculated in the manner specified in Schedule 3.

Schedule 3.

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Market risk.

16. (1) In determining its minimum capital requirements referred to in regulation 5, a financial organisation shall calculate capital for the market risk to which it is exposed.

Schedule 4.

(2) Capital required for market risk shall be calculated in the manner specified in Schedule 4.

Consolidated Reporting.

17. When reporting on a consolidated basis, a financial organisation shall comply with such requirements as may be specified by the Central Bank in a guideline.

Capital Conversion Buffer.

18. (1) A financial organisation shall be required to maintain a minimum capital conservation buffer of two point five per cent common equity Tier 1 capital above the minimum common equity Tier 1 capital ratio of four point five per cent contained in Schedule 1.

(2) Where a financial organisation fails to comply with the requirement in subregulation (1), it shall be subject to such constraints on the distribution of capital as contained in Schedule 5.

Leverage Ratio.

19. (1) A financial organisation shall be required to maintain a minimum leverage ratio of three per cent calculated as the ratio of Tier 1 capital to adjusted on-balance sheet and off-balance sheet assets.

(2) For the purposes of subregulation (1), a financial organisation shall determine its adjusted on-balance sheet and off-balance sheet assets in the manner specified by the Central Bank in a guideline.

Additional capital charge.

20. (1) A licensee, that is deemed to be systemically important in accordance with such criteria specified by Notice referred to in Regulation 2, shall be required to maintain an additional capital charge.

(2) The additional capital charge referred to in subregulation (1) shall range between one per cent to two point five per cent common equity Tier 1 capital as determined by the Inspector.

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Review by Inspector.

21. For the purposes of determining whether a financial institution is complying with these Regulations and any of the Schedules, the Inspector may, at any time, prior to the submission or after the submission of a report or return under these Regulations, review any systems, procedures or calculations used by a financial organisation in determining its capital requirement.

Transition period.

22. (1) Where at the date of the coming into force of these Regulations, a financial organisation does not meet the minimum capital ratios in Schedule 1 it shall—

(a) have a transition period of one year from the coming into force of these Regulations within which to meet the minimum capital ratios; and

(b) within three months from the coming into force of these Regulations, submit a board-approved capital plan to the Central Bank which details how it intends to meet the minimum capital ratios within the period referred to in subregulation (1)*(a)*.

(2) Notwithstanding subregulation (l)*(a)*—

(a) a financial organisation shall attain no less than the following transitional ratios during the transition period referred to in subregulation (l)*(a)*:

Transitional Ratios	
Minimum Capital Ratios	
Common Equity Tier 1 Capital Ratio	3%
Tier 1 Ratio	4%
Capital Adequacy Ratio	8%

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(b) where a financial organisation is unable to comply with the transition period referred to in subregulation (1)*(a)* as a result of external unforseeable circumstances beyond reasonable control including but not limited to the occurrence of any natural disaster, industrial unrest, public disorder, epidemic or the like, the Inspector may extend the transition period by up to one year as he considers necessary.

(3) For the avoidance of doubt if on the coming into force of these Regulations—

(a) or at any time during the transitional period referred to in subregulation (1), a financial organisation has satisfied the requirements under Schedule 1, the financial organisation shall continue to satisfy those requirements from that period onward; and

(b) a financial organisation had been directed by the Central Bank under section 16(6) or 17(10) of the Act to maintain a specific capital adequacy ratio above the requirements set out in Schedule 1, it shall continue to comply with that directive during the transition period referred to in subregulation (1), unless otherwise directed by the Inspector.

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SCHEDULE 1

[Regulations 8 and 18(1)].

MINIMUM CAPITAL RATIOS

i. Capital Adequacy Ratio	Regulatory Capital = / Risk Weighted Assets (Credit + Operational + Market)	10%
ii. Tier 1 Capital Ratio	Tier 1 Capital = / Risk Weighted Assets (Credit + Operational + Market)	6%
iii. Common Equity Tier 1 Capital Ratio	Common Equity Tier 1 Capital = / Risk Weighted Assets (Credit + Operational + Market)	4.5%

SCHEDULE 2

[Regulations 3 and 14(2)].

PROVISIONS FOR THE CALCULATION OF CAPITAL CHARGES FOR CREDIT RISK

Interpretation.

1. In this Schedule—

"aggregated exposure" means the gross amount, not taking any credit risk mitigation into account, of all forms of debt exposures that individually satisfy the criteria for inclusion in the regulatory retail portfolio;

"bank" means an incorporated entity that is—

(a) licensed by the Central Bank to carry on the business of banking pursuant to section 16 of the Act;

(b) licensed by the Central Bank to carry on business of a financial nature pursuant to section 17 of the Act; or

(c) in a foreign jurisdiction that meets the definition of a bank for the purposes of the banking capital adequacy regulations in the jurisdiction of incorporation;

"bilateral netting" means the consolidation of agreements between a financial organisation and a counterparty which results in a single legally enforceable arrangement between a financial organisation and a counterparty covering all included individual contracts including master netting agreements;

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SCHEDULE 2—*Continued*

"commercial real estate" means—

(a) commercial property including office buildings, retail spaces, multipurpose commercial premises, condominiums, townhouses or other residential property developments, multi-tenanted commercial premises, industrial or warehouse space and hotels; and

(b) land acquired for development and construction of commercial property in paragraph *(a)*.

"corporates" means incorporated bodies, wherever and however incorporated, but does not include venture capital investments, private equity investments, small business entities and banks or bodies which exercise some of the functions of an incorporated body but have not been granted separate legal personality by statute;

"counterparty" means a party to whom a financial organisation has an on-balance sheet or off-balance sheet credit exposure or a potential credit exposure;

"guarantee" means guarantee and counter guarantee;

"loan to value ratio" means the ratio of money borrowed to the appraised value of collateral;

"multilateral development bank" means a supranational institution chartered by two or more countries for the purpose of providing financial support and professional advice for economic and social development activities;

"private equity investment" means an investment—

(a) in a new or developing unincorporated body or venture;

(b) in a management buy-out or buy-in;

(c) done to finance the investee unincorporated body or venture and accompanied by a right of consultation, or rights to information, or board representation, or management rights; or

(d) acquired with a view to, or in order to, facilitate a transaction falling within paragraphs *(a)* to *(c)*;

"public sector entity" means—

(a) in relation to Trinidad and Tobago—

Ch.25:04.

(i) Municipal Corporations under the Municipal Corporations Act;

(ii) Statutory boards; and

(iii) other bodies in which the central government is the controlling shareholder including—

(A) public utilities;

(B) non-financial institutions; or

(C) financial institutions; and

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(b) in relation to a foreign jurisdiction—
(i) State or federal government and where in a jurisdiction or country, a state or federal government is equivalent to a central or national government, it shall not be treated as a public sector entity but as a sovereign under this Schedule;
(ii) local government;
(iii) Statutory boards; and
(iv) other bodies in which the central government is the controlling shareholder including—
(A) public utilities;
(B) non-financial institutions; or
(C) financial institutions;

"reference obligation" means the obligation used for the purposes of determining cash settlement value or the deliverable obligation;

"regulatory capital relief" means a reduction in regulatory capital requirements through the use of means including credit risk mitigation and bilateral netting;

"securities" means a security as defined in the Securities Act; Ch. 83:02.

"securities firm" means—
(a) entities in Trinidad and Tobago that are registered as a broker-dealer under the Securities Act; and
(b) entities in foreign jurisdictions that meet the definition of a securities firm in the legislation that governs the activities of securities in that jurisdiction;

"small business entity" means an entity whose—
(a) number of employees does not exceed twenty-five persons;
(b) asset value is less than five million Trinidad and Tobago dollars; and
(c) turnover in sales does not exceed ten million Trinidad and Tobago dollars;

"sovereign" means the Central Government or Central Bank of a jurisdiction or country;

"underlying obligation" means the underlying asset or entity from which a derivative obtains its price or value including commodities, currencies, stocks, bonds, interest rates, debt and equity;

"venture capital investment" has the same meaning as a private equity investment.

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SCHEDULE 2—*Continued*

Risk weight.

2. Risk weights shall be applied to all on-balance sheet and off-balance sheet exposures.

On and Off-balance sheet exposures.

3. On-balance sheet exposures shall be multiplied by the appropriate risk weight to determine the risk-weighted asset amount, while off-balance sheet exposures shall be multiplied by the appropriate credit conversion factor, as directed under clause 17(2), before the application of the respective risk weights.

Risk weighting.

4. Exposures shall be risk weighted net of specific provisions and partial write-offs.

PART I

PROVISIONS FOR RISK WEIGHTING OF CREDIT EXPOSURES

Claims on sovereigns.

5. (1) Claims on sovereigns shall be risk weighted based on the credit rating of the sovereign as follows:

Credit Rating of Sovereign	AAA to AA–	A+ to A–	BBB+ to BBB–	BB+ to B–	Below B–	Unrated
Risk Weight	0%	20%	50%	100%	150%	100%

(2) Claims on the Government of Trinidad and Tobago or the Central Bank, which are both denominated and funded in Trinidad and Tobago dollars, shall be risk weighted at zero per cent.

(3) The zero per cent risk weight shall apply to claims which are fully guaranteed by the Government of Trinidad and Tobago, which are denominated and funded in Trinidad and Tobago dollars, the guarantee of which shall be explicit, unconditional, legally enforceable and irrevocable, and satisfy the criteria set out under Part II of this Schedule.

(4) Claims on foreign sovereigns may be assigned the preferential risk weight applied by the foreign jurisdiction where the exposure is funded and denominated in the currency of that jurisdiction.

Claims on Non-Central Government Public Sector Entities.

6. Claims on public sector entities shall be assigned a risk weight as follows:

Credit Rating of Sovereign	AAA to AA–	A+ to A–	BBB+ to BBB–	BB+ to B–	Below B–	Unrated
Sovereign Risk Weight	0%	20%	50%	100%	150%	100%
Public Sector Entity Risk Weight	20%	50%	100%	100%	150%	100%

Claims on Multilateral Development Banks.

7. (1) Claims on the following multilateral development banks shall be risk weighted at zero per cent:

(a) World Bank Group, comprising the International Bank for Reconstruction and Development and the International Finance Corporation;
(b) Asian Development Bank;
(c) African Development Bank;
(d) European Bank for Reconstruction and Development;
(e) Inter-American Development Bank;
(f) European Investment Bank;
(g) European Investment Fund;
(h) Nordic Investment Bank;
(i) Caribbean Development Bank;
(j) Islamic Development Bank; and
(k) Council of Europe Development Bank.

(2) Claims on any other multilateral development bank not referred to in clause 7(1) shall be risk weighted in accordance with the table below—

Credit Rating of Multilateral Development Bank	AAA to AA–	A+ to A–	BBB+ to BBB–	BB+ to B–	Below B–	Unrated
Risk Weight	20%	50%	50%	100%	150%	50%

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SCHEDULE 2—*Continued*

(3) A zero per cent risk weight shall apply to claims on the Bank for International Settlements and the International Monetary Fund and other similar type agencies as may be advised by the Central Bank.

Claims on Banks.

8. (1) Claims on banks with a maturity of more than three months shall be risk weighted based on the credit rating of the bank or the credit rating of instruments issued by the bank as follows:

Credit Rating of bank/their issued instruments	AAA to AA–	A+ to A–	BBB+ to BBB–	BB+ to B–	Below B–	Unrated
Risk Weight	20%	50%	50%	100%	150%	50%

(2) Where a claim on a bank has an original maturity of three months or less, it shall be treated as a short term claim and shall be assigned a risk weight based on the credit rating of the bank as follows:

Credit Rating of Bank	AAA to AA–	A+ to A–	BBB+ to BBB–	BB+ to B–	Below B–	Unrated
Risk Weight for Short Term Claims	20%	20%	20%	50%	150%	20%

(3) Short term claims on banks in Trinidad and Tobago that are both denominated and funded in Trinidad and Tobago dollars may be assigned a risk weight of twenty per cent.

(4) Short term claims on banks which are expected to be rolled over or are restructured in any way, resulting in an effective maturity of longer than three months, shall not be risk weighted as a short term claim.

(5) Notwithstanding subclauses (1) and (2), no claim on an unrated bank may receive a risk weight lower than a claim on its sovereign of incorporation.

Claims on Securities Firms.

9. (1) Claims on securities firms shall be risk weighted as claims on banks under clause 8, provided that these firms are subject to supervisory and regulatory arrangements including regulatory capital requirements comparable to those under these Regulations.

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(2) Where a claim on a securities firm does not meet the requirements in subclause (1), such claim shall be risk weighted as claims on corporates in clause 10.

Claims on Corporates.

10. (1) Claims on corporates and securities firms that do not qualify for treatment as a bank under clause 8 shall be risk weighted in accordance with the credit rating of the corporate or security firm or the credit rating of instruments issued by the corporate or security firm as follows:

Credit Rating of Corporates and Securities Firms/their issued instruments	AAA to AA–	A+ to A–	BBB+ to BB–	Below BB–	Unrated
Risk Weight	20%	50%	100%	150%	100%

(2) No claim on an unrated corporate may be given a risk weight preferential to that assigned to its sovereign of incorporation.

(3) The Inspector may increase the standard risk weight for unrated claims on corporates where he determines that a higher risk weight is warranted by the overall default experience.

(4) Subject to approval by the Inspector, a financial organisation may risk weight all of its corporate claims at one hundred per cent without regard to external ratings, and where the Inspector grants such approval a financial organisation shall apply the one hundred per cent risk weighting to all such claims, notwithstanding the availability of external ratings.

(5) Notwithstanding subclause (4), after consideration of the credit quality of corporate claims held by a financial organisation, the Inspector may assign a standard risk weight higher than one hundred per cent.

Claims included in the Regulatory Retail Portfolios.

11. (1) Claims included in the regulatory retail portfolio shall be risk weighted at seventy-five per cent.

(2) Claims to be included in the regulatory retail portfolio shall meet the following criteria:

(a) exposures shall be to an individual or to a small business entity;

(b) exposures shall take the form of any of the following:

(i) revolving credits and lines of credit, including credit cards and overdrafts;

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SCHEDULE 2—*Continued*

(ii) personal term loans and leases including installment loans, auto loans and leases, student and educational loans, personal finance; and

(iii) facilities and commitments to small business entities;

(c) exposures shall be sufficiently diversified to a degree that reduces the risks in the portfolio and no aggregate exposures to one counterparty or related counterparties shall exceed zero point two per cent of the overall regulatory retail portfolio; and

(d) the maximum aggregated retail exposure to one counterparty shall not exceed an absolute threshold of six million dollars.

(3) Securities including bonds and equities, whether listed or not, and mortgage loans shall not be included in the regulatory retail portfolio.

(4) Notwithstanding subclause (1), after consideration of the default experience for these types of exposures, the Inspector may determine that a risk weight above the seventy-five percent should be applied to claims on the regulatory retail portfolio.

(5) Where an exposure does not meet the requirements of this clause, it shall be treated as a claim on corporates.

Claims secured by residential property.

12. (1) Residential mortgage loans where the loan is secured by the residential property shall be risk weighted at thirty-five percent where—

(a) the property is or will be occupied by the borrower or is rented;

(b) the loan is not past due for more than ninety days; and

(c) the loan has a loan-to-value ratio which does not exceed eighty per cent.

(2) Where a residential mortgage loan secured by the residential property satisfies subclauses (l)*(a)* and (l)*(b)* but—

(a) the loan-to-value ratio exceeds eighty per cent but is less than ninety per cent, a seventy-five per cent risk weight shall be applied;

(b) the loan-to-value ratio exceeds ninety per cent, a one hundred per cent risk weight will be applied; and

(c) the financial organisation has no loan-to-value information for the residential mortgage loan, a hundred per cent risk weight shall be applied.

(3) Where a residential mortgage loan does not satisfy the conditions set out at subclauses (1) and (2) a one hundred per cent risk weight shall be applied.

(4) Notwithstanding subclause (1), after consideration of the default experience of these types of exposure, the Inspector may determine that a risk weight above thirty-five per cent shall be applied to residential mortgage loans secured by residential property.

(5) For the purposes of this clause, a financial organisation in determining the loan-to-value ratio shall—

(a) have in place a sound valuation methodology to appraise and monitor the valuation of the property;

(b) monitor the value of the property on a request basis, at a minimum every three years for residential real estate; and

(c) have the property valuation reviewed by a qualified valuator when there is information regarding a decline in value of the property, including where the property may have declined materially relative to general market prices or upon default.

Claims secured by commercial real estate.

13. Commercial real estate loans shall be assigned a risk weight of one hundred per cent.

Past due loans.

14. (1) The unsecured portion of any loan other than a residential mortgage loan that meets the criteria referred to in clause 12, which is past due for more than ninety days, shall be risk weighted as follows:

(a) one hundred and fifty per cent risk weight, when specific provisions are less than twenty per cent of the outstanding amount of the loan;

(b) one hundred per cent risk weight, when specific provisions are twenty per cent or more of the outstanding amount of the loan; and

(c) subject to the approval of the Inspector, fifty per cent risk weight when specific provisions are no less than fifty per cent of the outstanding amount of the loan.

(2) Financial organisations shall apply the risk weight of any eligible collateral or guarantee on the secured portion of past due loans, provided that the credit risk mitigation criteria under the Credit Risk Mitigation in Part II of this Schedule is satisfied.

(3) Residential mortgage loans that meet the requirements of clause 12 and are past due for more than ninety days shall be risk weighted at—

(a) one hundred per cent; or

(b) fifty per cent, where specific provisions are no less than twenty per cent of the outstanding amount of the loan.

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SCHEDULE 2—*Continued*

Higher Risk Categories.

15. (1) A risk weight of one hundred and fifty per cent shall apply to venture capital and private equity investments.

(2) Securitisation exposures of investors, as referred to in clause 54 of Part VI of this Schedule, that are assigned a credit rating between BB+ and BB– by a credit rating agency shall be risk weighted at three hundred and fifty per cent.

Other Assets.

16. (1) A zero per cent risk weight will apply to—

(a) cash held by the financial organisation and at the Central Bank; and

(b) gold bullion, held in the financial organisation's vault or on an allocated basis to the extent backed by bullion liabilities.

(2) A twenty per cent risk weight shall apply to cash items in the process of collection.

(3) A one hundred per cent risk weight shall apply to—

(a) premises, plant, equipment and other fixed assets;

(b) real estate and other investments, including non-consolidated investment participation in other companies;

(c) investments in equity of other entities and holdings of investment funds, including investments in commercial entities where regulatory capital deduction is not required;

(d) unallocated prepayments and accrued interest; and

(e) all other assets not included elsewhere.

Off-balance sheet exposures.

17. (1) The regulatory capital treatment under this clause shall be applicable to all categories of off-balance sheet items, including guarantees, commitments and similar contracts whose full notional principal amount may not be reflected on the balance sheet.

(2) Financial organisations shall convert off-balance sheet items into credit exposure equivalents through the use of the following credit conversion factors:

OFF-BALANCE SHEET EXPOSURE	CREDIT CONVERSION FACTOR
(a) Commitments that are unconditionally cancellable without prior notice or that effectively provide for automatic cancellation due to the deterioration in a borrower's creditworthiness.	0%

OFF-BALANCE SHEET EXPOSURE	CREDIT CONVERSION FACTOR
(a) Commitments with an original maturity up to one year. *(b)* Short-term self-liquidating trade letters of credit arising from the movement of goods such as documentary credits collateralised by the underlying shipment.	20%
(a) Commitments with an original maturity exceeding one year, including underwriting commitments and commercial credit lines. *(b)* Certain transaction-related contingent items, including performance bonds, bid bonds, warranties and standby letters of credit related to particular transactions. *(c)* Note issuance facilities and revolving underwriting facilities.	50%
(a) Direct credit substitutes, such as general guarantees of indebtedness, including standby letters of credit serving as financial guarantees for loans and securities and acceptances including endorsements with the character of acceptances. *(b)* Sale and repurchase agreements. *(c)* Asset sales with recourse where the credit risk remains with the financial organisation. *(d)* Forward asset purchases, forward deposits and partly-paid shares and securities, which represent commitments with certain drawdown. *(e)* Lending of financial organisation's securities or the posting of securities as collateral by financial organisations, including instances where these arise out of collateralised securities financing transactions, that is repurchase and reverse repurchase agreements and securities lending and securities borrowing transactions.	100%

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SCHEDULE 2—*Continued*

(3) Where there is an undertaking to provide a commitment on an off-balance sheet item, the lower of the two applicable credit conversion factors is to be applied.

(4) The credit equivalent amount of derivatives that expose a financial organisation to counterparty credit risk shall be calculated in accordance with the Part IV.

(5) For the purposes of short term self-liquidating trade letters of credit, a twenty per cent credit conversion factor shall be applied to the financial organisation that either issues or confirms the exposure.

(6) The following exposures are to be risk weighted according to the type of asset and not according to the type of counterparty with whom the transaction has been entered into:

(a) forward asset purchases;

(b) forward deposits and partly-paid shares and securities which represent commitments with certain drawdown; and

(c) asset sales with recourse, where the risk remains with the financial organisation.

PART II

PROVISIONS FOR CREDIT RISK MITIGATION

Credit Risk Mitigation Framework.

18. The framework described under this Part sets out the treatment of credit risk mitigation techniques.

Risk Mitigation Techniques.

19. Financial organisations may use the following techniques to mitigate the credit risks to which they are exposed:

(a) exposures may be collateralised by first priority claims, in whole or in part, with cash or securities;

(b) loans owed may be netted or set-off against deposits from the same counterparty;

(c) exposures may be guaranteed by a third party; and

(d) a credit derivative may be bought to offset various forms of credit risk.

Minimum Conditions for the Recognition of Credit Risk Mitigation Techniques.

20. In order for financial organisations to obtain regulatory capital relief for use of any credit risk mitigation technique, the legal documents governing the credit risk mitigation technique shall meet the following requirements:

(a) all documentation used in collateralised transactions and for documenting on-balance sheet netting or setting-off and guarantees shall be binding on all parties and legally enforceable in all relevant jurisdictions;

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(b) financial organisations shall have conducted sufficient legal review to verify the matters in paragraph *(a)* and have basis, with which the Inspector agrees, to determine that they meet the standards contained in paragraph *(a)*; and

(c) financial organisations shall undertake further reviews, at least annually or at such times that there is a change or potential change to the documentation, to ensure continuing enforceability of the documentation.

General Considerations.

21. (1) Financial organisations shall employ robust procedures and processes to control the risks arising from the use of credit risk mitigation techniques including strategy, consideration of the underlying credit, valuation, policies and procedures, systems, control of roll-off risks and management of concentration risk and its interaction with the overall credit risk profile of the financial organisation.

(2) Where the Inspector is not satisfied that the risks arising from the use of credit risk mitigation techniques are adequately controlled, he may impose additional capital charges and disallow the use of credit risk mitigation techniques.

(3) A financial organisation shall not recognise credit risk mitigation for the purposes of regulatory capital relief on claims for which an issue specific rating assigned by a credit rating agency is used that already reflects the credit risk mitigation.

Collateralisation.

22. (1) A collateralised transaction occurs where—

(a) a financial organisation has a credit exposure or potential credit exposure; and

(b) that credit exposure or potential credit exposure is hedged, in whole or in part, by collateral posted by a counterparty or by a third party on behalf of the counterparty.

(2) Where a financial organisation takes eligible financial collateral including cash or securities as referred to in clauses 31 and 32, they may reduce their credit exposure to a counterparty when calculating their regulatory capital requirements to take account of the risk mitigating effect of the collateral.

(3) A capital charge shall be applied to financial organisations on either side of the following collateralised transactions:

(a) a repurchase or a reverse repurchase agreement transaction;

(b) securities lending and borrowing transactions; and

(c) posting of securities, in connection with a derivative exposure or other borrowing.

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(4) Where a financial organisation acts as an agent or arranges a repo-style transaction between a customer and a third party and provides a guarantee to the customer that the third party will perform on its obligations, that financial organisation shall calculate regulatory capital requirements as if it were itself the principal.

(5) In calculating regulatory capital for collateralised transactions, financial organisations shall operate under the simple approach, as detailed in clauses 24, 25 and 31 only in the banking book, and under the comprehensive approach, as detailed in clauses 26, 27, 28, 29, 30 and 32, only in the trading book.

(6) Notwithstanding subclause (5), collateralised securities financing transactions including collateralised repo-style transactions in the banking book shall be subject to the comprehensive approach.

(7) Partial collateralisation shall be recognised in both the simple and the comprehensive approach.

Pre-conditions for the use of collateral under either approach.

23. Prior to a financial organisation receiving any regulatory capital relief in respect of any form of collateral, the following standards shall be met under the simple and comprehensive approach:

(a) in addition to the general requirements for legal certainty as contained in clause 20, the legal mechanism by which collateral is pledged or transferred shall ensure that the financial organisation has the right to liquidate or take legal possession of the collateral, in a timely manner, in the event of the default, insolvency or bankruptcy or such other credit events as set forth in the transaction documentation of the counterparty or the custodian holding the collateral;

(b) a financial organisation shall take all steps necessary to fulfill all legal requirements applicable to their interest in the collateral for obtaining and maintaining an enforceable security interest including—

(i) registering it with a registrar; and

(ii) exercising a right to net or set off in relation to title transfer collateral;

(c) where the credit quality of the counterparty and the value of the collateral have a material positive correlation, the collateral instrument shall not be eligible for credit risk mitigation purposes;

(d) a financial organisation shall have clear and robust procedures for the timely liquidation of collateral to ensure that any legal conditions required for declaring the default of the counterparty and liquidating the collateral are observed, and that the collateral can be liquidated promptly; and

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(e) where a custodian holds the collateral, financial organisations shall take reasonable steps to ensure that the custodian segregates the collateral from its own assets.

COLLATERALISATION UNDER THE SIMPLE APPROACH

The simple approach.

24. (1) For collateral to be eligible under the simple approach, it shall—

(a) be pledged for, at least, the life of the exposure; and

(b) be marked to market and revalued with a minimum frequency of six months.

(2) Collateral may be reduced in proportion to the amount of the reduction in the exposure amount where the collateral is cash.

(3) The release of collateral in subclause (2) by a financial organisation shall be conditional upon the repayment of such part of the exposure that is collateralised by cash.

Risk weighting of the collateralised portion of exposures under the simple approach.

25. (1) The collateralised portion of exposures shall be risk weighted as follows under the simple approach:

(a) the collateralised portion shall be subject to a minimum risk weight of twenty per cent; and

(b) the uncollateralised portion of the claim shall be assigned the risk weight appropriate to the counterparty.

(2) Notwithstanding the minimum risk weight referred to in subclause (1)*(a)* for the collateralised portion of a claim, a zero per cent risk weight shall apply where the exposure and the collateral are denominated in the same currency and the collateral is cash.

(3) For the purposes of subclause (2), cash shall meet the criteria contained in clause 31(3).

COLLATERALISATION UNDER THE COMPREHENSIVE APPROACH

The comprehensive approach.

26. (1) For a collateralised transaction under the comprehensive approach, the exposure amount after risk mitigation shall be calculated as follows:

$$E^* = \max(0, [E \times (1 + H_e) - C \times (1 - H_c - H_{fx})])$$

where:

E^* = *the exposure value after risk mitigation*

E = *current value of the exposure*

H_e = *haircut appropriate to the exposure*

C = *the current value of the collateral received*

H_c = *haircut appropriate to the collateral*

H_{fx} = *haircut appropriate for currency mismatch between the collateral and exposure.*

SCHEDULE 2—*Continued*

(2) The exposure amount after risk mitigation shall be multiplied by the risk weight of the counterparty to obtain the risk-weighted asset amount for the collateralised transaction.

(3) The treatment for transactions where there is a mismatch between the maturity of the counterparty exposure and the collateral shall be as in clause 43.

(4) Where the collateral is a basket of assets the haircut on the basket shall be—

$$H = \sum_i a_i H_i$$

where:

a_i = *the weight of the asset (as measured by units of currency) in the basket; and*

H_i = *the haircut applicable to that asset.*

(5) Financial organisations shall use the standard supervisory haircuts referred to in clause 27 in calculating the exposure amount after risk mitigation.

Standard supervisory haircuts under the comprehensive approach.

27. (1) The standard supervisory haircuts under the comprehensive approach where there is a daily mark-to-market or revaluation, daily re-margining and a ten-business day holding period, expressed as percentages shall be as follows:

Issue rating for debt security	Residual Maturity	Sovereigns	Other Issuers
		%	%
AAA to AA-/A-1	≤ 1year	0.5	1
	>1year, ≤ 5 years	2	4
	>5years	4	8
A+ to BBB-/ A-2/A-3/P-3 and unrated securities	≤ 1 year	1	2
	>1year, ≤ 5 years	3	6
	>5years	6	12
BB+ to BB-	All	15	
Main index equities (including convertible bonds) and Gold		15	
Other equities (including convertible bonds) listed in a recognized exchange)		25	
Undertakings for Collective Investments in Transferable Securities/Mutual Funds		Highest haircut applicable to any security in which the fund can invest	
Cash in the same currency		0	

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(2) For transactions in which the financial organisation lends instruments not eligible under the comprehensive approach, including non-investment grade corporate debt securities, the haircut to be applied on the exposure shall be the same as that for equity traded on a recognised exchange that is not part of a main index.

(3) For the purpose of this clause—

(a) "other issuers" includes public sector entities which are not treated as sovereigns by the national supervisor;

(b) "unrated securities" shall meet the criteria contained in clause 31(1)*(e)*; and

(c) "cash in the same currency" means cash collateral that meets the criteria contained in clause 31(3).

(4) The haircut in subclause (1) shall be scaled up or down using the square root of time formula as shown in clause 28(2), depending on the type of instrument, type of transaction, frequency of re-margining or revaluation.

(5) The standard supervisory haircut based on a ten-business day holding period and daily mark-to-market or revaluation for currency risk where exposure and collateral are denominated in different currencies shall be eight per cent.

Adjustment of different holding periods and non-daily mark-to-market or re-margining under the comprehensive approach.

28. (1) In order to apply the standard supervisory haircuts referred to in clause 27(1), the minimum holding period and re-margining and revaluation conditions for various products under the comprehensive approach shall be as follows:

Transaction type	Minimum holding period	Condition
Repo-style transaction	Five business days	Daily re-margining
Other capital market transactions	Ten business days	Daily re-margining
Secured lending	Twenty business days	Daily revaluation

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SCHEDULE 2—*Continued*

(2) When the frequency of re-margining or revaluation is longer than the minimums in subclause (1), the standard supervisory haircuts at clause 27(1) shall be scaled up or down depending on the type of transaction and the actual number of business days between re-margining or revaluation using the square root of time formula as follows:

$$H = H_{10} \sqrt{\{N_R + (T_M - 1)\}/10} \quad \text{where-}$$

H = haircut
H_{10}= 10-business day standard supervisory haircut for instrument
N_R = actual number of business days between re-margining for capital market transactions or revaluation for secured transactions
T_M = minimum holding period for the type of transaction.

COLLATERALISATION FOR SECURITIES FINANCING TRANSACTIONS

Securities financing transactions.

29. Financial organisations shall use the comprehensive approach to recognise collateral for collateralised securities financing transactions in both the banking and trading book.

Treatment of securities financing transactions not covered under bilateral netting agreements.

30. (1) Capital charges for collateralised securities financing transactions that are not covered by bilateral netting agreements shall be calculated in accordance with clauses 26, 27 and 28.

(2) Financial organisations may recognise the effects of netting agreements covering collateralised securities financing transactions including repurchase and reverse repurchase agreements on a counterparty-by-counterparty basis if the agreements are legally enforceable in each relevant jurisdiction upon the occurrence of an event of default regardless of whether the counterparty is insolvent or bankrupt.

(3) Bilateral netting agreements shall—

(a) provide the non-defaulting party the right to terminate and close-out in a timely manner all transactions under the agreement upon an event of default, including in the event of insolvency or bankruptcy of the counterparty;

(b) provide for the netting of gains and losses on transactions including the value of any collateral terminated and closed out under it so that a single net amount is owed by one party to the other;

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(*c*) allow for the prompt liquidation or set-off of collateral upon the event of default; and

(*d*) be legally enforceable in each relevant jurisdiction upon the occurrence of an event of default and regardless of the counterparty's insolvency or bankruptcy.

(4) Netting across positions in the banking and trading book shall only be recognised when the netted transactions fulfill the following conditions:

(*a*) all transactions are marked-to-market daily; and

(*b*) the collateral instruments used in the transactions are recognised as eligible financial collateral in accordance with clause 31 in the banking book.

(5) Financial organisations shall determine the adjusted exposure after credit risk mitigation for securities financing transactions covered under bilateral netting agreements as follows:

$$E^* = \max\ (0, [(\sum (E) - \sum(C)) + \sum (E_s \times H_s) + \sum (E_{fx} \times H_{fx})])$$

where:

E^* = *the exposure value after risk mitigation*

E = *current value of the exposure*

C = *the value of the collateral received*

E_s = *absolute value of the net position in a given security*

H_s = *haircut appropriate to Es*

E_{fx} = *absolute value of the net position in a currency different from the settlement currency*

H_{fx} = *haircut appropriate for currency mismatch.*

(6) All haircuts to be applied under this clause shall be in accordance with the rules for haircuts as referred to in clauses 27 and 28.

COLLATERAL UNDER THE SIMPLE APPROACH

Eligible financial collateral under simple approach.

31. (1) The following collateral instruments shall be eligible for recognition under the simple approach:

(*a*) cash on deposit at the financial organisation that incurs the exposure;

(*b*) certificates of deposit, including fixed rate certificates of deposit and variable rate certificates of deposits issued by the lending financial organisation which are held on deposit with the financial organisation that incurs the counterparty exposure;

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(c) gold;

(d) debt securities rated by a credit rating agency where these are either—

(i) at least BB– when issued by sovereigns or public sector entities that are treated as sovereigns by the national supervisor;

(ii) at least BBB– when issued by other entities including banks and securities firms; or

(iii) at least A–3/ P-3 for short-term debt instruments;

(e) debt securities not rated by a credit rating agency where—

(i) issued by a financial organisation;

(ii) listed on a recognised exchange;

(iii) classified as senior debt;

(iv) all rated issues of the same seniority by the issuing financial organisation are assigned a credit rating of at least BBB– or A-3/ P-3 by a credit rating agency;

(v) the financial organisation holding the securities as collateral has no information to suggest that the issue justifies a rating below BBB– or A-3/P-3; and

(vi) the Inspector is satisfied that there is adequate market liquidity for the security.

(f) equities including convertible bonds that are included in a main index; and

(g) Undertakings for Collective Investments in Transferable Securities and mutual funds where—

(i) a price for the units is publicly quoted daily; and

(ii) the Undertakings for Collective Investments in Transferable Securities or mutual funds are limited to investing in the instruments listed in this clause.

(2) Cash-funded credit-linked notes issued by the financial organisation against exposures in the banking book which fulfill the criteria for credit derivatives shall be treated as cash collateralised transactions under the simple approach.

(3) Cash on deposit or certificates of deposit referred to in subclauses (1)*(a)* and *(b)*, issued by the financial organisation incurring the counterparty exposure—

(a) that is held at a third party financial organisation in a non-custodial arrangement;

(b) that is openly pledged or assigned to the financial organisation incurring the counterparty exposure; and

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(c) where the pledge or assignment is unconditional and irrevocable,

shall receive the risk weight of the third party financial organisation.

COLLATERAL UNDER THE COMPREHENSIVE APPROACH

Eligible financial collateral under comprehensive approach.

32. (1) The following collateral instruments shall be eligible for recognition under the comprehensive approach:

(a) all of the instruments referred to as eligible collateral under simple approach in clause 31;

(b) equities, including convertible bonds which are not included in a main index but which are listed on a recognised exchange; and

(c) Undertakings for Collective Investments in Transferrable Securities or mutual funds that include such equities referred to in subclause (1)*(b)*.

(2) The use of derivative instruments by Undertakings for Collective Investments in Transferable Securities or mutual funds solely to hedge investments will not prevent units in those Undertakings for Collective Investments in Transferable Securities or mutual funds from being eligible financial collateral.

SETTING-OFF OR NETTING ARRANGEMENTS

On-balance sheet setting-off or netting.

33. (1) A financial organisation may calculate capital requirements on the basis of its net credit exposures where it has legally enforceable arrangements for netting or setting-off loans against deposits and the financial organisation—

(a) has a legal basis, with which the Inspector agrees, for concluding that the netting or setting-off arrangement is enforceable in each relevant jurisdiction regardless of whether the counterparty is insolvent or bankrupt;

(b) is able, at any time to determine those assets and liabilities with the same counterparty that are subject to the netting arrangement;

(c) monitors and controls its roll-off risks; and

(d) monitors and controls the relevant exposures on a net basis.

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(2) A financial organisation shall apply the treatment set out under clauses 26, 27 and 28 for the purposes of the regulatory capital calculation for on-balance sheet netting or setting-off and—

(a) loans shall be treated as exposures and deposits shall be treated as collateral;

(b) the haircuts shall be zero, except when a currency mismatch exists; and

(c) a ten-business day holding period shall apply when daily mark-to-market is conducted and the following requirements are completed:

(i) recognition and calculation of the appropriate standard supervisory haircuts; and

(ii) adjustment for any maturity mismatches.

TREATMENT OF GUARANTEES AND CREDIT DERIVATIVES

Guarantees and credit derivatives.

34. (1) A financial organisation may use guarantees or credit derivatives to obtain capital relief where—

(a) they are direct, explicit, irrevocable, legally enforceable and unconditional; and

(b) the Inspector is satisfied that the financial organisation fulfills the minimum operational conditions set out in Part III of this Schedule relating to risk management processes.

(2) Where a financial organisation uses guarantees or credit derivatives to obtain regulatory capital relief, a substitution approach shall be applied as follows:

(a) only guarantees issued by or protection provided by entities with a lower risk weight than the counterparty will lead to reduced capital charges; and

(b) the uncovered portion shall retain the risk weight of the underlying counterparty.

Range of eligible guarantors, counter-guarantors and protection providers.

35. (1) The Inspector shall recognise credit protection provided by the following entities:

(a) sovereigns, public sector entities, banks and securities firms with lower risk weights than the counterparty, and

(b) other entities rated A– or better, including credit protection provided by parent, subsidiary and affiliate companies when they have a lower risk weight than the obligor.

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(2) For the purposes of subclause (1), sovereigns shall also include the Bank for International Settlements, the International Monetary Fund, the European Central Bank and the European Community, as well as those multilateral development banks eligible for the zero per cent risk weight in accordance with the credit risk weighting framework in Part I of this Schedule.

Risk weights for guarantors and protection providers.

36. (1) A financial organisation shall assign—

(a) the risk weight of the guarantor or the protection provider to the protected portion of a claim; and

(b) the risk weight of the underlying counterparty to the uncovered portion of the claim.

(2) Materiality thresholds on payments below which no payment is made in the event of loss shall be treated as equivalent to retained first loss positions and shall be deducted in full from the regulatory capital of the financial organisation purchasing the credit protection.

Proportional cover.

37. (1) Where the amount guaranteed, or against which credit protection is held, is less than the amount of the exposure, and the secured and unsecured portions are of equal seniority, regulatory capital relief shall be afforded on a proportional basis.

(2) For the purposes of subclause (1), the secured portion of the exposure shall receive the treatment applicable to eligible guarantors or credit derivatives in clauses 34, 35 and 36 and the remainder shall be treated as unsecured.

Tranched cover.

38. Where a financial organisation transfers a portion of the risk of an exposure in one or more tranches to a protection provider and—

(a) retains some level of risk of the loan; and

(b) the risk transferred and the risk retained are of different seniority,

it may obtain credit protection for either the senior tranches or the junior tranches and the rules relating to credit risk securitisation in Part VI shall apply.

Treatment of pools of credit risk mitigation techniques.

39. Where a financial organisation has multiple credit risk mitigation techniques covering a single exposure or where credit protection provided by a single protection provider has differing maturities—

(a) the financial organisation shall subdivide the exposure into portions covered by each type of credit risk mitigation technique; and

(b) the risk-weighted assets of each portion shall be calculated separately.

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First-to-default credit derivatives.

40. (1) Where a financial organisation obtains credit protection for a basket of reference names and—

(a) the first default among the reference names triggers the credit protection;

(b) the credit events specified in clause 46(1)*(a)* also terminate the contract; and

(c) the notional amount of the asset in the basket with the lowest risk weight is less than or equal to the notional amount of the credit derivative,

the financial organisation may reduce its regulatory capital requirement for the asset within the basket with the lowest risk weight.

(2) Where a financial organisation provides credit protection through the instrument referred to in subclause (1) and the instrument has a credit rating from a credit rating agency, the risk weight applied to securitisation exposures contained in Part VI shall be applied.

(3) If the instrument referred to in subclause (1) is not rated by a credit rating agency, the risk weights of the assets included in the basket shall be aggregated up to a maximum of one thousand two hundred and fifty per cent and multiplied by the nominal amount of the protection provided by the credit derivative to obtain the risk-weighted asset amount.

Second-to-default credit derivatives.

41. (1) Where the second default among the assets within the basket triggers the credit protection, a financial organisation obtaining credit protection through such an instrument shall only reduce its regulatory capital requirements if—

(a) first-default-protection has also been obtained; or

(b) one of the assets within the basket has already defaulted.

(2) For financial organisations providing credit protection through an instrument referred to in subclause (1), the capital treatment shall be the same as in clause 40(3), except that in aggregating the risk weights the asset with the lowest risk weighted amount may be excluded from the calculation.

GENERAL CREDIT RISK MITIGATION CONSIDERATIONS

Currency mismatches.

42. (1) Where a financial organisation is utilising credit risk mitigation techniques and there is a currency mismatch, the amount of the exposure

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deemed to be protected shall be reduced by the application of a haircut H_{FX} using the following formula—

$$G_A = G \times (1 - H_{FX})$$ *where:*

G_A = *value of credit protection adjusted for currency mismatch*

G = *nominal amount of the credit protection*

H_{FX} = *haircut appropriate for currency mismatch between the credit protection and underlying exposure.*

(2) The appropriate haircut based on a ten-business day holding period as contained in clause 27, assuming daily marking-to-market, revaluation or remargining shall be applied and the haircuts shall be scaled up or down using the square root of time formula as described in clause 28.

Maturity mismatches.

43. (1) For the purposes of using the credit risk mitigation techniques set out under this Part—

(a) the effective maturity of the underlying exposure shall be the longest possible remaining time before the counterparty is scheduled to fulfill its obligation, taking into account any applicable grace period; and

(b) for the hedge, embedded options which may reduce the term of the hedge shall be taken into account so that the shortest possible effective maturity is used.

(2) Notwithstanding subclause (1), for the purposes of using credit risk mitigation techniques for calls—

(a) where a call is at the discretion of the protection provider, the maturity shall always be at the first call date;

(b) where the call is at the discretion of the protection buyer but the terms of the arrangement at origination of the hedge contain a positive incentive for the protection buyer to call the transaction before contractual maturity, the remaining time to the first call date shall be deemed to be the effective maturity.

(3) A financial organisation may recognise the effects of credit risk mitigation for an exposure where there is maturity mismatch only if—

(a) the hedge has an original maturity that is greater than or equal to one year; and

(b) the hedge has a residual maturity of more than three months.

(4) Maturity mismatches shall not be permitted under the simple approach for collateral.

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SCHEDULE 2—*Continued*

(5) Financial organisations shall calculate the value of the credit risk mitigation adjusted for any maturity mismatch as follows:

$$P_a = P \times (t - 0.25) / (T - 0.25)$$

where—

P_a = *value of the credit protection adjusted for maturity mismatch*

P = *credit protection, including the collateral amount or guarantee amount adjusted for any haircuts*

t = *min (T, residual maturity of the credit protection arrangement) expressed in years*

T = *min (5, residual maturity of the exposure) expressed in years*.

PART III

PROVISIONS ON OPERATIONAL REQUIREMENTS FOR THE PURPOSE OF GUARANTEES AND CREDIT DERIVATIVES

Operational requirements common to guarantees and credit derivatives.

44. In order for a guarantee or credit derivative to be recognised for the purpose of regulatory capital requirements in Part II of this Schedule—

(a) a guarantee or credit derivative shall—

(i) represent a direct claim on the protection provider and shall be explicitly referenced to specific exposures or a pool of exposures, so that the extent of the cover is clearly defined and incontrovertible;

(ii) be irrevocable, other than where there is non-payment by a protection purchaser of money due in respect of the credit protection contract and in particular—

(A) there shall be no clause in the contract that would allow the protection provider unilaterally to cancel the credit cover or that would increase the effective cost of cover as a result of deteriorating credit quality in the hedged exposure; and

(B) the maturity agreed *ex ante* shall not be reduced *ex post* by the protection provider; and

(iii) be unconditional so that there is no clause in the protection contract outside the direct control of the financial organisation that could prevent the protection provider from being obligated to pay out in a timely manner in the event that the original counterparty fails to make the payment due.

Additional operational requirements for guarantees.

45. (1) In addition to the legal certainty requirements in Part II of this Schedule and the operational requirements set out in clause 44, in order for a guarantee to be recognised by the Inspector for the purposes of regulatory capital requirements the following conditions shall be satisfied:

(a) on the qualifying default or non-payment of the counterparty, the financial organisation shall have the right to receive any payments from the guarantor without first having to commence legal proceedings in order to pursue the counterparty for payment;

(b) the guarantee shall be an explicitly documented obligation assumed by the guarantor; and

(c) the guarantee shall cover all types of payments the underlying obligor is expected to make under the documentation governing the transaction.

(2) Where the guarantee covers payment of principal only, interest and other uncovered payments shall be treated as an unsecured amount in accordance with clause 37.

Additional operational requirements for credit derivatives.

46. (1) In addition to the operational requirements set out in clause 44, in order for a credit derivative contract to be recognised by the Inspector for the purposes of regulatory capital requirements, the following conditions shall be satisfied:

(a) the credit events specified by the contracting parties shall at a minimum cover—

(i) failure to pay the amounts due under terms of the underlying obligation that are in effect at the time of such failure with a grace period that is closely in line with the grace period in the underlying obligation;

(ii) events including bankruptcy, insolvency or inability of the obligor to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due; and

(iii) restructuring of the underlying obligation involving forgiveness or postponement of principal, interest or fees that result in a credit loss event.

(b) if the credit derivative covers obligations that do not include the underlying obligation, clause 46(2) shall govern whether an asset mismatch in the credit derivative contract is permissible;

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(c) subject to clauses 43(1) and (2) the credit derivative shall not terminate prior to expiration of any grace period required for a default on the underlying obligation which has occurred as a result of a failure to pay;

(d) in the case of credit derivatives allowing for cash settlement—

(i) a robust valuation process shall be in place in order to estimate loss reliably;

(ii) there shall be a clearly specified period for obtaining post-credit event valuations of the underlying obligation; and

(iii) if the reference obligation specified in the credit derivative for purposes of cash settlement is different from the underlying obligation, clause 46(2) shall govern whether an asset mismatch in the credit derivative contract is permissible;

(e) if the consent of the protection purchaser to transfer the underlying obligation to the protection provider is required for settlement, the terms of the underlying obligation shall provide that any required consent to such transfer may not be unreasonably withheld; and

(f) where a credit event has occurred—

(i) the identity of the parties responsible for determining whether a credit event has occurred shall be clearly defined;

(ii) the determination of the occurrence of the credit event shall not be the sole responsibility of the protection provider; and

(iii) the protection buyer shall have the right to inform the protection provider of the occurrence of a credit event.

(2) A mismatch between the underlying obligation and the reference obligation under the credit derivative contract is permissible if—

(a) the reference obligation ranks *pari passu* with or is junior to the underlying obligation;

(b) the underlying obligation and the reference obligation share the same obligor; and

(c) legally enforceable cross-default or cross acceleration clauses are in place.

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(3) A mismatch between the underlying obligation and the obligation used for determining whether a credit event has occurred is permissible if in the credit derivative contract—

(a) the obligation used for the purposes of determining whether a credit event has occurred ranks *pari passu* with or is junior to the underlying obligation;

(b) the underlying obligation and the reference obligation share the same obligor; and

(c) legally enforceable cross-default or cross acceleration clauses are in place.

(4) Where the restructuring of the underlying obligation is not covered by the credit derivative, but the other operational requirements in clause 45 are met partial recognition of the credit derivative shall be allowed as follows:

(a) if the amount of the credit derivative is less than or equal to the amount of the underlying obligation, sixty per cent of the amount of the hedge shall be recognised as covered; and

(b) if the amount of the credit derivative is larger than that of the underlying obligation, then the amount of eligible hedge shall be no more than sixty per cent of the amount of the underlying obligation.

(5) For the purposes of regulatory capital requirements, only credit default swaps and total return swaps that provide credit protection equivalent to guarantees shall be eligible for recognition.

(6) Notwithstanding subclause (5), the credit protection shall not be recognised for the purpose of regulatory capital requirements where a financial organisation buys credit protection through a total return swap and records the net payments received on the swap as net income, but does not record offsetting deterioration in the value of the asset that is protected either through reductions in fair value or by an addition to reserves.

(7) Cash-funded credit-linked notes issued by the financial organisation against exposures in the banking book which fulfill the criteria for credit derivatives shall be treated as cash collateralised transactions under clauses 31 and 32.

(8) Credit derivatives other than those referred to in this Part are not eligible for recognition for the purposes of regulatory capital requirements.

PART IV

PROVISIONS ON OVER-THE-COUNTER DERIVATIVES

Counterparty credit risk for over-the-counter derivatives.

47. (1) A financial organisation shall calculate counterparty credit risk capital charges for all over-the-counter derivatives in both the banking and the trading book.

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(2) The over-the-counter derivatives to which counterparty credit risk charges shall apply include but are not limited to, forwards, swaps and options.

(3) To determine the counterparty credit risk charge of any over-the-counter derivative in the banking or trading book, a financial organisation shall apply the current exposure method as referred to in clause 48.

Current exposure method.

48. (1) The counterparty credit risk charge for an individual contract shall be calculated as follows:

Counterparty Credit Risk Capital Charge = [(RC + add-on) – CA] x **r** x **CAR**

where—

RC = *the replacement cost*

add-on = *the amount for potential future credit exposure*

CA = *the volatility adjusted collateral amount under the comprehensive approach prescribed or zero if no eligible collateral is applied to the transaction*

r = *the risk weight of the counterparty*

CAR = *capital adequacy ratio as described in Schedule 1 Item i*.

(2) In the determination of capital charges for counterparty credit risk for over the counter derivatives, a financial organisation shall calculate—

(a) the total replacement cost of all of its contracts by marking-to-market contracts with positive value; and

(b) an amount for potential future credit exposure calculated on the basis of the total notional principal amount of its book, split by residual maturity as follows:

	Residual Maturity of Contracts		
	1 year or less	Over 1 year to 5 years	Over 5 years
Interest Rates	0%	0.5%	1.5%
Foreign Exchange Rates and Gold	1%	5%	7.5%
Equities	6%	8%	10%
Precious Metals Except Gold	7%	7%	8%
Other Commodities	10%	12%	15%

(3) For contracts with multiple exchanges of principal, the factors in subclause (2)*(b)* shall be multiplied by the number of remaining payments in the contract.

(4) The residual maturity of over-the-counter derivative contracts shall be equal to the time until the next reset date where—

(a) the contracts are structured to settle outstanding exposure following specified payment dates; and

(b) the terms are reset such that the market value of the contract is zero on these specified payment dates.

(5) Where interest rate contracts with remaining maturities of more than one year meet the criteria at subclause (4), the add-on factor for the purposes of the calculation of the counterparty credit risk capital charge shall be no less than zero point five per cent.

(6) For the purposes of subclause (2)*(b)*, forwards, swaps, purchased options and similar derivative contracts not specified in the matrix shall be treated as other commodities.

(7) No potential future credit exposure shall be calculated for single currency floating or floating interest rate swaps and the credit exposure on these contracts shall be evaluated solely on the basis of their mark-to-market value.

Calculation of the counterparty credit risk.

49. (1) Where bilateral netting agreements are in place between a financial organisation and a counterparty, in the event of the default or insolvency of one of the parties, the obligation shall be the net sum of all positive and negative fair values of contracts included in the bilateral netting agreement.

(2) When bilateral netting agreements that meet the requirements under this clause are in place, a financial organisation may determine the credit exposure by using net claims with the same counterparty arising out of an over the counter transaction.

(3) For the purposes of determining the counterparty credit risk charge for over-the-counter derivative contracts with bilateral netting agreements that meet the requirements under this clause, the formula at clause 48(1) shall be used and—

(a) the replacement cost shall be the net replacement cost; and

(b) the add-on shall be A_{Net} calculated as follows:

$$\mathbf{A_{Net} = (0.4 \times A_{Gross}) + (0.6 \times NGR \times A_{Gross})}$$

where—

A_{Net} = *add-on for netted transactions*

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A_{Gross} = *the sum of individual add-on amounts calculated by multiplying the notional principal amount by the appropriate add-on factors set out in clause 48(2)(b) of all transactions subject to legally enforceable bilateral netting agreements with one counterparty*

NGR = *the net replacement cost or the gross replacement cost for transactions subject to legally enforceable bilateral netting agreements.*

(4) For regulatory capital requirements, financial organisations may—

(a) net transactions, subject to novation under which any obligation between a financial organisation and its counterparty to deliver a given currency on a given value date is automatically amalgamated with all other obligations for the same currency and value date, legally substituting one single amount for the previous gross obligations; and

(b) net transactions, subject to any legally valid form of bilateral netting agreement not covered in subclause (4)*(a)*, including other forms of novation.

(5) In both the instances referred to in subclause (4)*(a)* and *(b)*, the financial organisation shall satisfy the Inspector that it has—

(a) a bilateral netting agreement with the counterparty which creates a single legal obligation, covering all included transactions, such that the financial organisation would have either a claim to receive or obligation to pay only the net sum of the positive and negative mark-to-market values of included individual transactions in the event a counterparty fails to perform due to default, bankruptcy, liquidation or similar circumstances; and

(b) written and reasoned legal opinions that, in the event of a legal challenge, the relevant courts and administrative authorities would find the financial organisation's exposure to be such a net exposure amount under—

(i) the law of the jurisdiction in which the counterparty is chartered and, if the foreign branch of a counterparty is involved, then also under the law of the jurisdiction in which the foreign branch is located;

(ii) the law that governs the individual transactions;

(iii) the law that governs any contract or agreement necessary to effect the netting; and

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(iv) procedures in place to ensure that the legal characteristics of netting arrangements are kept under review to account for possible changes in relevant law.

(6) The Inspector shall be satisfied that the netting is enforceable under the laws of each of the relevant jurisdictions.

(7) In making its determination in subclause (6), the Inspector shall consult with other relevant supervisors and where any of the supervisors with whom the Inspector has consulted is dissatisfied about enforceability under its laws, the bilateral netting agreement shall be deemed to not meet this condition and neither counterparty shall obtain regulatory capital relief for netting arrangements.

(8) Contracts containing walkaway clauses which permit a non-defaulting counterparty to make only limited payments or no payment at all to the estate of a defaulter, even if the defaulter is a net creditor, shall not be eligible for netting for the purpose of calculating regulatory capital requirements.

Calculation of the counterparty credit risk charge for single name credit derivative transactions.

50. (1) Notwithstanding the add-on factors set out in clause 48(2)*(b)*, the counterparty credit risk charge for single name credit derivative transactions in the trading book shall be calculated using the following potential future credit exposure add-on factors:

	Protection Buyer	**Protection Provider**
Total Return Swap		
"Qualifying" reference obligation	5%	5%
"Non-qualifying" reference obligation	10%	10%
Credit Default Swap		
"Qualifying" reference obligation	5%	5%
"Non-qualifying" reference obligation	10%	10%

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(2) For the purposes of the calculation of the counterparty risk charges for single name credit derivative transactions in the trading book, the qualifying category in subclause (l) shall include—

(a) investment grade rated securities issued or fully guaranteed by—
  (i) public sector entities; and
  (ii) multilateral development banks;

(b) securities issued by other entities that are investment grade rated by a credit rating agency and are subject to supervisory and regulatory arrangements comparable to those set out under these Regulations; and

(c) other securities, that are—
  (i) rated investment grade by at least two internationally recognised credit rating agencies;
  (ii) rated investment grade by a credit rating agency and another agency which issues credit ratings; or
  (iii) subject to the approval of the Central Bank, unrated but deemed to be of investment grade quality by the reporting financial organisation and the issuer has securities listed on a recognised stock exchange.

(3) Residual maturities shall not be considered for the purposes of the calculation of the potential future credit exposure add-on factors for single name credit derivatives.

(4) The protection provider of a credit default swap shall only be subject to the add-on factor where the credit default swap is subject to closeout upon the insolvency of the protection buyer while the underlying obligation is still solvent and where this subclause applies the maximum add-on factors shall be no more than the amount of the unpaid premiums.

(5) Where the single name credit derivative is a first to default transaction, the add-on shall be determined by the lowest credit quality underlying obligation in the basket and the non-qualifying reference obligation add-on shall be used.

(6) The add-on factor for the second to default single name credit derivative transaction shall be determined by the assets in the underlying basket with the second lowest credit quality.

(7) The add-on factor for the Nth to default single name credit derivative transaction shall be determined in a similar manner to subclause (6).

(8) In this clause, "Nth to default" means the ordinal default of assets in the underlying basket.

PART V

PROVISIONS RELATED TO FAILED AND UNSETTLED TRADES

Delivery versus payment and non-delivery versus payment transactions.

51. (1) The regulatory capital treatment under this Part shall apply to all transactions on securities, foreign exchange instruments, and commodities that are at a risk of delayed settlement or delivery, including transactions through recognised clearing houses that are subject to daily mark-to-market and payment of daily variation margins and that involve a mismatched trade.

(2) Financial organisations shall develop, implement and improve systems for tracking and monitoring the credit risk exposures arising from unsettled and failed transactions that produce management information that allows for the management of their trades on a timely basis.

(3) Capital charges shall be calculated for both delivery versus payment and non-delivery versus payment exposures.

(4) Where a system-wide failure of a settlement or clearing system occurs, the Inspector may waive capital charges until the system is restored.

(5) Failure of a counterparty to settle a trade in itself will not be deemed a default for purposes of credit risk capital charges under this Part.

(6) Repurchase agreements and reverse repurchase agreements as well as securities lending and borrowing that have failed to settle shall be excluded from the regulatory capital treatment under this Part.

(7) For delivery versus payment transactions, if the payments have not yet taken place five business days after the settlement date, the financial organisation shall calculate a capital charge by multiplying the positive current exposure of the transaction by the appropriate factor, according to the following table:

Number of business days after the agreed settlement date	Corresponding Risk Factor
From 5 to 15	8%
From 16–30	50%
From 31–45	75%
46 or more	100%

(8) For non-delivery versus payment transactions, after the first contractual payment or delivery leg, the financial organisation that has made the payment shall treat its exposure as a loan if the second leg has not been received by the end of the business day and a one hundred per cent risk weight shall be applied to these exposures.

(9) For non-delivery versus payment transactions, if five business days after the second contractual payment or delivery date the second leg has not yet taken place, the financial organisation that has made the first payment leg shall deduct from regulatory capital the full amount of the value transferred plus replacement cost, if any, until the second payment leg is made.

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PART VI

PROVISIONS FOR SECURITISATION FRAMEWORKS

Credit Risk Securitisation Framework.

52. (1) All financial organisations, whether acting as an originator or third party investor, shall hold regulatory capital against all securitisation exposures, whether on-balance sheet or off-balance sheet, arising from traditional and synthetic securitisations or similar structures that contain features common to either type of securitisation.

(2) Underlying instruments in the pool being securitised may include, but are not limited to, loans, commitments, asset-backed and mortgage-backed securities, corporate bonds, equity securities and private equity investments and the underlying pool may include one or more exposures.

(3) Financial organisations shall look to the economic substance rather than the form of a securitisation transaction to determine whether it shall be subject to the securitisation framework in this Part.

(4) Financial organisations shall apply the securitisation framework outlined under this Part for determining regulatory capital requirements on exposures arising from traditional and synthetic securitisations or similar structures that contain features common to either type of securitisation.

(5) Notwithstanding subclause (4), where a financial organisation—

(a) meets the operational requirements for traditional securitisations and synthetic securitisations in Part VII of this Schedule, it may reduce its regulatory capital requirement; and

(b) retains any securitisation exposure, it shall hold regulatory capital for the exposure.

(6) Financial organisations shall monitor and control risks arising from the continued retention of any securitised exposure, including the continuing assessment of any change in the risk profile of the transaction and the resulting impact on regulatory capital arising from its role in the transaction and shall have in place capital and contingency plans to deal with the risk.

Calculation of the Capital Requirement against Securitisation Exposures.

53. (1) Financial organisations shall hold regulatory capital against all of their securitisation exposures, including those arising from the provision of credit risk mitigants to a securitisation transaction, investments in asset-backed securities, retention of a subordinated tranche and extension of a liquidity facility or credit enhancement, as contained in this Part.

(2) Repurchased securitisation exposures shall be treated as retained securitisation exposures.

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Risk Weights long and short term categories.

54. The risk-weighted asset amount of a securitisation exposure shall be computed by multiplying the exposure or the credit equivalent amount of the exposure by the appropriate risk weight determined in accordance with the following tables:

Credit Rating	AAA to AA-	A+ to A-	BBB+ to BBB-	BB+ to BB-	B+ and below or unrated
Risk Weight-Investor	20%	50%	100%	350%	Deduction
Risk Weight-Originator	20%	50%	100%	Deduction	

Short Term Category

Credit Rating	A-1/P-1	A-2/P-2	A-3/P-3	All other ratings or unrated
Risk Weight	20%	20%	50%	Deductions

Risk weights for on-Balance Sheet Securitisation Exposure.

55. (1) The risk-weighted amount of an on-balance sheet securitisation exposure shall be determined by multiplying the amount of the securitisation exposure by the appropriate risk weight set out at clause 54.

(2) Notwithstanding the risk weights for securitisation exposures set out at clause 54, only third-party investors may recognise credit ratings of BB+ to BB– for risk weighting purposes and originators shall deduct from regulatory capital any credit rating below BBB–.

(3) Originating financial organisations shall deduct all retained securitisation exposures rated below investment grade.

(4) Unrated securitisation exposures shall be deducted from regulatory capital, subject to the following exceptions:

(a) the most senior exposure in a securitisation;

(b) exposures that are in a second loss position or better in asset-backed commercial paper programmes and meet the requirements outlined in clause 57(1); and

(c) eligible liquidity facilities as referred to in clause 59(1).

Treatment of unrated most senior securitisation exposures.

56. (1) If the most senior exposure in a securitisation of a traditional or synthetic securitisation is unrated, a financial organisation that holds or guarantees such an exposure may determine the risk weight by applying the

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look-through treatment, provided that the composition of the underlying pool is known at all times.

(2) Financial organisations shall not consider interest rate or currency swaps when determining whether an exposure is the most senior in a securitisation for the purpose of applying the look-through approach.

(3) For the purpose of the look-through treatment in subclause (1)—

(a) the unrated most senior position shall receive the average risk weight of the underlying exposures subject to the approval of the Inspector; and

(b) where the financial organisation is unable to determine the risk weights assigned to the underlying credit risk exposures, the unrated position shall be deducted from regulatory capital.

Treatment of exposures in a second loss position or better in asset-backed commercial paper programmes.

57. (1) Deduction for regulatory capital purposes is not required for unrated securitisation exposures provided by sponsoring financial organisations to asset-backed commercial paper programmes that satisfy the following requirements:

(a) the exposure is economically in a second loss position or better and the first loss position provides significant credit protection to the second loss position;

(b) the associated credit risk is the equivalent of investment grade or better; and

(c) the financial organisation holding the unrated securitisation exposure does not retain or provide the first loss position.

(2) Where the conditions in subclause (1)*(a)*, *(b)* and *(c)* are satisfied, the risk weight shall be the greater of—

(a) one hundred per cent; or

(b) the highest risk weight assigned to any of the underlying individual exposures covered by the facility.

(3) For the purposes of this clause, a sponsoring financial organisation is a financial organisation that, in fact or in substance, manages or advises programmes including asset-backed commercial paper conduit programmes or other structured investment instruments, places securities into the market, or provides liquidity or credit enhancements.

Credit conversion factors for off-balance sheet exposures.

58. (1) For off-balance sheet exposures, financial organisations shall apply the appropriate credit conversion factors and then risk weight the resultant credit equivalent amount according to the risk weight provisions at clauses 54, 55 and 56.

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(2) For the purpose of regulatory capital requirements, financial organisations shall determine whether an off-balance sheet securitisation exposure qualifies as an eligible liquidity facility or an eligible servicer cash advance facility as referred to in clauses 59(1) and 62(1).

(3) All other rated off-balance sheet securitsation exposures shall be assigned a one hundred per cent credit conversion factor.

Eligible liquidity facilities.

59. (1) A financial organisation may treat off-balance sheet exposures as eligible liquidity facilities where they meet the following requirements:

(a) the facility documentation shall—
  (i) clearly identify and limit the circumstances under which it may be drawn;
  (ii) limit the amount of the draws under the facility to that which is likely to be repaid fully from the liquidation of the underlying exposures and any seller-provided credit enhancements; and
  (iii) not cover any losses incurred in the underlying pool of exposures prior to a draw or be structured such that draw-down is certain as indicated by regular or continuous draws;

(b) the facility shall—
  (i) be subject to an asset quality test that precludes it from being drawn to cover credit risk exposures that are in default;
  (ii) only be used to fund securities that are externally rated investment grade at the time of funding if the exposures that a liquidity facility is required to fund are externally rated securities;

(c) the facility cannot be drawn after all applicable credit enhancements from which the liquidity would benefit have been exhausted; and

(d) repayment of draws on the facility shall not be subordinated to any interests of any note holder in a commercial paper programme, including asset-backed commercial paper programmes, or subject to deferral or waiver.

(2) Where the conditions referred to in subclause (1) are met, the financial organisation may apply—

(a) a twenty per cent credit conversion factor to the amount of eligible liquidity facilities with an original maturity of one year or less;

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(*b*) a fifty per cent credit conversion factor if the facility has an original maturity of more than one year; or

(*c*) a one hundred per cent credit conversion factor if an external rating of the facility itself is used for risk weighting the facility.

Eligible liquidity facilities available only in the event of market disruption.

60. (1) Financial organisations may apply a zero per cent credit conversion factor to eligible liquidity facilities referred to in clause 59 that are only available in the event of a general market disruption, including but not limited to where—

(*a*) more than one special purpose vehicle across different transactions are unable to roll over maturing commercial paper; and

(*b*) that inability under paragraph (*a*) is not the result of an impairment in the credit quality of the special purpose vehicle or in the credit quality of the underlying exposures.

(2) To qualify for the treatment referred to in subclause (1), the funds advanced by the financial organisation to pay holders of the capital market instruments when there is a general market disruption shall be secured by the underlying assets, and shall rank at least *pari passu* with the claims of holders of the capital market instruments.

Risk weights for eligible liquidity facilities.

61. For eligible liquidity facilities where the conditions for use of external credit ratings for exposures in clause 84 are not met, the risk weight applied to the exposure's credit equivalent amount shall be equal to the highest risk weight assigned to any of the underlying individual exposures covered by the facility.

Eligible servicer cash advance facilities.

62. (1) Undrawn cash advances extended by a financial organisation acting as a servicer of a securitisation exposure to ensure an uninterrupted flow of payments to investors may be treated as an eligible servicer cash advance facility where the following conditions are met:

(*a*) the provision of such facilities is contractually provided for;

(*b*) the servicer is entitled to full reimbursement and this right is senior to other claims on cash flows from the underlying pool of exposures; and

(*c*) such undrawn servicer cash advances or facilities are unconditionally cancellable without prior notice.

(2) Undrawn servicer cash advance facilities meeting the conditions at subclause (1) may be assigned a zero per cent credit conversion factor.

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Treatment of overlapping facilities.

63. (1) Where a financial organisation holds overlapping facilities provided by the same financial organisation, the financial organisation shall hold regulatory capital only once for the position covered by the overlapping facilities whether they are liquidity facilities or credit enhancements.

(2) Where the overlapping facilities are subject to different conversion factors, the financial organisation shall attribute the overlapping part to the facility with the highest conversion factor.

(3) Each financial organisation shall hold regulatory capital for the maximum amount of the facility if overlapping facilities are provided by different financial organisations.

Deductions of securitisation exposure.

64. (1) When a financial organisation is required to deduct a securitisation exposure from regulatory capital—

(a) subject to subclause (2), the deduction shall be taken fifty per cent from Tier 1 capital referred to in regulation 10 of these Regulations and fifty per cent from Tier 2 capital referred to in regulation 11 of these Regulations;

(b) credit enhancing interest only strips net of any gain on sale shall be deducted fifty per cent from Tier 1 capital referred to in regulation 10 of these Regulations and fifty per cent from Tier 2 capital referred to in regulation 11 of these Regulations; and

(c) the deduction from regulatory capital shall be calculated net of any specific provisions taken against the relevant securitisation exposures.

(2) Notwithstanding the deductions referred to in subclause (1), financial organisations shall deduct in full any gain on sale from Tier 1 capital referred to in regulation 10 of these Regulations.

Implicit support.

65. (1) When a financial organisation provides implicit support to a securitisation transaction, it shall, at a minimum, hold regulatory capital against all of the exposures associated with the securitisation transaction as if they had not been securitised.

(2) Financial organisations shall not recognise in regulatory capital any gain-on-sale where it provides implicit support to a securitisation transaction.

(3) Where a financial organisation provides implicit support to a securitisation transaction it shall disclose publicly—

(a) that it has provided non-contractual support; and

(b) the capital impact of providing support.

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Treatment of credit risk mitigation for securitisation exposure.

66. (1) For the purpose of credit risk mitigation for securitisation exposures, "collateral" means collateral used to hedge the credit risk of securitisation exposure and not the underlying exposures of the securitisation transaction.

(2) When a financial organisation other than the originator provides credit protection to—

(a) a securitisation exposure, it shall hold regulatory capital on the covered exposure as if it were an investor in that securitisation; and

(b) an unrated credit enhancement, it shall treat the credit protection provided as if it were directly holding the unrated credit enhancement.

Collateral.

67. (l) Only eligible collateral as set out in clauses 31 and 32 shall be recognised for the purpose of the collateralisation of securitisation exposures.

(2) Collateral pledged by special purpose vehicles may be recognised for the purpose of the collateralisation of securitisation exposures.

Guarantees and Credit derivatives.

68. (1) Only credit protection provided by eligible guarantors that meet the requirements under the credit risk mitigation framework in Part II of this Schedule shall be recognised for the purpose of securitisation exposures.

(2) Special purpose vehicles shall not be recognised as eligible guarantors.

(3) Financial organisations may take into account credit protection provided by guarantees and credit derivatives in calculating regulatory capital requirements for securitisation exposures where they fulfill the minimum operational conditions as specified under Part III.

(4) Regulatory capital requirements for the guaranteed or protected portions of the exposure shall be calculated according to methodology set out under Part II.

Maturity Mismatches.

69. ln the treatment of credit risk mitigation for securitisation exposures, regulatory capital against a maturity mismatch shall be as follows:

(a) the regulatory capital requirement shall be determined in accordance with clause 43; and

(b) when the exposures being hedged have different maturities, the longest maturity shall be used.

Capital requirement for early amortisation provisions.

70. (1) An originating financial organisation shall hold capital against both the drawn and undrawn balances related to securitised exposures when—

(a) it sells exposures into a structure that contains an early amortisation feature; and

(b) the exposures sold are of a revolving nature.

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(2) For securitisation structures where the underlying pool of assets comprises revolving and term exposures, a financial organisation shall apply the relevant early amortisation treatment outlined in clauses 71 to 79 to that portion of the underlying pool of assets containing revolving exposures.

(3) Financial organisations are not required to calculate a capital requirement for early amortisations in the following situations:

(a) replenishment structures where the underlying exposures do not revolve and the early amortisation ends the ability of the financial organisation to add new exposures;

(b) transactions involving revolving assets containing early amortisation features where the risk on the underlying exposure does not return to the originating financial organisation;

(c) structures where a financial organisation securitises one or more credit line and where investors remain fully exposed to future draws by borrowers even after an early amortisation event has occurred; or

(d) the early amortisation clause is solely triggered by events not related to the performance of the securitised assets or the selling financial organisation, including material changes in tax laws or regulations.

(4) For the purposes of subclause (3), "replenishment structure" means a securitisation transaction that allows the originating financial organisation to replenish the underlying pool of assets by adding additional exposures to the pool as the underlying pool of assets is depleted as a result of amortisation, prepayment, repayment or default.

Maximum capital requirement for early amortisation treatment.

71. (1) For a financial organisation subject to the early amortisation treatment, the total capital charge for all of its positions shall be subject to a maximum capital requirement equal to the greater of—

(a) that required for retained securitisation exposures; or

(b) the capital requirement that would apply had the exposures not been securitised.

(2) Financial organisations shall deduct the entire amount of any gain-on-sale and credit enhancing interest only strips arising from the securitisation transaction in accordance with clause 64.

Determination of capital charge of early amortisation.

72. For the purpose of early amortisation treatment, the capital charge of the originator for the interest of the investor in the securitisation shall be the product of the—

(a) interest of the investor in the securitisation;

SCHEDULE 2—*Continued*

(b) appropriate credit conversion factor in clauses 75(3) or 78(3); and

(c) risk weight appropriate to the underlying exposure type, as if the exposures had not been securitised.

Determination of credit conversion factors for early amortisations.

73. (1) The credit conversion factors for early amortisations shall be determined on the basis of whether the—

(a) early amortisation repays investors through a controlled or non-controlled mechanism; and

(b) securitised exposures are uncommitted retail credit lines or other credit lines.

(2) For the purpose of early amortisation a line is considered uncommitted if it is unconditionally cancellable without prior notice.

Credit conversion factors for controlled early amortisation features.

74. For the purposes of regulatory capital requirements, an early amortisation feature shall be treated as controlled where it meets the following conditions:

(a) the financial organisation has an appropriate capital and liquidity plan in place to ensure that it has capital and liquidity available to meet its obligations in the event of an early amortisation;

(b) throughout the duration of the transaction, including the amortisation period, there is the same *pro rata* sharing of interest, principal, expenses, losses and recoveries based on the financial organisation's and investors' relative shares of the receivables outstanding at the beginning of each month;

(c) the financial organisation sets a period for amortisation that would be sufficient for at least ninety per cent of the total debt outstanding at the beginning of the early amortisation period to have been repaid or recognised as in default; and

(d) the pace of repayment is not any more rapid than would be allowed by straight-line amortisation over the period set out in paragraph *(c)*.

Credit conversion factors for uncommitted retail exposures containing controlled amortisation features.

75. (1) For uncommitted retail credit lines in securitisations containing controlled early amortisation features, financial organisations shall compare the three-month average excess spread to the point at which the financial organisation is required to trap excess spread as economically required by the structure.

(2) Where uncommitted retail credit lines containing controlled early amortisation features do not require excess spread to be trapped, the trapping point shall be four point five percentage points.

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(3) The financial organisation shall divide the excess spread level by the excess spread trapping point of the transaction to determine the appropriate segments of the excess spread and apply the corresponding conversion factors as follows:

Controlled early amortisation features

	Uncommitted	Committed
Retail credit lines	**3-month average excess spread Credit Conversion Factor (CCF)** 133.33% of trapping point or more **0% CCF** less than 133.33% to 100% of trapping point **1% CCF** less than 100% to 75% of trapping point **2% CCF** less than 75% to 50% of trapping point **10% CCF** less than 50% to 25% of trapping point **10% CCF** less than 25% **40% CCF**	**90% CCF**
Non -retail credit lines	**90% CCF**	**90% CCF**

(4) Financial organisations shall apply the conversion factors set out in subclause (3) for controlled mechanisms to the interest of the investor referred to in clause 72.

Credit conversion factors for other exposures with controlled amortisation features.

76. All other securitised revolving exposures with controlled early amortisation features, including committed retail credit lines and non-retail credit lines, whether committed or uncommttted, shall be subject to credit conversion factors of ninety per cent against the off-balance sheet exposures.

Credit conversion factors for non-controlled early amortisation features.

77. Early amortisation features that do not satisfy the definition of a controlled early amortisation at clause 74 shall be treated as non-controlled early amortisation.

SCHEDULE 2—*Continued*

Credit conversion factors for uncommitted retail exposures containing non-controlled early amortisation features.

78. (1) For uncommitted retail credit lines in securitisations containing non-controlled early amortisation features, financial organisations shall also compare the three-month average excess spread to the point at which the financial organisation is required to trap excess spread as economically required by the structure.

(2) Where uncommitted retail credit lines in securitisations containing non-controlled early amortisation features do not require excess spread to be trapped, the trapping point shall be four point five percentage points.

(3) The financial organisation shall divide the excess spread level by the excess spread trapping point of the transaction to determine the appropriate segment of the excess spread and apply the corresponding conversion factors as follows:

	Uncommitted	**Committed**
Retail credit lines	**3-month average excess spread Credit Conversion Factor (CCF)** 133.33% or more of trapping point **0% CCF** less than 133.33% to 100% of trapping point **5% CCF** less than 100% to 75% of trapping point **15% CCF** less than 75% to 50% of trapping point **50% CCF** less than 50% of trapping point **100% CCF**	**100% CCF**
Non -retail credit lines	**100% CCF**	**100% CCF**

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Credit conversion factors for other exposures with non-controlled amortisation features.

79. All other securitised revolving exposures with non-controlled early amortisation features including committed retail credit lines and non-retail credit lines, whether committed or uncommitted, will be subject to a credit conversion factor of one hundred per cent against the off-balance sheet exposure.

Certificates of Participation.

80. (1) For unrated certificates of participation, a twenty per cent risk weight shall apply where—

(a) the underlying assets are equities, bonds, debentures, stocks or other evidence of indebtedness of—

(i) the Government of Trinidad and Tobago; or

(ii) any public corporation that is fully guaranteed by the Government of Trinidad and Tobago and which said guarantee is explicit, unconditional, legally enforceable and irrevocable over the life of the equity, bond, debenture, stock or other evidence of indebtedness in question;

(b) such equities, bonds, debentures, stocks or other evidence of indebtedness are vested in a trustee on behalf of the participants under a deed of trust constituting participation;

(c) such equities, bonds, debentures, stocks or other evidence of indebtedness are transferred from the seller to the trustee by way of an executed instrument of transfer and such trustee is constituted as the registered owner of such equities, bonds, debentures, stocks or other evidence of indebtedness;

(d) the trustee of the equities, bonds, debentures stocks or other evidence of indebtedness is, without being compelled to take recourse to the seller, empowered by the deed of trust constituting the participation to take enforcement action against the issuer of such assets;

(e) participants under the deed of trust constituting the participation have a right of action against the trustee, where the trustee has acted negligently or committed a breach of trust; and

(f) the seller and trustee are financial organisations.

(2) Certificates of participation that do not meet the criteria outlined in subclause (1) shall be risk weighted in accordance with the credit risk securitisation framework in this Part.

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PART VII

PROVISIONS RELATING TO OPERATIONAL REQUIREMENTS FOR THE PURPOSE OF SECURITISATION EXPOSURES

Operational requirements for capital relief for securitisations.

81. (1) An originating financial organisation may exclude securitised exposures from the calculation of risk-weighted assets, if all of the following conditions are met:

(a) significant credit risk associated with the securitised exposures has been transferred to third parties;

(b) the transferor does not maintain effective or indirect control over the transferred exposures;

(c) the assets in the securitised transaction are legally isolated from the transferor in such a way that the exposures are put beyond the reach of the transferor and its creditors, even in bankruptcy or receivership and these conditions shall be supported by an opinion provided by a qualified legal counsel;

(d) the transferee is a special purpose vehicle and the holders of the beneficial interests in that vehicle have the right to pledge or exchange their beneficial interests without restriction;

(e) clean-up calls satisfy the conditions set out in clause 83; and

(f) the securitisation does not contain clauses that—

(i) require the originating financial organisation to alter the underlying exposures such that the underlying pool of assets' weighted average credit quality is improved unless this is achieved by selling assets to independent and unaffiliated third parties at market prices;

(ii) allow for increases in a retained first loss position or credit enhancement provided by the originating financial organisation after the transaction's inception; or

(iii) increase the yield payable to parties other than the originating financial organisation, such as investors and third-party providers of credit enhancements, in response to a deterioration in the credit quality of the underlying pool of assets.

(2) The financial organisation transferring the credit risk specified in subclause (1)*(a)* is deemed to have maintained effective control over the transferred credit risk exposures if—

(a) it is able to repurchase from the transferee the previously transferred exposures in order to realise their benefits;

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(b) it is obligated to retain the risk of the transferred exposures; and

(c) the securities issued are not obligations of the transferor and investors who purchase the securities only have claim to the underlying pool of exposures.

(3) For the purposes of subclause (l)*(b)*, the transferor's retention of servicing rights to the exposures shall not constitute indirect control of the exposures.

(4) Notwithstanding subclauses (1) and (2), a financial organisation shall hold regulatory capital against any securitisation exposures it retains.

(5) For the purposes of subclause (1), "transferor" shall mean the financial organisation that is transferring significant credit risk associated with the securitised exposures to third parties.

Operational requirements for capital relief for synthetic securitisations.

82. (1) In a synthetic securitisation transaction, a financial organisation may use credit risk mitigation techniques for hedging the underlying exposure to reduce its regulatory capital requirement where—

(a) credit risk mitigants comply with the requirements under the Credit Risk Mitigation Framework in Parts II and III.

(b) eligible collateral is limited to that specified under clauses 31 and 32;

(c) eligible guarantors are limited to those defined in clause 35;

(d) the financial organisation transfers significant credit risk associated with the underlying exposure to third parties;

(e) the instruments used to transfer significant credit risk do not contain terms or conditions that limit the amount of credit risk transferred, including clauses that—

(i) materially limit the credit protection or credit risk transference, including significant materiality thresholds below which credit protection is deemed not to be triggered even if a credit event occurs or terms or conditions that allow for the termination of the protection due to deterioration in the credit quality of the underlying exposures;

(ii) require the originating financial organisation to alter the underlying exposures to improve the weighted average credit quality of the underlying pool of assets;

(iii) increase the financial organisation's cost of credit protection in response to deterioration in the quality of the underlying assets of pool;

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(iv) increase the yield payable to parties other than the originating financial organisation, including investors and third-party providers of credit enhancements, in response to a deterioration in the credit quality of the reference pool; or

(v) provide for increases in a retained first loss position or credit enhancement provided by the originating financial organisation after the transaction's inception.

(f) an opinion is obtained from a qualified legal counsel that confirms the enforceability of the contracts in all relevant jurisdictions; and

(g) clean-up calls satisfy the conditions set out in clause 83.

(2) For the purpose of subclauses (1)*(b)* and *(c)*, where a special purpose vehicle is formed for the purpose of the securitisation—

(a) eligible collateral provided by the special purpose vehicle may be recognised for the purposes of synthetic securitisations; and

(b) the special purpose vehicle may not be recognised as an eligible guarantor under the credit risk securitisation framework in Part VI.

(3) Where there is a maturity mismatch between the credit risk mitigant and the exposure, the capital requirement shall be determined in accordance with clause 43.

(4) When the exposures in the underlying pool of assets have different maturities, the longest maturity shall be taken as the maturity of the pool.

(5) Where—

(a) maturity mismatches arise through a financial organisation using credit derivatives to transfer part or all of the credit risk of a specific pool of assets to third parties;

(b) the credit derivatives under paragraph *(a)* unwind and the transaction terminates; and

(c) the effective maturity of the tranches of the synthetic securitisation differs from that of the underlying pool of assets,

the originating financial organisation of the synthetic securitisation shall—

(d) deduct all retained positions that are unrated or rated below investment grade; and

(e) apply the maturity mismatch treatment set out at clause 43 for all other securitisation exposures.

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Operational requirements for the treatment of clean-up calls.

83. (1) No capital shall be required for securitisation transactions that include a clean-up call if the following conditions are met:

(a) the exercise of the clean-up call is at the discretion of the originating financial organisation and is not mandatory in substance or effect;

(b) the clean-up call is not structured to avoid allocating losses to credit enhancements or positions held by investors or otherwise structured to provide credit enhancement; and

(c) the clean-up call is only exercisable when ten per cent or less of the original underlying portfolio or securities issued remains or, for synthetic securitisations when ten per cent or less of the original reference portfolio value remains.

(2) The following shall apply to securitisation transactions that include a clean-up call which do not meet the criteria in subclause (1):

(a) for traditional securitisations, the underlying exposures shall be treated as if they were not securitised and financial organisations shall not recognise any gain-on-sale in regulatory capital;

(b) for synthetic securitisations, the financial organisation purchasing protection shall—

(i) hold capital against the entire amount of the securitised exposures as if they did not benefit from any credit protection; and

(ii) if a synthetic securitisation incorporates a call other than a clean-up call that effectively terminates the transaction and the purchased credit protection on a specific date the financial organisation shall treat the transaction in accordance with subclauses (2), (3) and (4) and clause 43.

(3) When a clean-up call is exercised, and it serves as a credit enhancement, the exercise of the clean-up call shall be considered a form of implicit support provided by the financial organisation and shall be treated in accordance with Part VI.

Operational requirements for use of external credit ratings for securitisation exposures.

84. (1) Financial organisations shall comply with the following operational requirements for the use of external credit ratings for securitisation exposures:

(a) the credit rating shall—

(i) be from a credit rating agency and be publicly available, published in an accessible form and included in the credit rating agency's transition matrix;

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(ii) take into account and reflect the entire amount of credit risk exposure the financial organisation has with regard to all payments owed to it; and

(iii) take into account and reflect the credit risk associated with timely repayment of both principal and interest;

(b) a financial organisation shall—

(i) apply credit ratings from credit rating agencies consistently across a given type of securitisation exposure;

(ii) not use the credit ratings issued by one credit rating agency for one or more tranches and those of another credit rating agency for other positions whether retained or purchased within the same securitisation structure; and

(iii) follow the directions for multiple credit ratings under a guideline issued by the Central Bank where two or more credit rating agencies are used and they assess the credit risk of the same securitisation exposure differently.

(c) where credit risk mitigation is provided directly to a special purpose vehicle by an eligible guarantor under clause 35 and is reflected in the credit rating assigned to a securitisation exposure—

(i) the risk weight associated with that credit rating shall be used;

(ii) no additional capital recognition shall be permitted; and

(iii) if the credit risk mitigation provider is not recognised as an eligible guarantor, the covered securitisation exposures shall be treated as unrated.

(d) where a credit risk mitigant is not obtained by the special purpose vehicle but applied to a specific securitisation exposure within a given structure, the financial organisation shall—

(i) treat the exposure as if it is unrated; and

(ii) use the credit risk mitigation treatment outlined under Parts II and III of this Schedule to recognise the hedge.

(2) Ratings that are made available only to the parties to a transaction shall not satisfy the requirement of subclause (1)*(a)*(i);

(3) For the purpose of subclause (1)*(a)*, credit rating agencies shall have demonstrated expertise in assessing securitisations evidenced by strong market acceptance.

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SCHEDULE 3

Regulations 3 and 15(2).

PART I—Provisions related to the calculation of capital charges for operational risk

Calculation of Capital Charges for operational risk.

1. (1) In the determination of capital charges for operational risk, the activities of financial organisations shall be mapped into the following business lines:

(a) corporate finance;
(b) trading and sales;
(c) retail banking;
(d) commercial banking;
(e) payment and settlement;
(f) agency services;
(g) asset management; and
(h) retail brokerage.

(2) The total capital charge for operational risk shall be calculated as the three-year average of the simple summation of the regulatory capital charges across each business line referred to in subclause (1), in accordance with following formula:

$K_{TSA} = \{\Sigma \text{ years}_{1\text{-}3} \max [\Sigma(GI_{1\text{-}8} \times \beta_{1\text{-}8}), 0]\}/3$ where:

K_{TSA} = the capital charge for operational risk

$GI_{1\text{-}8}$ = annual gross income in a given year,

$\beta_{1\text{-}8}$ = a fixed percentage relating the level of required capital to the level of the gross income for each business line as set out below-

Business Lines	Beta Factors
Corporate finance (β1)	18%
Trading and sales (β2)	18%
Retail banking (β3)	12%
Commercial banking (β4)	15%
Payment and settlement (β5)	18%
Agency services (β6)	15%
Asset management (β7)	12%
Retail brokerage (β8)	12%

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SCHEDULE 3—*Continued*

(3) For the purpose of the formula referred to in subclause (2), gross income shall be the sum of net interest income and net non-interest income for each year and net interest income and net non-interest income shall be defined as follows:

(a) "net interest income" means interest income net of interest expense, gross of any provisions; and

(b) "net non-interest income" means non-interest income, including dividend income and other operating income, gross of operating expense, including any fees paid for outsourced services and excluding realised profits and losses from sale of securities in the banking book, extraordinary or irregular items and income derived from insurance.

(4) In any given year, negative capital charges resulting from negative gross income in any business line referred to in subclause (1) may offset positive capital charges in other business lines without limit but where the aggregate capital charge across all business lines within a given year is negative, then the input to the numerator referred to in subclause (2) for that year shall be zero.

PART II—Provisions related to the mapping of Business lines

Operational Risk Business Lines.

2. (1) Operational risk business lines shall be mapped as follows:

LEVEL 1	LEVEL 2	ACTIVITIES
Corporate Finance	Corporate Finance	Mergers and acquisitions, underwriting, privatisations, securitisation, research, debt limited to government or high yield debt, equity, syndications, initial public offerings, secondary private placements
	Municipal/Government Finance	
	Merchant Banking	
	Advisory Services	
Trading & Sales	Sales	Fixed income, equity, foreign exchanges, commodities, credit, funding, own position securities, lending and repos, brokerage, debt, prime brokerage
	Market Making	
	Proprietary Positions	
	Treasury	

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Retail Banking	Retail Banking	Retail lending and deposits, banking services, trust and estates
	Private Banking	Private lending and deposits, banking services, trust and estates, investment advice
	Card Services	Merchant, commercial, corporate, private labels and retail cards
Commercial Banking	Commercial Banking	Project finance, real estate, export finance, trade finance, factoring, leasing, lending, guarantees, bills of exchange
Payment and Settlement	External Clients	Payments and collections, funds transfer, clearing and settlement
Agency Services	Custody	Escrow, depository receipts, securities lending, corporate actions
	Corporate Agency	Issuer and paying agents
	Corporate Trust	
Asset Management	Discretionary Fund Management	Pooled, segregated, retail, institutional, closed, open, private equity
	Non-Discretionary Fund Management	Pooled, segregated, retail, institutional, closed, open
Retail Brokerage	Retail Brokerage	Execution and full service

SCHEDULE 3—*Continued*

(2) For the purposes of subclause (1), payment and settlement losses related to the activities of a financial organisation shall be incorporated in the loss experience of the affected business line.

Rules for Business Line Mapping.

3. (1) All activities of a financial organisation shall be mapped into the eight level one business lines referred to in clause 2(1) in a mutually exclusive and jointly exhaustive manner.

(2) Any banking or non-banking activity conducted by a financial organisation which cannot be directly mapped into the business line framework in clause 2(1) but which represents an ancillary function to an activity included in that framework, shall be allocated to the business line it supports and if more than one business line is supported through the ancillary activity, a mapping criteria that meets objective standards as may be determined by the Central Bank shall be used.

(3) When mapping gross income, if an activity cannot be mapped into a particular business line referred to in clause 2(1) then the business line yielding the highest charge shall be used and the same business line shall apply equally to any associated ancillary activity.

(4) A financial organisation may use internal pricing methods to allocate gross income between business lines provided that total gross income for the financial organisation still equals the sum of gross income for the eight business lines.

(5) The mapping of activities into business lines for operational risk capital purposes referred to in clause 1(1) shall be consistent with the business lines used for regulatory capital calculations for credit risk and market risk in these Regulations.

(6) A financial organisation shall provide explanations and documentation for any deviation from the mapping process referred to in subclause (5).

(7) A financial organisation shall have a documented mapping process with written business line definitions that will allow third parties to replicate the business line mapping.

(8) The documented mapping process referred to in subclause (7) shall contain reasons for any exceptions or deviations to the mapping process and shall be kept on record by the financial organisation for at least six years.

(9) A financial organisation shall have a policy for treating with new activities or products that do not map into the business lines in clause 2(1).

(10) Senior management of the financial organisation shall be responsible for the mapping policy, which shall be approved by its board of directors.

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(11) The mapping process shall be independently reviewed by, at a minimum, the internal audit function of the financial organisation at least annually or with such frequency as determined by the Inspector.

Oversight and Governance Standards for Operational Risk.

4. (1) A financial organisation shall satisfy the Central Bank that—

(a) its board of directors and senior management are actively involved in the oversight of its operational risk management framework;

(b) it has an operational risk management system that is conceptually sound and is implemented in accordance with the risk management framework; and

(c) it has sufficient resources to apply the operational risk framework in its material business lines as well as the control and audit areas.

(2) In assessing the requirements under subclause (1)*(b)*, the Central Bank shall consider the integrity and reliability of the inputs, assumptions, processes, and outputs of the financial organisation's operational risk management system.

(3) Financial organisations shall develop policies and have documented criteria for mapping gross income for current business lines and activities which shall be reviewed and adjusted for new or changing business activities at least annually or with such frequency as determined by the Central Bank.

(4) A financial organisation shall have a documented operational risk management system that assigns responsibilities to relevant staff.

(5) Financial organisations shall regularly report on operational risk exposures, including material operational losses to its business unit management, senior management, its board of directors and the Central Bank as specified in a guideline.

(6) The operational risk management processes and assessment system of a financial organisation shall—

(a) be subject to triennial validation; and

(b) at least annually or with such frequency as determined by the Central Bank, be independently reviewed by, at a minimum, the internal audit function of the financial organisation.

(7) The review referred to in subclause (6)*(b)* shall include both the activities of the business units and of the operational risk management function.

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Regulation 3 and 16.

SCHEDULE 4

Provisions For The Calculation Of Capital Charges For Market Risk

Interpretation.

1. In this Schedule—

"basis risk" means the risk that the relationship between the prices of two similar, but not identical, instruments will alter through time;

"bought put option" means a short position;

"bought call option" means a long position;

"commodity" means a physical product which is or can be traded on a secondary market, including agricultural products, minerals and precious metals except gold, which shall be treated as foreign currency;

"commodity risk" means the uncertainties of future market values and of the size of future income, caused by the fluctuation in the prices of commodities;

"directional risk" means the risk of loss arising from exposure to the direction of a reference asset or market;

"equity risk" means the risk of losses arising from changes in the value of that equity investment;

"foreign exchange risk" means the risk that a financial organisation's financial performance or position will be affected by fluctuations in the exchange rates between currencies;

"forward gap risk" means the risk that the forward price may change for reasons other than a change in interest rate,

"general market risk" means the risk of a loss arising from adverse changes in market prices including, a change in interest rates or official policy and "general risk" shall have the same meaning;

"interest rate risk" means the risk that movements in market interest rates cause an adverse effect on the financial condition of a financial organisation;

"long position" means a position which gives or may give the financial organisation a right, or imposes or may impose an obligation on it to receive a payment or an asset and bought call options and sold put options shall be treated as long positions;

"market risk" means the risk of losses in on-balance sheet and off-balance sheet positions arising from movements in market prices, including interest rates, exchange rates, commodity and equity values;

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"net forward position" means all amounts to be received less all amounts to be paid under forward foreign exchange transactions, including currency futures and the principal on currency swaps not included in the spot position;

"net open position" means in the case of—

(a) commodities risk, the absolute value of the difference between long positions and short positions in each commodity; and

(b) foreign exchange risk, the calculation referred to in clause 36;

"net position" means the excess of the long over the short position in identical securities and derivatives;

"net spot position" means the difference between the assets and liabilities in each currency including accrued interest;

"non-convertible preference shares" means shares that do not possess an option or right to be converted to an ordinary preference equity share;

"public sector entity" means—

(a) in relation to Trinidad and Tobago—

(i) Municipal Corporations;

(ii) Statutory boards; and

(iii) other bodies in which the central government is the controlling shareholder including—

(A) public utilities;

(B) non-financial institutions; or

(C) financial institutions; and

(b) in relation to a foreign jurisdiction—

(i) State or federal government, and where in a jurisdiction or country, a state or federal government is equivalent to a central or national government, it shall not be treated as a public sector entity but as a sovereign under this Schedule;

(ii) local government;

(iii) Statutory boards; and

(iv) other bodies in which the central government is the controlling shareholder including—

(A) public utilities;

(B) non-financial institutions; or

(C) financial institutions;

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SCHEDULE 4—*Continued*

"short position" means a position which gives or may give the financial organisation a right or imposes or may impose an obligation on it to make a payment or deliver an asset;

"sold call option" means a short position;

"sold put option" means a long position; and

"specific risk" means the risk that the price of a given instrument will move out of line with similar instruments, due principally to factors related to its issuer.

Market Risk Capital Charges.

2. (1) Capital charges for market risk shall be the sum of capital charges for interest rate risk, equity risk, foreign exchange risk and commodity risk.

(2) Capital charges for interest rate risk and equity risk shall apply to the current market value of items in the financial organisation's trading book.

(3) Capital charges for foreign exchange risk and commodity risk shall apply to a financial organisation's total foreign exchange and commodity positions, whether in the trading or the banking book.

(4) For the purposes of subclause (1), a financial organisation shall only be required to calculate a capital charge for interest rate risk and equity risk where the value of securities and associated derivatives that are marked to market represents ten per cent or more of total on-balance sheet and off-balance sheet assets.

Definition of trading book for Market Risk.

3. For the purposes of the calculation of capital charges for market risk, the trading book shall be defined as comprising all securities and associated derivatives that are marked to market including such instruments in the available for sale portfolio.

Non-trading instruments.

4. For the purposes of the calculation of capital charges for market risk, charges shall apply to non-trading instruments used to hedge trading activities but such instruments shall not be subject to specific market risk charges.

Calculation of capital charges for the interest rate risk and equity risk.

5. Capital charges for interest rate risk and equity risk shall be calculated as the sum of capital required for spectfic market risk and general market risk arising from a financial organisation's debt and equity positions.

Instruments requiring the calculation of capital charges for interest rate risk.

6. When measuring the risk of holding or taking positions in debt securities and other marked to market interest rate related instruments, the instruments covered shall include—

(*a*) all fixed-rate and floating-rate debt securities; and
(*b*) instruments that behave like them, including non-convertible preference shares.

Repo-style transactions and securities lending agreements.

7. A security, which is the subject of a repo-style transaction or securities lending agreement, shall be treated as if it were still owned by the lender of the security.

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Convertible bonds.

8. Convertible bonds, including debt issues or preference shares that are convertible into ordinary shares of the issuer, shall be treated as debt securities if they trade like debt securities and as equities if they trade like equities.

Calculation of minimum capital requirement for interest rate risk.

9. (1) The minimum capital requirement for interest rate risk shall be the sum of capital charges for the—

(a) specific risk of each security, whether it is a short or a long position; and

(b) general market risk where long and short positions in different securities or instruments can be offset.

(2) A financial organisation's interest rate risk capital requirement shall be the sum of the capital required for—

(a) specific risk; and

(b) general market risk for each currency in which the financial organisation has an exposure.

Interest rate specific risk charge.

10. The specific risk capital charge for interest rate risk referred to in clause 9(1)*(a)* shall be calculated by multiplying the absolute values of the debt position by their respective risk weight as follows:

Categories	Credit Rating	Specific Risk Capital Charge
Government	AAA to AA–	0.00%
	A+ to BBB–	0.25% (residual term to final maturity of 6 months or less) 1.00% (residual term to final maturity greater than 6 months up to and including 24 months) 1.60% (residual term to final maturity exceeding 24 months)
	BB+ to B–	8.00%
	Below B–	12.00%
	Unrated	8.00%
Qualifying		0.25% (residual term to final maturity 6 months or less) 1.00% (residual term to final maturity greater than 6 months up to and including 24 months) 1.60% (residual term to final maturity exceeding 24 months)
Other	BB+ to BB–	8.00%
	Below BB–	12.00%
	Unrated	8.00%

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SCHEDULE 4—*Continued*

Government category for interest rate specific risk charges.

11. (1) For the purposes of clause 10, the category labelled as "government" includes all forms of government paper including bonds, treasury bills and other short-term instruments.

(2) Notwithstanding subclause (1), the Central Bank may apply a specific risk weight to securities issued by a foreign government including where the securities are denominated in a currency other than that of the issuing government.

(3) For the purpose of the government category referred to in clause 10 when—

(a) government paper is issued in Trinidad and Tobago and is denominated and funded in Trinidad and Tobago dollars, the financial organisation may apply a zero per cent interest rate specific risk capital charge; and

(b) government paper is issued by a foreign sovereign and is funded and denominated in the currency of that foreign sovereign, the financial organisation may assign the preferential risk weight applied by that foreign sovereign to those securities.

Qualifying and other category for interest rate specific risk charges.

12. (1) The category labelled as "qualifying" in clause 10 includes securities issued by public sector entities and zero per cent risk weighted multilateral development banks and other securities that are—

(a) rated investment grade by at least two credit rating agencies;

(b) rated investment grade by a credit rating agency and not less than investment grade by another agency which issues credit ratings; or

(c) subject to the approval of the Central Bank, unrated, but deemed to be of comparable investment quality by the reporting financial organisation, and the issuer has securities listed on a recognised stock exchange.

(2) The category labelled as "other" in clause 10 shall include all debt securities that do not qualify as "govennnent" and "qualifying" securities as referred to in clause 11 and subclause (1).

Offsetting for interest rate specific risk.

13. (1) In measuring interest rate specific risk, a financial organisation may offset matched long and short positions in an identical issue including positions in derivatives.

(2) For different issues where the issuer is the same, no offsetting shall be permitted between the different issues.

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Capital for interest rate general risk charge.

14. The capital requirements for general risk shall be the sum of—

(a) the net short or long position of the marked-to-market securities in the trading book;

(b) a proportion of the matched positions in each time-band in clause 15;

(c) a proportion of the matched positions across different time-bands in clause 17; and

(d) a net charge for positions in options.

Time bands and assumed changes in yield for interest rate general risk.

15. A financial organisation shall use the following time-bands and assumed changes in yield in the determination of their interest rate general risk capital charge:

Zone	Time-Bands	(%) Assumed Changes in Yield
1	0–1 month	1.00
	> 1 – 3 months	1.00
	> 3 – 6 months	1.00
	> 6 – 12 months	1.00
2	> 1 – 1.9 years	0.90
	> 1.9 – 2.8 years	0.80
	> 2.8 – 3.6 years	0.75
3	> 3.6 – 4.3 years	0.75
	> 4.3 – 5.7 years	0.70
	> 5.7 – 7.3 years	0.65
	> 7.3 – 9.3 years	0.60
	> 9.3 – 10.6 years	0.60
	> 10.6 – 12 years	0.60
	> 12 – 20 years	0.60
	> 20 years	0.60

Determination of interest rate general risk capital charge.

16. (1) A financial organisation shall determine the interest rate general risk capital charge as follows:

(a) calculate the price sensitivity of each instrument by reference to the change in assumed yield in accordance with clause 15;

(b) place the resulting sensitivity measures calculated in paragraph *(a)* into a duration-based ladder with the time-bands referred to in clause 15;

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SCHEDULE 4—*Continued*

(*c*) subject long and short positions in each time-band to a five per cent vertical disallowance designed to capture basis risk; and

(*d*) carry forward the net positions in each time-band for horizontal offsetting subject to the horizontal disallowances in clause 17(1).

(2) For the purpose of subclause (1)(*c*), "vertical disallowance" means a fraction of vertical offsetting, which is the offsetting of weighted long and short positions in each time-band referred to in clause 15.

(3) For the purpose of subclause (l)(*d*)—

(*a*) "horizontal offsetting" means the offsetting of positions across the time-bands referred to in clause 17(1); and

(*b*) "horizontal disallowance" means a fraction of the horizontal offsetting.

Horizontal disallowances for interest rate general risk.

17. (1) A financial organisation shall use the following horizontal disallowances in the calculation of the interest rate general risk capital charge:

		Capital Charges Required		
Zones	Time-Bands	Matched Position within each Zone	Matched Position between adjacent zones	Matched Position between Zones 1 and 3
1	0 – 1 month			
	> 1 – 3 months	40%		
	> 3 – 6 months			
	> 6 – 12 months			
2	> 1 – 1.9 years		40%	
	> 1.9 – 2.8 years	30%		
	> 2.8 – 3.6 years			
3	> 3.6 – 4.3 years			100%
	> 4.3 – 5.7 years			
	> 5.7 – 7.3 years			
	> 7.3 – 9.3 years		40%	
	> 9.3 – 10.6 years	30%		
	> 10.6 – 12 years			
	> 12 – 20 years			
	> 20 years			

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(2) In the case of residual currencies, the gross positions in each time-band shall be subject to the assumed change in yield set out in clause 15 with no further offsets.

INTEREST RATE DERIVATIVES CALCULATION

Calculation of capital charges for interest rate derivatives.

18. In the determination of capital charges for interest rate risk, a financial organisation shall include all marked-to-market interest rate derivatives and off-balance sheet instruments which react to changes in interest rates, including forward rate agreements, other forward contracts, bond futures, interest rate and cross currency swaps and forward foreign exchange positions.

Specific and general market risk for interest rate derivatives.

19. (1) For the purpose of determining the general and specific market risk capital charge for interest rate derivatives financial organisations shall—

(a) convert interest rate derivatives into positions in the relevant underlying instrument; and

(b) calculate the capital charge on the market value of the principal amount of the underlying or notional underlying instrument.

(2) In determining the interest rate capital charge for interest rate derivatives—

(a) futures and forward contracts including forward rate agreements, shall be treated as a combination of a long and a short position in a notional government security;

(b) the maturity of a future or a forward rate agreement referred in paragraph *(a)* shall be the period until delivery or exercise of the contract and, where applicable, the life of the underlying instrument;

(c) a future on a corporate bond index shall be included at the market value of the notional underlying portfolio of securities;

(d) swaps shall be treated as two notional positions in government securities with relevant time-bands in clause 15;

(e) where a swap transaction attracts risk other than interest rate risk, including equity risk or foreign exchange risk, the financial organisation shall set aside capital for these risks using the capital treatment set out in this Schedule for the respective categories of risk; and

(f) the separate legs of cross-currency swaps shall be reported in the relevant time-bands referred to in clause 15 for the currencies involved in the transaction.

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SCHEDULE 4—*Continued*

Allowable offsetting of matched positions in interest rate derivatives.

20. (1) In determining the general and specific risk capital charge for interest rate derivatives, a financial organisation may fully offset—

(a) long and short positions, both actual and notional, in identical instruments with exactly the same issuer, coupon, currency and maturity; and

(b) matched positions in a future or forward and its corresponding underlying obligation.

(2) Where a financial organisation fully offsets positions as referred to in subclause (1) the positions may be excluded from the capital charge calculation.

(3) Notwithstanding subclause (2), a financial organisation shall apply the relevant capital charge to the leg of the future or forward representing its unexpired term.

Offsetting rules for futures and forwards.

21. (1) When a future or forward is comprised of a range of deliverable instruments, a financial organisation may offset positions in the future or forward contract and its underlying obligation where—

(a) there is an identifiable underlying security; and

(b) in accordance with the investment policy of the financial organisation, the identifiable underlying security referred to in paragraph *(a)* is most profitable for the trader with a short position to deliver.

(2) A financial organisation shall not offset between positions in different currencies.

(3) The separate legs of cross-currency swaps or forward foreign exchange deals shall be treated as notional positions in the relevant interest rate derivative instruments and included in the capital calculation for each currency.

(4) Opposite positions in the same category of interest rate derivatives may be offset fully where the positions—

(a) relate to the same underlying instruments;

(b) are of the same nominal value; and

(c) are denominated in the same currency.

Required conditions for offsetting certain positions.

22. For the purpose of offsetting positions in clause 21(4), the following conditions shall be met:

(a) for futures offsetting positions in the notional or underlying instruments to which the futures contract relates shall be for identical products and mature within seven days of each other;

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(*b*) for swaps and forward rate agreements, the reference rate for floating rate positions shall be identical and the coupon must differ by no more than fifteen basis points; and

(*c*) for swaps, future rate agreements and forwards, the next interest fixing date or, for fixed coupon positions or forwards, the residual maturity, shall correspond within the following limits:

(i) if either instrument has an interest fixing date or residual maturity up to and including one month, the residual maturities shall be the same day for both instruments;

(ii) if either instrument has an interest fixing date or residual maturity greater than one month and up to and including one year, the residual maturities shall be within seven days of each other; or

(iii) if either instrument has an interest fixing date or residual maturity over one year, the residual maturities shall be within thirty days of each other.

Approval for use of alternative formulae for swaps.

23. The Central Bank may approve the use of alternative formulae to calculate the positions referred to in clause 15 if it is satisfied that—

(*a*) the systems being used to track and measure the swaps are accurate;

(*b*) the positions calculated fully reflect the sensitivity of the cash flows to interest rate changes and are entered into the appropriate time-bands; and

(*c*) the positions are denominated in the same currency.

Specific risk for interest rate derivatives.

24. A financial organisation shall calculate the specific risk charge for all its interest rate derivatives, except the following:

(*a*) interest rate and currency swaps;

(*b*) forward rate agreements;

(*c*) forward foreign exchange contracts;

(*d*) interest rate futures; and

(*e*) futures on an interest rate index.

Specific risk for futures with underlying debt securities.

25. Notwithstanding clause 24, for futures contracts where the underlying exposure is a debt security or an index representing a basket of debt securities, a financial organisation shall apply a specific risk charge to the future contract in accordance with clauses 10, 11, 12 and 13.

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SCHEDULE 4—*Continued*

General market risk for interest rate derivatives.

26. Subject to the exemption for offsetting positions in clause 20(1), a financial organisation shall calculate a general market risk charge for positions in all interest rate derivative products in accordance with clauses 14, 15, 16 and 17.

EQUITY RISK

Capital requirements for equity risk.

27. Capital requirements for equity risk shall be the sum of capital charges calculated for—

(a) the specific risk of holding a long or short position in an individual equity; and

(b) the general market risk of holding a long or short position in the market as a whole.

Equity Risk Capital Charges.

28. (1) Equity risk capital requirements shall apply to long and short positions in all instruments that exhibit market behaviour including—

(a) ordinary shares, whether voting or non-voting;

(b) convertible preference shares or securities that behave like equities;

(c) convertible debt securities which convert into equity instruments and are trading as equities;

(d) any other instruments exhibiting equity characteristics; and

(e) equity derivatives or derivatives based on above securities.

(2) Long and short positions in identical equity issues may be reported on a net basis.

(3) Equity risk capital charges shall not apply to non-convertible preference shares which shall be treated in accordance with clause 6.

(4) The long and short position in identical equity issues shall be calculated on a market-by-market basis.

(5) Equity securities listed in more than one country shall be allocated to either the country where the issuer is incorporated and listed or the country where the security was purchased or sold but not both.

Long and short positions in equities.

29. Calculations of the long and short position in clause 28 shall be expressed in the domestic currency equivalent to the denomination of the equity, converted at spot rates at the reporting date.

Capital charge for equity risk.

30. (1) The capital charge for equity risk shall be the sum of the capital charge for specific risk and the capital charge for general market risk.

(2) The capital charge for specific risk for equities shall be ten per cent and the capital charge for general market risk for equities shall be ten per cent.

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Capital charge for equity derivatives.

31. (1) Capital charges shall be determined for equity derivatives and off-balance sheet positions which are affected by changes in equity prices, including futures and swaps on both individual equities and on stock indices.

(2) For the purpose of calculating the capital charge for equity derivatives under subclause (1), the derivatives shall be converted into positions in the relevant underlying instrument.

(3) Matched positions in each identical equity or stock index in each country may be fully offset, resulting in a single net short or long position to which the specific and general market risk charges will apply.

Calculation of equity derivative positions.

32. (1) For the purposes of calculating the specific and general market risk for equities, equity positions in derivatives shall be converted into notional equity positions as follows:

(a) futures and forward contracts relating to individual equities shall be reported at current market prices;

(b) futures relating to stock indices shall be reported as the mark-to-market value of the notional underlying equity portfolio;

(c) equity swaps shall be treated as two notional positions; and

(d) equity options and stock index options and their associated hedges shall be excluded from the calculations performed for all other equity positions and a separate risk charge shall be calculated in accordance with the methodology for the treatment of options in this Schedule.

Risk in relation to an Index.

33. (1) A financial organisation shall—

(a) not be required to calculate specific risk charges for equity risk for an index contract comprising a well-diversified portfolio of equities that meet the requirements specified in a guideline issued by the Central Bank;

(b) Notwithstanding paragraph *(a)* in addition to general market risk, apply a further capital charge of two per cent to the net long or short position in the index contract; and

(c) calculate specific and general market risk charges for equity risk for an index contract that does not comprise of a well-diversified portfolio of equities that meet the requirements specified in a guideline issued by the Central Bank.

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SCHEDULE 4—*Continued*

COMMODITIES RISK

Capital charges for commodities risk including commodity derivatives.

34. (1) Capital charges for commodities risk shall be calculated for the market risk associated with holding positions in commodities, including precious metals except gold.

(2) The total capital charge for commodities risk shall be the sum of capital charges for directional risk, basis risk, interest rate risk and forward gap risk.

(3) A financial organisation shall—

(a) calculate the capital charge for directional risk as fifteen per cent of the net open position; and

(b) not off-set positions in different commodities when calculating the net open position.

(4) The capital charge for basis risk, interest rate risk and forward gap risk shall be an additional three per cent of the financial organisation's gross long and short positions in that particular commodity.

(5) For the purpose of calculating capital charges for commodities risk, a financial organisation shall—

(a) express each commodity position in terms of the metric system of measurement; and

(b) convert the net position in each commodity at current spot rates into Trinidad and Tobago Dollars.

(6) For commodity derivatives and off-balance sheet positions which are affected by changes in commodity prices, including commodity futures, commodity swaps and options, a financial organisation shall—

(a) calculate capital charges; and

(b) include the capital charges in paragraph *(a)* in the total capital charge for commodities risk.

(7) To determine the capital charge for commodity derivatives at subclause (6), a financial organisation shall—

(a) convert commodity derivatives into notional commodities using the current spot price; and

(b) determine capital charges for commodity options in accordance with the methodology for treatment of options in this Schedule.

FOREIGN EXCHANGE RISK

Capital charges for foreign exchange risk.

35. (1) Capital charges for foreign exchange risk shall be calculated to cover the risk of holding or taking positions in foreign currencies, including gold.

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(2) In calculating the capital requirement for foreign exchange risk, financial organisations shall—

(a) measure the exposure in a single currency position; and

(b) measure the risks inherent in its mix of long and short positions in different currencies.

Measuring the exposure in a single currency.

36. (1) When calculating the capital requirements for foreign exchange risk, the net open position in each currency shall be the sum of—

(a) the net spot position;

(b) the net forward position;

(c) guarantees and other instruments used for credit risk mitigation that will be called and are irrecoverable;

(d) net future income or expenses not yet accrued but fully hedged;

(e) any other item representing a profit or loss in foreign currencies; and

(f) the net delta-based equivalent of the total book of foreign currency options.

(2) When measuring its open positions which are denominated in a composite currency, a financial organisation shall not use the individual currencies that comprise the composite currency for the purpose of calculating the capital charge.

Treatment of interest, other income and expenses for Foreign Exchange Capital Charges.

37. A financial organisation shall include the following when calculating its positions for foreign exchange capital charges:

(a) interest accrued;

(b) expenses accrued;

(c) unearned but expected future interest that is fully hedged; and

(d) anticipated expenses that are fully hedged.

Measurement of forward currency and gold positions.

38. (1) In determining capital charges for foreign exchange risk, forward currency and gold positions shall be valued at current spot market exchange rates.

(2) When measuring their forward currency and gold positions, financial organisations that base their normal management accounting on net present values shall use the net present values of each position, discounted using current interest rates and valued at current spot rates.

Foreign exchange risk for foreign currency positions and gold.

39. (1) In determining capital charges for foreign exchange risk, the nominal amount or net present value of the net position in each foreign currency and in gold shall be converted at spot rates into Trinidad and Tobago Dollars.

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SCHEDULE 4—*Continued*

(2) The overall net open position shall be measured by aggregating—

(a) the sum of the net short positions or the sum of the net long positions, whichever is the greater; and

(b) the net position short or long in gold, whether positive or negative.

(3) The capital charge shall be ten per cent of the higher of either the net long currency positions or the net short currency positions plus the net position in gold.

TREATMENT OF OPTIONS

Capital requirements for options.

40. (1) Option contracts and related hedging positions in the associated underlying instrument, commodity or index, cash or forward shall be subject to market risk capital requirements.

(2) Capital calculated for exposures in subclause (1) shall be added to the capital requirements for interest rate risk, equity risk, foreign exchange risk and commodities risk.

(3) In determining market risk capital charges for options, a financial organisation shall use—

(a) the simplified method, where it only purchases options; and

(b) the scenario method, where it writes options unless all its option positions are hedged by perfectly matched long positions in exactly the same options in which case no capital charge for market risk shall be required.

(4) The simplified and scenario method referred to in subclause (3) shall be specified by the Central Bank in a Guideline.

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SCHEDULE 5

Regulation 18(2).

Interpretation.

1. In this Schedule—

"earnings" means the distributable profits calculated prior to the deduction of the elements that are subject to the restriction on distributions of capital contained in this Schedule; and

"scrip dividend" means a dividend offered in the form of additional shares in a company instead of an automatic offer of a cash dividend.

Minimum capital conservation standards.

2. (1) A financial organisation shall maintain the following minimum capital conservation standards:

Minimum capital conservation standards	
Column 1	**Column 2**
Buffer Ranges (Common Equity Tier 1 Capital Ratio of 4.5% + Capital Conservation Buffer)	**Capital Constraints (Expressed as a percentage of earnings)**
4.5% – 5.125%	100%
>5.125% – 5.75%	80%
>5.75% – 6.375%	60%
>6.375% – 7%	40%

(2) Where a financial organisation falls within the buffer ranges in Column 1 of the table in subclause (1), it shall withhold distributions of capital in accordance with the corresponding capital constraints in Column 2.

Restrictions on distributions.

3. (1) Elements that shall be subject to the restriction on the distribution of capital shall include—

(a) dividends and share buy-backs;

(b) discretionary payments on other Tier 1 capital instruments; and

(c) discretionary bonus payments to staff of the financial organisation.

(2) Distributions of capital shall not include payments that do not result in a depletion of common equity Tier 1 capital including scrip dividends.

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SCHEDULE 5—*Continued*

(3) Distribution restrictions shall not apply to dividends when the following criteria are met:

(a) the dividends cannot be legally cancelled by the financial organisation;

(b) the dividends have already been removed from the common equity Tier 1; and

(c) at the time the financial organisation declared dividends, the financial organisation had complied with the capital conservation standards specified by the Central Bank.

Calculation of earnings.

4. (1) Earnings shall be calculated after the tax which would have been reported if none of the distributable elements referred to in clause 3 had been paid.

(2) A financial organisation shall be restricted from making positive net distributions as described in clause 3(1) where—

(a) the financial organisation does not have positive earnings and has a common equity Tier 1 ratio of less than seven per cent; or

(b) the common equity Tier 1 ratio of the financial organisation is higher than seven per cent because its capital conservation buffer has been expanded by other buffers specified by the Central Bank.

Individual and consolidated application.

5. The capital conservation buffer and restrictions referred to in this Schedule shall apply to a financial organisation on an individual and consolidated basis.

Imposition of time limits.

6. Where a financial organisation falls within the common equity Tier 1 capital buffer ranges in clause 2, and the Inspector is of the opinion that it is unreasonable for the financial organisation to operate within this buffer range, he may require the financial organisation to increase its common equity Tier 1 capital to meet the minimum requirements in regulation 18 within such timeframe as he may specify.

THE E-MONEY ISSUER ORDER

ARRANGEMENT OF ORDERS

ORDER

1. Citation.
2. Interpretation.
3. Categories of e-money issuer.
4. Registration requirements.
5. Requirement to be registered separately as a Payment Service Provider.
6. Provisional Registration.
7. Permissible Activities for e-money issuers.
8. Capital.
9. Corporate Governance.
10. Safeguarding of customers' funds.
11. Risk management.
12. E-money Accounts.
13. Reloading.
14. Redemption of e-money.
15. Validity Period.
16. Inactive and Dormant Accounts.
17. Use of Agents by e-money issuers.
18. Agent Management.
19. Market Conduct.
20. Restrictions or prohibitions.
21. Regulatory Oversight and Reporting.
22. Record Retention.
23. Enforcement.

SCHEDULE 1.
SCHEDULE 2.
SCHEDULE 3.

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284/2020.

THE E-MONEY ISSUER ORDER

made under section 27(4)

Citation.

1. This Order may be cited as the E-Money Issuer Order.

Interpretation.

2. In this Order—

"Agent" means a natural or legal person who conducts permissible activities on behalf of an e-money issuer upon the non-objection of the Central Bank;

"Bank" means the Central Bank of Trinidad and Tobago;

"cash-in" means the process by which the e-money account of a customer is loaded with e-money value equivalent to a cash amount;

"cash-out" means the process by which a customer deducts cash from their e-money account;

"Custodian Account" means an account at a deposit taking institution licensed pursuant to the Act for the purpose of ensuring that customer funds are properly and securely stored;

"e-float" means the total amount of e-money issued by an e-money issuer;

"e-money account" means an account held with an e-money issuer for the purpose of loading an e-money instrument and the term "e-money account holder" shall be construed accordingly;

"EMI" or "e-money issuer" means a person under clause 3 who is registered or who has applied to be registered to issue e-money under this Order and has been granted a provisional registration under clause 6;

"e-wallet" means a software application which allows a user to store e-money or m-money, check balances, make and receive payments and conduct any other permissible activity using an electronic device;

"Fintech" means technologically enabled financial innovation that could result in new business models, applications,

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processes or products with an associated material effect on financial markets and institutions and the provision of financial services;

"FIU" means the Financial Intelligence Unit established under the Financial Intelligence Unit Trinidad and Tobago Act; Ch. 72:01.

"liquid assets" means cash held at a Custodian Account or any assets as the Central Bank may allow;

"Money Remitter" means a provider of electronic transfer who accepts funds from a payer for the purpose of making them available to a payee, through a data communication network or by an electronic platform that processes the data, without necessarily maintaining an account relationship with the payer or payee;

"m-money" means payment initiated and transmitted electronically by access to devices that are connected to mobile communication networks;

"Mobile Network Operator" means a telecommunications service provider or provider that offers wireless voice and data communication to its subscribed mobile users, possesses its own mobile license and mobile infrastructure and maintains a direct relationship with mobile users;

"non-reloadable e-money card" means an e-money instrument that facilitates a one-time initial loading for use of up to a period of one year;

"payment service" means a service which enables cash deposits and withdrawals, execution of a payment, the issue or acquisition of a payment instrument, the provision of a remittance service, and any other service functional to the transfer of money and the term "Payment Service Provider" shall be construed accordingly;

"permissible activities" means those activities defined in clause 7; and

"Technology Service Provider" means an entity or a person who provides hardware or software that allows a Payment Service Provider to provide payment services or instruments as well as the clearing and settlement of instruments.

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Categories of e-money issuer.

3. (1) The following categories of persons, other than licensees, may apply to the Bank to be an e-money issuer:

(a) entities registered with the Central Bank as a Payment Service Provider or Payment System Operator (PSO);

(b) Money Remitters registered with the FIU;

(c) Mobile Network Operators authorised by the Telecommunications Authority of Trinidad and Tobago;

(d) Technology Service Providers; and

(e) other financial institutions, such as credit unions, insurance companies and the Trinidad and Tobago Unit Trust Corporation.

(2) Where the Bank receives an application under subclause (1), it may, where it is satisfied that the applicant meets the requirements for registration as an e-money issuer, approve the application.

Registration requirements.

4. A person seeking approval to issue e-money shall satisfy all requirements of this Order.

Requirement to be registered separately as a Payment Service Provider. Ch. 79:02.

5. (1) An EMI will be required to be registered separately as a Payment Service Provider, pursuant to the Central Bank Act, to conduct payment service activities.

(2) An application to be a Payment Service Provider and EMI may be done simultaneously.

(3) An EMI shall apply for registration with the FIU within five business days after being granted approval or provisional registration by the Bank to operate as an EMI.

(4) An EMI shall pay such fees in relation to an application for permission and renewal of permission to issue e-money, as set out in Schedule 1.

Provisional Registration.

6. (1) Notwithstanding clause 4, the Bank, where it is satisfied that it is appropriate to do so having regard to the nature,

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scale, and complexity of an applicant's proposed activities, may vary or waive one or more of the requirements set out in this Order and grant provisional registration to an applicant.

(2) Provisional registration may be granted for an initial period of up to six months.

(3) The Bank may impose such other terms and conditions, as it considers appropriate, in the granting of provisional registration under this clause.

(4) The terms and conditions may include the extent and nature of the operations of the EMI, the size of its customer base, and limits on the monetary values that may be transferred or funded using an e-money instrument.

(5) The Bank may, as it considers appropriate—

(a) extend a provisional registration for a further period of up to six months;

(b) revoke, in accordance with its powers under section 17(5)*(c)* of the Act, any provisional registration granted; or

(c) vary the terms and conditions of the registration under this clause,

and in the case of paragraphs *(b)* or *(c)*, shall serve notice on the EMI of its intention to revoke or vary, which shall include its reasons, seven days prior to its revocation or variation.

Permissible Activities for e-money issuers.

7. An EMI shall conduct the following activities in Trinidad and Tobago dollars only—

(a) issuance of e-money account;

(b) cash-in;

(c) cash-out;

(d) provision of payment services; and

(e) money transfer or remittances.

Capital.

8. (1) An EMI is required to have sufficient initial capital to mitigate risks, based on its size and scale, and shall maintain, at a minimum, the capital requirements outlined in Schedule 2.

Schedule 2.

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(2) Notwithstanding the provision in subclause (1), the Bank can determine the capital requirement of an EMI based on considerations such as the size and type of business and the risks associated with its e-money operations.

(3) The capital determined by the Bank of an EMI may be above the minimum specified amount at subclause (1).

Corporate Governance.

9. (1) An EMI shall be a body corporate with its registered office in Trinidad and Tobago.

(2) An EMI shall submit to the Bank certified copies of the Articles of Incorporation, Bye-laws, the last Annual Return of the company and such other documents as the Bank may request.

(3) An EMI shall identify all acquirers, significant and controlling shareholders, directors and senior management of the company and submit such information in relation to those persons, as requested by the Bank, including a group chart showing all the entities in its group, that are either owned or controlled by the acquirer, controlling and significant shareholders of the EMI, to the Bank.

(4) An EMI, as well as all its directors, officers, acquirers, significant and controlling shareholders, shall be fit and proper, in accordance with the Fit and Proper Guidelines of the Bank and the Second Schedule of the Act and be subject to the approval process of the Bank.

(5) A business under this clause shall be directed by a minimum of two persons, at least one of whom shall possess the requisite experience and technical knowledge to direct the business activities of the EMI.

Safeguarding of customers' funds.

10. (1) An EMI shall open and operate a Custodian Account which shall—

(a) contain unencumbered liquid assets which are readily and easily available; and

(b) reflect, at all times, the amount of outstanding e-money issued.

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(2) The Bank may require an EMI to keep its liquid assets in a Custodian Account at more than one financial institution in the interest of protecting customers.

(3) An EMI shall maintain a separate account, apart from the Custodian Account, to be used for operating expenses.

(4) Records pertaining to the liquid assets, as well as reconciliations, shall be made available to the Bank for inspection upon request.

(5) An EMI shall establish satisfactory measures to ensure that customers can retrieve funds in the event of the failure of the EMI or any other event requiring substantial conversion of electronic value into cash.

(6) The Bank may impose further requirements for the safeguarding of customer funds relevant to the liability for the losses of customers.

Risk management.

11. (1) An EMI shall demonstrate that it has all relevant procedures in place to effectively identify, analyse, assess, manage, monitor and report any risks to which it might be exposed.

(2) An EMI shall implement internal controls and risk management frameworks which address its key risks, inclusive of operational, settlement, liquidity, information technology or cyber, third party and money laundering or terrorist financing risks, including:

(a) an Information and Communications Technology Risk Management Framework which should, at a minimum, address—

(i) access and authentication management;

(ii) availability;

(iii) vulnerability assessment and response;

(iv) incident and problem management;

(v) change and configuration management; and

(vi) privacy management;

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(b) appropriate security policies and measures intended to safeguard the integrity, authenticity, and confidentiality of data and operating processes;

(c) business resilience and continuity plans and procedures;

(d) an effective audit function to provide periodic review of the security control environment and systems; and

(e) an Anti-Money Laundering or Combatting of Terrorist Financing programme which is risk based, with proportionate Know Your Customer and Customer Due Diligence applied to clients commensurate with their risks.

E-money Accounts.

12. (1) E-money accounts should be issued against cash, debit cards, credit cards or direct debits via the Automated Clearing House.

(2) An EMI may issue an e-money account to an individual or company up to a maximum limit as outlined in Schedule 2.

Schedule 2.

(3) An e-money account holder may be permitted to have more than one e-money account.

(4) The total amount loaded into all the e-money accounts of that e-money account holder shall not exceed the aggregate monthly transactional limits established in Schedule 2.

Reloading.

13. E-money may only be issued or reissued to customers at the EMI or Agent acting on behalf of e-money issuers.

Redemption of e-money.

14. (1) Customers may redeem the full amount of e-money balances outstanding at any time or where the business is being wound-up or directed by the Bank to be discontinued.

(2) Where redemption is provided in the event of discontinuance by an EMI, the redemption value shall not be in

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excess of the amount outstanding or the face value or loading limit for the e-money instrument.

Validity Period.

15. (1) Non-reloadable e-money issued to e-money account holders would have a validity period of one year in order to protect the issuer from unreasonable or unduly extended periods of liability.

(2) Upon the expiration date of the non-reloadable e-money account, the value of the outstanding funds remaining on the expired e-money instrument shall be transferred to a new e-money instrument and may be at a nominal cost to the e-money account holder.

Inactive and Dormant Accounts.

16. (1) An e-money account that has registered no activity for a consecutive period of twelve months shall be considered inactive.

(2) An EMI shall adhere to the following:

(a) the e-money account holder shall be notified no less than one month before the twelve-month mark that the e-money account will be suspended unless there is some form of activity and the customer would then be advised to either—

(i) perform a transaction to keep the e-money account active; or

(ii) close the e-money account;

(b) if no activity has still taken place by the end of the twelve-month period, the EMI shall block the e-money account, permit no further transactions until reactivated by the customer and the—

(i) reactivation shall be supported by provision of the original identification used to open the e-money account; and

(ii) EMI shall notify the customer that the e-money account is blocked and provide reactivation instructions;

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(c) an e-money account that has been blocked for twelve months without reactivation by or communication from the e-money account holder shall be terminated by the EMI;

(d) all outstanding balances in the account upon termination shall be transferred, along with identifying information on the e-money account holder, into a separate e-money account held by the EMI designated for this purpose and kept for a period of no less than seven years;

(e) all identifying information relating to the e-money account and its closing balance shall be retained by the EMI and the bank for a period of no less than seven years; and

(f) after the period of seven years has passed without claim from the original e-money account holder, the EMI shall transfer all such funds to the Bank and retain all identifying information.

Use of Agents by e-money issuers.

17. (1) An EMI may utilise an Agent to conduct permissible activities on its behalf.

Schedule 3.

(2) An EMI shall apply to the Bank for permission to use each Agent and provide the information set out in Schedule 3 to the Bank.

(3) The Bank shall, within sixty days of the receipt of all relevant information, indicate its objection or non-objection to the use of the Agent of an EMI.

(4) Where the Bank has objected to the use of an Agent, it shall provide written reasons for doing so.

Agent Management.

18. (1) An Agent shall be a registered business.

(2) An Agent may conduct cash-in, cash out, payment services, collect information and complete documents for opening e-money accounts.

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(3) An EMI shall have in place agency arrangements and management procedures with each Agent as set out in Schedule 3.

Schedule 3.

(4) Agency arrangements and management procedures shall be submitted to the Bank when applying for approval to use Agents.

(5) An EMI utilising an Agent to conduct permissible activities is required to oversee the management of that Agent to the satisfaction of the Bank.

(6) An EMI shall ensure that its Agents maintain a bank account for the purpose of conducting permissible activities on its behalf.

(7) An EMI shall be responsible and liable for—

(a) the acts and omissions of its Agent in providing services within the scope of the relevant agency agreement and the agreement shall not exclude this liability; and

(b) any breach by its Agent of the requirements in this Order.

(8) The Bank may—

(a) request any information from an EMI on its Agent in respect of the conduct of permissible activities; and

(b) direct an EMI to terminate its agency agreement with an Agent in instances involving a breach of the requirements of this Order, fraud, dishonesty or other financial impropriety on the part of the Agent.

Market Conduct.

19. An EMI shall be required to—

(a) disclose, in writing or on its website or applications ("apps"), all applicable fees, charges, terms and conditions for the use of e-money accounts, as well as any such

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information necessary for customers to contact the EMI or its Agents in the event of a query or concern;

(b) establish terms and conditions for use of the e-money accounts which shall be fair, legible and written in plain language so as to be easily understood by the customer; and

(c) establish and implement appropriate policies and procedures for addressing customer complaints and resolving disputes within thirty days from the date on which the complaint was submitted to the EMI.

Restrictions or prohibitions.

20. An EMI is prohibited from—

(a) co-mingling the funds of the e-money account holder with any other EMI, entity or person;

(b) buying, selling or dealing in foreign currency;

(c) granting credit;

(d) issuing or allowing joint accounts;

(e) paying interest on the account of the e-money account holder; and

(f) issuing e-money in currencies other than the Trinidad and Tobago dollars.

Regulatory Oversight and Reporting.

21. An EMI shall—

(a) submit audited financial statements within three months of its financial year end;

(b) have its Anti-money laundering or Counter-financing of terrorism compliance programme reviewed by the external auditor and submit the report within four months of the end of each financial year to the Bank;

(c) submit the following information, in a form prescribed by the Bank, on a quarterly basis or other frequency as the Bank may require:

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(i) the number of e-money accounts issued by it;

(ii) volumes and values of its e-money transactions;

(iii) the total of outstanding e-money balances held by it;

(iv) value, type and location of liquid assets;

(v) incidents of fraud, theft or robbery, including at its Agents, number of complaints received, analysed by category;

(vi) material service interruptions and major security breaches; and

(vii) any other information as may be required by the Central Bank from time to time;

(d) provide the Central Bank with access to all its systems and databases for the purpose of reviewing the conduct of all permissible activities; and

(e) comply with all relevant laws pertaining to Anti-money laundering, Counter-financing of terrorism or Counter-Proliferation Financing.

Record Retention.

22. An EMI shall have record keeping systems that retain customer and transaction files for a minimum period of seven years and in a format that will facilitate timely retrieval of information to satisfy requests for information from competent authorities.

Enforcement.

23. Any breach of this Order or any other terms and conditions imposed by the Bank shall be enforced in accordance with this Order and the provisions of the Act.

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(Clause 5).

SCHEDULE 1

APPLICATION AND REGISTRATION FEES

	Authorisation Fees
Application Fee – E-Money Issuer	TT$10,000.00
Annual Registration Fee	
- E-Money Issuer	TT$20,000.00
- Agent	TT$1,000.00

(Clauses 8 and 12).

SCHEDULE 2

E-MONEY ACCOUNTS

TRANSACTIONAL LIMITS AND CAPITAL REQUIREMENTS

EMI Servicing Category-Individuals	**Transaction Limit per transaction**	**Monthly Transaction Limit**	**Maximum Wallet Size**	**Capital**
Micro-Transactions	Payments up to $500	$5,000/month	$5,000	TT$500,000 or 3% of the outstanding balance of the e-float, whichever is greater
Mid-Value Transactions	Payments up to $1,000	$20,000/month	$20,000	
High-Value Transactions	Payments up to $10,000	$40,000/month	$40,000	TT$100,000 or 3% of the outstanding balance of the e-float, whichever is greater

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SCHEDULE 2—*Continued*

E-MONEY ACCOUNTS

TRANSACTIONAL LIMITS AND CAPITAL REQUIREMENTS

<table>
<tr><th>EMI Servicing Category-Individuals</th><th>Transaction Limit per transaction</th><th>Monthly Transaction Limit</th><th>Maximum Wallet Size</th><th>Capital</th></tr>
<tr><td>Micro-Enterprises[1]</td><td>N/A</td><td>$40,000/month</td><td>$100,000</td><td>TT$500,000 or 3% of the outstanding balance of the e-float, whichever is greater</td></tr>
<tr><td>Small Enterprises[2] and Medium Enterprises[3]</td><td>N/A</td><td>$80,000/month</td><td>$200,000</td><td rowspan="2">TT$100,000 or 3% of the outstanding balance of the e-float, whichever is greater</td></tr>
<tr><td>Large Enterprises[4] and Government employees</td><td>N/A</td><td>$150,000/month</td><td>$200,000</td></tr>
</table>

1. 1–5 employees, including the owner or manager; assets up to $250,000 and annual sales up to $250,000.
2. 6–25 employees, including the owner or manager; assets up to $1,500,000 and annual sales up to $5,000,000.
3. 26–50 employees, including the owner or manager; assets up to $5,000,000 and annual sales up to $10,000,000.
4. 51 employees and above.

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(Clauses 17 and 18).

SCHEDULE 3

AGENT ARRANGEMENT AND MANAGEMENT

A. Agency Arrangements

EMIs that intend to utilise Agents shall submit the following information to the Bank:

(i) the results of the due diligence conducted by the EMI to select the said Agent;

(ii) the proposed geographic location of the Agent or Agent network;

(iii) the services to be provided by the Agent on behalf of the EMI;

(iv) copies of the Agent's—

(a) certificate of incorporation or registration of business;

(b) evidence of a registered office in Trinidad and Tobago;

(v) documents demonstrating the financial soundness of the Agent. These should include one of the following, where applicable:

(a) audited financial statements;

(b) management accounts; or

(c) cash flow;

(vi) a copy of the Agency agreement between the Agent and the EMI containing, at minimum—

(a) a clear indication of the duties and responsibilities of each party;

(b) any compensation arrangements;

(c) the scope of work to be performed by the Agent;

(d) a statement that the EMI is responsible and liable for the actions or omissions of an Agent providing the services on its behalf;

(e) a statement that the Agent shall ensure safekeeping of all relevant records and ensure that the records are, at pre-specified regular intervals, moved to the EMI who shall ensure safekeeping of these records for at least seven years; and

(f) an agreement by both parties to provide unrestricted access to the Bank to review the internal systems of

the Agent, information, data and documents relevant to the conduct of permissible activities;

(vii) the policies and procedures approved by the EMI for the provision of permissible activities through the Agent, including those pertaining to Know Your Customer or Customer Due Diligence;

(viii) a description of the technology to be used for delivering Agency services;

(ix) a risk assessment report of the provision of permissible activities through the Agent, including the control measures that will be applied to mitigate the risks;

(x) a report regarding internal controls to be used for the agency business which shall be reviewed by an external auditor on an annual basis; and

(xi) any further information that the Bank considers necessary.

B. Agent Management

An EMI shall—

(a) maintain systems, policies and procedures, including risk management policies relevant to money laundering or terrorist financing risks, to exercise effective internal control over the provision of services by its Agents;

(b) ensure that there is adequate training and support for its Agents with a view to providing safe and efficient services to customers;

(c) submit an annual report prepared by an external auditor, in respect of the operations of its Agents, to the Bank within four months from the end of each financial year;

(d) demonstrate its ability to track and maintain records of the payment transactions carried out by each Agent it uses to the satisfaction of the Bank; and

(e) maintain a list of Agents used, and information relevant to these agents including name, address, Global Positioning System coordinates, telephone contact, including the contacts and addresses for each outlet of the Agent at which it will provide services on behalf of the EMI, which shall be submitted to the Bank on a quarterly basis.

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