

THE FINANCIAL INSTITUTIONS ACT, 2008

Arrangement of Sections

PRELIMINARY

Section

1. Short title
2. Interpretation
3. Meaning of “connected party” and “connected party group”
4. Restriction on the use of certain titles

PART II

GENERAL PROVISIONS CONCERNING REGULATION AND SUPERVISION

5. Objectives of Supervision
6. Inconsistency
7. Appointment of Inspector
8. Prohibition against disclosure
9. Regulations
10. Guidelines
11. Draft regulations
12. Contravention of guidelines
13. Amendment to Schedules
14. Delegation and exercise of powers through authorized officers
15. Delegation of functions

PART III

LICENSING OF FINANCIAL INSTITUTIONS

16. Restriction on business of banking
17. Restriction on business of a financial nature
18. Licence for branch of foreign financial institution
19. Guideline for approved securities

20. Application for licence
21. Approval and issue of licence
22. Annual Fees
23. Revocation of licence
24. Restriction of licence
25. Notice of restriction
26. Restriction or variation
27. Directions to licensee
28. Notification and confirmation of directions
29. Mandatory revocation and restriction in cases of urgency
30. Information as to licensed institutions
31. Amendment of articles of incorporation and other constituent documents
32. False statements as to licensed status

PART IV

DIRECTORS AND MANAGEMENT

33. Persons debarred from management
34. Restriction on voting power of director
35. Duties of directors
36. Audit committee
37. Annual reports
38. Policies and procedures for transactions with connected parties and employees
39. Information systems for credit exposures
40. Internal controls

PART V

RESTRICTIONS AND PROHIBITIONS

41. Prohibitions
42. Limits on credit exposures
43. Limit on credit exposures to connected parties

44. Reporting contravention of credit exposure limits
45. Limits on acquisition of shares and ownership interests by a licensee
46. Approval for certain transactions
47. Restriction on dividends and requirement to maintain assets
48. Limits on financing for shares held in trust
49. Contravention
50. Branches and representative offices
51. Notification of new products and services
52. Restriction on an officer or employee of licensee acting as insurance agent
53. Advertisements
54. Misleading or objectionable advertisements
55. Information not to be disclosed

PART VI

RESERVES AND OTHER REQUIREMENTS

56. Statutory Reserve Fund
57. Reserve Account
58. Selective credit control
59. Central Bank may fix maximum of working balances
60. Maximum liability
61. Preference to Trinidad and Tobago securities and fixing of ratio

PART VII

INSPECTION, INVESTIGATION AND WINDING-UP

62. Duties of Inspector
63. Inspector to report on insolvency
64. Winding-up
65. Rules as to proceedings in Court
66. Voluntary winding-up

PART VIII

OWNERSHIP OF LICENSEES

- 67. Restructuring of ownership may be required
- 68. Restructuring not required in certain cases
- 69. Restriction on activities of financial holding company
- 70. Requirements for licence
- 71. Requirements for controlling shareholder
- 72. Requirements for significant shareholder
- 73. Mergers
- 74. Acquisitions

PART IX

ACCOUNTS, AUDITORS AND INFORMATION

- 75. Submission of statements and other information to Central Bank
- 76. Publication of inactive accounts
- 77. Consolidated financial statements to be submitted to Inspector
- 78. Power to require information
- 79. Report on credit exposures
- 80. Consolidated audited financial statements to be open to publication and inspection
- 81. Appointment of auditor
- 82. Notification in respect of auditors
- 83. Duties of auditor to report to Board
- 84. Further duties of auditor
- 85. Protection of auditor and other persons providing information

PART X

COMPLIANCE DIRECTIONS AND INJUNCTIONS

- 86. Compliance directions
- 87. Injunctive relief

PART XI

FACILITATION OF TRANSFERS AND UNDERTAKINGS

- 88. Definitions
- 89. Vesting Order
- 90. Supplementary provisions as to transfers
- 91. Transfers subject to stamp duty

PART XII

PAYMENT SYSTEMS

- 92. Definitions
- 93. Restriction on operating payment system
- 94. Application for licence
- 95. Suspension or withdrawal of licence
- 96. Appeal
- 97. Equal treatment
- 98. Oversight powers of the Central Bank
- 99. Sanctions
- 100. Inter-Institutional co-operation
- 101. Notification of External Administration
- 102. No retroactive effect of External Administration
- 103. Definitive character of payments
- 104. Use of Settlement Account
- 105. Validity and Enforceability of Financial Collateral Arrangements
- 106. Validity and Enforceability of Close-out Netting Arrangements
- 107. Substitution and topping-up of Financial Collateral
- 108. Perfection of pledged Financial Collateral

- 109. Enforcement of pledged Financial Collateral
- 110. Private International Law
- 111. Governing law

PART XIII

APPEALS

- 112. Jurisdiction to hear appeals
- 113. Procedure on appeal
- 114. Determination of appeals
- 115. Costs or expenses on appeal

PART XIV

SUPPLEMENTARY

- 116. Saving
- 117. Offences and penalty
- 118. Fraud on depositors
- 119. Jurisdiction and limitation
- 120. Evidence
- 121. Exempted Institutions

PART XV

MISCELLANEOUS

- 122. Offences and Penalties
- 123. Power of Central Bank to require information
- 124. Offence to suppress information
- 125. Revocation of permit or licence
- 126. Refusal re licence or permit
- 127. Alternate Dispute Resolution Scheme
- 128. Transactions and rights intact

- 129. Act No 18 of 1993 repealed
- 130. Act No. 49 of 1981 repealed
- 131. Commencement of section 52(2)(b)
- 132. Chap 79:02 amended

FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

FOURTH SCHEDULE

FIFTH SCHEDULE

SIXTH SCHEDULE

SEVENTH SCHEDULE

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REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 26 of 2008

[L.S.]

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

[Assented to 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:

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

PART I

PRELIMINARY

Short title 1. This Act may be cited as the Financial Institutions Act, 2008.

Interpretation 2. (1) In this Act—

“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;

“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 subparagraphs (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;

“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;

“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 credit worthiness, 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 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 and dealer respectively, as defined in the Securities Industry Act; Chap. 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; Chap. 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;

“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;

“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;
- (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 authorized 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;

“licensed foreign institution” means a foreign financial institution that is authorized 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, by-laws or other constituent document, or resolution of the directors or members;

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

“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 Cohabital Relationships Act, parent, brother, sister, children, the children of a cohabitational relationship, adopted children and step-children of the person;

“representative office” has the meaning assigned to in section 50(2);

“security” means any document, instrument or writing evidencing ownership of, or any interest in, the capital, debt, property, profits, earnings, or royalties of any person, or enterprise, and without limiting the generality of the foregoing, includes—

- (a) any bond, debenture, note or other evidence of indebtedness;

- (b) any share, stock, unit, unit certificate, participation certificate, certificate of share or interest;
 - (c) any document, instrument or writing commonly known as a security;
 - (d) any document, instrument or writing evidencing an option, subscription or other interest in or to a security;
 - (e) any investment contract;
 - (f) any asset-backed security;
 - (g) any document, instrument or writing constituting evidence of any interest or participation in—
 - (i) a profit sharing arrangement or agreement;
 - (ii) a trust; or
 - (iii) an oil, natural gas or mining lease, claim or royalty or other mineral right;
 - (h) an interest in the whole, or in part of, the net assets of a collective investment scheme; or
 - (i) any right to acquire or dispose of anything specified in paragraphs (a) to (h),
- but does not include—
- (j) currency;

- (k) a cheque, bill of exchange, or bank letter of credit;
- (l) a certificate or document constituting any interest in a deposit account with—
 - (i) a financial institution; or
 - (ii) a credit union within the meaning of the Co-operative Societies Act; and
- (m) a contract of insurance;

“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 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.

(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;
 - (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.

PART II

GENERAL PROVISIONS CONCERNING REGULATION, SUPERVISION, GUIDELINES AND PENALTIES

Central Bank

Objectives of supervision

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.

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

(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.

6. In the case of any inconsistency or conflict between ^{Inconsistency} 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.

Inspector

7. (1) The President shall, upon the recommendation ^{Appointment of} of the Governor, appoint a fit and proper person to be ^{Inspector} 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.

(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;
- (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

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. ^{Prohibition against disclosure}

(2) Notwithstanding subsection (1) or any other written law, the Central Bank, or a person authorized 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 purposes related to that regulation;
- (b) the Deposit Insurance Corporation for purposes related to its operations; or
- (c) the designated authority under the Proceeds of Crime 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.

(3) Further to subsection (2), the Central Bank may enter into a Memorandum of Understanding with the Deposit Insurance Corporation, the designated authority, 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 regulatory authority.

(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.

(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 authorizes 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 authorized 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

Regulations

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

- (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;
 - (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;
 - (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.

10. The Central Bank may issue guidelines on any Guidelines 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 No. 55 of 2000 Act, 2000, the Anti-Terrorism Act, 2005, No. 26 of 2005 or any other written law relating to the prevention of money laundering and combating the financing of terrorism; and
- (d) regulate the market conduct of licensees.

11. (1) Before Regulations are made pursuant to Draft Regulations 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.

12. Contravention of a guideline referred to in section Contravention of guidelines 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 authorized
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
- (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.

(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

(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;

- (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.

(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.

(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;
- (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.

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 authorizing 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.

(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.

19. The Central Bank shall issue Guidelines with

Guidelines for
approved securities

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;
- (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, by-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.

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.

Approval and issue
of licence

(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.

(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 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.

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

- (a) in respect of its licence;
- (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.

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

Revocation of licence

- (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;
- (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;
- (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.

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

(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 in Chambers, the Inspector shall 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 authorization 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.

(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*.

25. (1) Where the Board proposes to—

Notice of restriction

- (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—

- (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.

(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.

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

- (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.

(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.

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. Notification and confirmation of directions

(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.

(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.

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.

Mandatory revocation and restriction in cases 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—

- (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.

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. Information as to licensed institutions

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

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

- 32.** (1) A person other than a licensee shall not— False statements as to licensed status
- (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

- 33.** (1) A person who has been— Persons debarred from management
- (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;

- (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 Proceeds of Crime Act or any regulations made thereunder or such other statutory provision in relation to the prevention of money laundering and the combating of terrorist financing as may be in force from time to time;
 - (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,

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.

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

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

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 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.

(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;
 - (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 collateralized loan; or
 - (B) an outstanding credit card balance not exceeding sixty thousand dollars.

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.

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 policies 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

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), 42 (3), 43(1) and 43(4).

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

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

41. (1) Subject to this Act—

Prohibitions

- (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 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) 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 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;

No. 35 of 1995

(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 subsections (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.

(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

42. (1) 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 than one month and fully secured by investments that 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.

(2) A licensee that contravenes subsection (1) 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 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.

(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.

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

Limit on credit exposures to connected parties

(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) 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

(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 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.

Reporting
contravention of
credit exposure
limits

44. Where a licensee has contravened the limitations on credit exposures referred to in sections 42(1), 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.

(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 Industry 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.

(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.

(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.

(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.

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: Restriction on dividends and requirements to maintain assets

- (a) all capitalized 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);
- (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
- (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.

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, Limits on financing for shares held in trust

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 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.

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

Branches and
representative offices

- (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
- (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;
- (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 authorizing 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.

(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.

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

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

Notification of new products and services

- (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).

(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.

(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 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.

53. (1) A person other than a licensee shall not issue Advertisements 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 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

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

(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.

PART VI

RESERVES AND OTHER REQUIREMENTS

56. (1) Every licensee shall hold and maintain a ^{Statutory Reserve} reserve fund to be known as the ^{Fund} 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;
- (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 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.

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. ^{Maximum liability}

(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.

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. ^{Preference to Trinidad and Tobago securities and fixing ratio}

(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

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 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 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.

(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 authorized 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 authorized by the Central Bank shall regard and deal with all information and documents obtained in the course of his duties as confidential.

(16) If the Inspector or any person authorized 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 authorized 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 authorized 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 constitute 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 authorized by the Central Bank to enter into the premises of the licensee to fulfill the requirements of subsection (13).

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.

Inspector to report
on insolvency

(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 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 authorization of the Board, for the winding-up of the licensee or the financial holding company on behalf of its depositors.

(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.

64. (1) In any case where a petition is made by ^{Winding-up} 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 pendency of the petition unless it is authorized 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.

(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—

- (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.

(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 authorizing 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
- (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.

68. (1) The Central Bank shall not require a restructuring under section 67—

a Restructuring not required in certain cases

(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

(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.

(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.

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) organizational, 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;
- (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;

- (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 jeopardize the financial position of the licensee or licensees and any insurance company registered under the Insurance Act, within the financial group;
 - (b) no double or multiple gearing or excessive leveraging of capital exists or will take place;

- (c) the financial group is structured and managed in such a manner that it may be supervised by the Central Bank;
- (d) each member of the financial group maintains adequate 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 sections 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

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 prevail over this section.

(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—

(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.

(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.

(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.

72. (1) Notwithstanding any other law but subject to Requirements for significant shareholder 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 prevail over this section.

(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.

(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—

- (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.

(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 Attorney General may apply to for the disposal of shares on such terms and conditions as the 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.

73. (1) Notwithstanding any other law, a merger ^{Mergers} 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).

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

(3) A proposed amalgamation agreement submitted to the Central Bank pursuant to subsection (2), shall not be amended without 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;
- (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 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).

(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.

(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;
- (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) 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.

(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.

74. (1) A financial entity or a significant or Acquisitions 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—

(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.

(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
- (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;
- (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.

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. Publication of inactive accounts

(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 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.

(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

78. (1) The Central Bank may, by notice, require a—

- (a) licensee, its servant or agent;
- (b) financial holding company, controlling shareholder, or significant shareholder 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;
- (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, by notice—

- (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 by notice 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.

(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).

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). Consolidated audited financial statements to be open to publication and inspection

(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.

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. Appointment of auditor

(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.

(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.

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- (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 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 collateralized 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 realization 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.

(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).

(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 re-appointed,

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
- (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.

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—

Duties of auditor to report to Board

- (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;
- (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 jeopardize 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 jeopardize 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 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.

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. Protection of auditor and other persons providing information

(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

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 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 minimize the prejudice.

(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 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.

(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”.

87. Where the Central Bank reasonably believes that ^{Injunctive relief} 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 authorized 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.

PART XI

FACILITATION OF TRANSFERS AND UNDERTAKINGS

88. In this Part—

Definitions

“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 “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.

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;
 - (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

Supplementary provisions as to transfers

- (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

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.

(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
Chap. 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.

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 reorganization 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;

“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 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;

“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.

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, By-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 organizational 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.

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 regulation 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 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.

(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.

96. Where an Operator is aggrieved by a decision of ^{Appeal} 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) Sections 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.

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.

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.

Inter-Institutional
co-operation

Division 2— *Soundness of Payment Systems*

101. (1) Upon knowledge of External Administration in respect of any Participant the Inspector shall promptly notify the Governor of such fact.

Notification of
External
Administration

(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.

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.

No retroactive effect
of External
Administration

(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.

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—

Definitive character
of payments

(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.

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—

Validity and enforceability of Close-out Netting Arrangements

- (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.

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—

Substitution and topping-up of Financial Collateral

- (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.

108. The pledge of Financial Collateral is validly perfected between parties and against third parties once the Financial Collateral is delivered, transferred,

Perfection of pledged Financial Collateral

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

- (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.

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. ^{Governing law}

PART XIII

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). ^{Jurisdiction to hear appeals}

(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(1);
- (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);
- (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

(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.

113. Subject to this Part, the procedure for Procedure on appeal determining appeals shall be in accordance with the Civil Proceedings Rules of the Supreme Court of Judicature.

114. (1) On an appeal, the appellant and the Central Determination of appeals Bank as respondent may appear in person or be represented by counsel 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.

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 by-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.

(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;

(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 regulation 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;
- (d) does anything which is in contravention of this Act, regulations or by-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

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 three 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.

120. (1) In any proceeding, any document referred to ^{Evidence} 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;
- (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

(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 Money Lenders Act do not apply to licensees.

PART XV

MISCELLANEOUS

Offences and
penalties

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.

Fourth Schedule

(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 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

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 regulation 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 authorize 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.

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.

129. The Financial Institutions Act, 1993 is repealed. Act No. 18 of 1993 repealed

130. Notwithstanding section 116, the Financial Institutions (Non-Banking) Regulations, 1981 and the Banking Regulations are repealed. Act No. 49 of 1981 repealed

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. Commencement of section 52(2)(b)

132. The Central Bank Act is amended in the manner specified in the Seventh Schedule. Chap. 79:02 amended

FIRST SCHEDULE

(Section 17)

<i>Class</i>	<i>Activities</i>
1. Confirming House or	Confirming, accepting or Acceptance House 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
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

<i>Class</i>	<i>Activities</i>
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 rela- tion to foreign exchange and commodities.

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), 72(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.
- (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;
- (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 board of directors*

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.

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.

THIRD SCHEDULE

(Sections 121 and 123)

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. 82:07, 79:07 | 2. The Agricultural Development Bank of Trinidad and Tobago established under the Agricultural Development Bank Act. |
| Chap. 33/38 No. 1
Chap.33:04 | 3. Any Society registered under the Building Societies Act. |
| Chap. 32:50 | 4. Any Society registered under the Friendly Societies Ordinance. |
| 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

	<i>Institutions</i>	<i>Activities</i>
	Export-Import Bank of Trinidad and Tobago Limited.	<p>(a) The business of a Confirming House, Acceptance House, Finance House or Finance Company;</p> <p>(b) Financial Services Activities as described in paragraph 8 of the First Schedule.</p>
Chap. 83:02	A securities Company registered under the Securities Industry Act	<p>(a) The business of repurchase agreements; and</p> <p>(b) Lending and borrowing against securities as defined in the Securities Industry Act.</p>
Chap. 84:01	Insurance Companies registered under the Insurance Act.	<p>(a) The collection of funds in the form of premiums for the purpose of insurance business</p> <p>(b) The activities set out in paragraphs 5, 6 and 7 of the First Schedule.</p>

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, by-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, by-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	

FOURTH SCHEDULE—CONTINUED

Section	General Description of Offence	Criminal Penalty (Applicable only on summary conviction)	Administrative Fine (Licensee)	Administrative Fine (Individual)
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	
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.	\$5000,000	\$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	

FOURTH SCHEDULE—CONTINUED

Section	General Description of Offence	Criminal Penalty (Applicable only on summary conviction)	Administrative Fine (Licensee)	Administrative Fine (Individual)
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	
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(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	

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	

FOURTH SCHEDULE—CONTINUED

Section	General Description of Offence	Criminal Penalty (Applicable only on summary conviction)	Administrative Fine (Licensee)	Administrative Fine (Individual)
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	
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	

FOURTH SCHEDULE—CONTINUED

Section	General Description of Offence	Criminal Penalty (Applicable only on summary conviction)	Administrative Fine (Licensee)	Administrative Fine (Individual)
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	
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	

FOURTH SCHEDULE—CONTINUED

Section	General Description of Offence	Criminal Penalty (Applicable only on summary conviction)	Administrative Fine (Licensee)	Administrative Fine (Individual)
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
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	

FOURTH FOURTH SCHEDULE—CONTINUED

Section	General Description of Offence	Criminal Penalty (Applicable only on summary conviction)	Administrative Fine (Licensee)	Administrative Fine (Individual)
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	
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	

FOURTH SCHEDULE—CONTINUED

Section	General Description of Offence	Criminal Penalty (Applicable only on summary conviction)	Administrative Fine (Licensee)	Administrative Fine (Individual)
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	

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.
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.

SIXTH SCHEDULE—CONTINUED

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 *prorata* basis, where—

- (a) a licence is issued for the first time; or
- (b) a branch is established; or

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.

SEVENTH SCHEDULE

(Section 130)

AMENDMENTS TO THE CENTRAL BANK ACT, CHAP. 79:02

(a) in section 3—

(i) in subsection (3)—

(A) delete the word “and”;

(B) delete the full stop occurring in paragraph (f) and substitute the words “; and”; and

(C) insert after subsection (3)(f), the following new paragraph:

“(g) generally, have the powers and undertake the duties and responsibilities assigned to it by any other law.”;

(ii) repeal subsection (4) and substitute the following subsection:

“(4) Neither the Bank, a director, an officer, an employee nor any person acting on behalf of the Bank is liable for any action, claim or demand or any liability in damages or any other remedy whatever including costs, for anything done or omitted in the discharge or purported discharge of the functions of the Bank under this Act or any other written law, unless it is shown that the act or omission was reckless or in bad faith.”;

(b) in section 36—

(i) delete the full stop occurring in paragraph (bb) and substitute the words “; and”; and

(ii) insert after paragraph (bb), the following new paragraph:

“(cc) supervise the operations of payments systems in Trinidad and Tobago generally, Interbank Payment Systems in accordance with the Financial Institutions Act and the transfer of funds by electronic means including money transmission or remittance business.”;

(c) repeal section 44H and substitute the following new section:

“Protection of persons acting under this Part 44H. Neither the State, the Minister, the Bank, its directors and officers, any person acting on behalf of the Bank nor any person

appointed by the Bank under section 44D is liable to any action, claim or demand or any liability in damages or any other remedy whatever including costs, for anything done or omitted in the discharge or purported discharge of the functions of the Bank under this Part, unless it is shown that the act or omission was reckless or in bad faith.”;

(d) repeal section 44L and substitute the following new section:

Membership
Fund 44L Membership in the Fund is compulsory for every institution licensed under the Financial Institutions Act, including a licensed foreign financial institution in respect of its deposits held in Trinidad and Tobago.”;

(e) in section 60, insert the following new subsection:

“(6) Fees and charges, as prescribed, shall be payable to the Central Bank by each person regulated by the Central Bank in respect of the administration of its functions under this Act, the Financial Institutions Act, the Insurance Act and any other written law.”;

(f) in section 56, by inserting after the words “objects,” occurring in subsection (1) the words “and subject to section 8 of the Financial Institutions Act,”.

Passed in the House of Representatives this 14th day of November, 2008.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say, by the votes of 30 members.

Clerk of the House

Passed in the Senate this 2nd day of December, 2008.

J. SAMPSON
Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say, by the votes of 29 Senators.

N. JAGGASSAR
Clerk of the Senate

Senate amendments agreed to by the House of Representatives this 12th day of December, 2008.

J. SAMPSON
Clerk of the House