

ANTIGUA AND BARBUDA



INTERNATIONAL BANKING ACT, 2016

No. of 2016

INTERNATIONAL BANKING ACT, 2016

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ANTIGUA AND BARBUDA
INTERNATIONAL BANKING ACT

No. [...] of [2016]

BILL

FOR

AN ACT to provide for the regulation and supervision of international banks and for incidental and connect purposes.

ENACTED by the Parliament of Antigua and Barbuda, as follows:

PART I

PRELIMINARY

1. Short title and Commencement

This Act may be cited as the International Banking Act 2016 and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

2. Interpretation

In this Act -

“affiliate” in relation to a financial institution (“F”) means

- (a) a company which is or has at any relevant time been
 - i. a holding company or subsidiary of F;
 - ii. a subsidiary of a holding company of F; or
 - iii. a holding company of a holding company or a subsidiary of a subsidiary of F; or
- (b) any company over which F has control;
- (c) any company over which F and any person associated with F has control;
- (d) any company which has common ownership with F; and
- (e) any company which has the same beneficial owner and share common management and interlinked businesses with F; and “affiliation” shall be construed accordingly.

“bank” means any licensed international financial institution whose operations include the acceptance of deposits subject to the transfer by the depositor by cheque or wire transfer;

“banking activities” means an international banking corporation operating in a lawful and prudent manner which may engage in any generally acceptable banking activities from within Antigua and Barbuda and elsewhere, CARICOM Grouping.

"banking business" means

- (a) the business of receiving funds through -
 - i. the acceptance of monetary deposits which are repayable on demand or after notice or any similar operation;
 - ii. the sale or placement of bonds, certificates, notes or other securities

and the use of such funds, either in whole or in part, for extensions of credit or investment for the account and at the risk of the person doing such business;

- (b) any other activity recognised by the Commission as banking business and which a financial institution may additionally be authorised to do;

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

“Board of Directors” means the Board of Directors of the Commission established under Section 8 of the FSRC Act No 5 of 2013;

"borrower group" means

- (a) a family group comprising an individual and that individual’s spouse, parent, child, brother or sister where each member of the group is substantially dependent upon the same income sources;
- (b) a company in which the family group indicated in paragraph (a) has control;
- (c) a group of companies which is under a common control;
- (d) a group of persons in which the credit worthiness, ability to generate funds or the future viability of each, depends on one or other member of the group;
- (e) a group of persons in which one member has power directly or indirectly to control the other members;
- (f) any other group of persons as may be determined by the Commission;

"business of a financial nature" means the collection of funds in the form of deposits, shares, loans, premiums, and the investment of such funds in loans, shares and other securities.

“The CARICOM grouping” is the grouping comprised within the jurisdictional areas of the Member States of the Community of States established by the Treaty signed on the 4th day of July, 1973, at Chaguaramas and all subsequent revisions and amendments to the treaty.

"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 Commission, or such other capital account or similar measure as approved by the Commission;

"Commission" means the Financial Services Regulatory Commission as preserved and continued under section 4 of the FSRC Act No. 5 of 2013 (as amended);

“continued licensed financial institution” means a licensed financial institution that has come under this Act pursuant to a certificate of continuance and that has not ceased to be a licensed financial institution under this Act;

"connected" or "related" means where the interest of two or more persons or groups of persons are so interrelated that they should be considered as a single unit or borrower group;

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

- (a) exercise more than twenty per cent of the voting rights at any meeting of shareholders of a licensed financial institution, company or unincorporated body;
- (b) elect a majority of the directors of a licensed financial institution, company or unincorporated body; or
- (c) exert influence over the business and affairs of a licensed financial institution, company or unincorporated body; and the terms “controlling interest” and “controlling shareholder” shall be construed accordingly;

“corporation” means a body corporate that is incorporated or continued under this Act and that has not ceased to be a corporation under the International Business Corporations Act Cap. 222 (as amended);

“Court” means the High Court of Antigua and Barbuda;

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

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

"exposure" means the amount at risk and includes:

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

"external auditor" means an auditor appointed under section 147 of the IBC Act that is:

- (a) a person who is a member of a professional body of accountants;
- (b) any other person approved by the Commission;

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

“FSRC Act” means the Financial Services Regulatory Commission Act No. 5 of 2013;

“FSRC” or “the Commission” means the Financial Services Regulatory Commission;

“international banking” means the carrying on from within Antigua and Barbuda of banking in any currency that is foreign in every country of the CARICOM Grouping; but the keeping of external accounts for residents in any foreign currency under exchange control licence or regulation is not carrying on international banking by virtue of that activity alone;

“international banking business” means

- (a) the business of receiving foreign funds through:
 - i. the acceptance of foreign money deposits payable upon demand or after a fixed period or after notice;
 - ii. the sale or placement of foreign bonds, foreign certificates, foreign notes or other foreign debt obligations or other foreign securities; or
 - iii. any other similar activity involving foreign money or foreign securities;
- (b) the business of using the foreign funds so acquired, either in whole or in part, for
 - i. loans, advances and investments;
 - ii. the activities of the licensee for the account of or at the risk of the licensee;
 - iii. the purchase or placement of foreign bonds, foreign certificates, notes or other foreign debt obligations or other foreign securities; or
 - iv. any other similar activity involving foreign money or foreign securities; or;
- (c) the business of accepting in trust from persons resident outside Antigua and Barbuda or from prescribed persons
 - i. amounts of money in foreign currencies or in foreign securities or both;
 - ii. foreign personal property or foreign movable property; or
 - iii. foreign real property or foreign immovable property;

“Foreign” in reference to money means:

- i. a currency recognized by the Eastern Caribbean Commission as legal tender issued by a non-CARICOM state.
- ii. any other articles, securities or property acquired or in any transaction of an international bank means the item originates and is registered in a non-CARICOM jurisdiction.

“IBC Act” means the International Business Corporations Act Cap. 222 (as amended);

“international trust” means the

- (a) the acting as trustee of funds in a currency that is foreign in every country within the CARICOM Grouping;
- (b) the managing or administering of real property situated outside Antigua and Barbuda or the managing or administering of personal property of persons who are not resident within Antigua and Barbuda; or
- (c) the managing or administering of any property of a corporation other than its real property situated in Antigua and Barbuda.”

"large exposure" means an exposure to a person or a borrower group, which amounts to ten per cent or more of the capital base of a licensed financial institution;

"licensed financial institution" means any person or incorporated entity licensed to conduct banking business under the provisions of this Act;

"Minister" means the Minister responsible for Finance in Antigua and Barbuda;

"person" includes a public body, company, partnership, trust, association or body of persons whether corporate or unincorporate;

"permitted person" includes a person conducting international trade or business as defined in the International Business Corporations Act Cap. 222 (as amended); and include persons who are not citizens of Antigua and Barbuda;

"place of business" means any office including a mobile office of a financial institution, in Antigua and Barbuda;

"principal place of business" means, a licensed financial institutions principal office in Antigua and Barbuda;

"related party" includes: any financial holding company, subsidiary or other affiliate of a licensed financial institution,

- (a) directors, officers, and significant shareholders of a licensed financial institution, subsidiary or other affiliate of a licensed financial institution,
- (b) a relative or other members of the households of persons listed in paragraph (a),
- (c) any entity that is controlled by a person described in paragraphs (a) and (b) , or
- (d) any other person or class of persons determined by the Commission to be a related party because of its past or present interest in or relationship with the licensed financial institution being such that it can reasonably be expected that this person can influence the decision of the licensed financial institution regarding a transaction;

"relative" means a spouse or former spouse, son, daughter, step-son, step-daughter, brother, sister, aunt, uncle or child of aunt or uncle or any person related by marriage, father, mother, any lineal ascendant and descendant of the individual or spouse of the individual;

"resident" means

- (a) any natural person who is either a citizen of Antigua and Barbuda, holder of a residence permit or holds an Organization of Eastern Caribbean States' Indefinite Stay permit granted under the Immigration and Passport Act 2014 no.6 of 2014 or
- (b) any corporate body or entity whose major shareholders, meaning owning more than 60 percent of the issued shares, are natural persons can be categorized in one of the groups in paragraph (a) above.

(1) For the purpose of this Act, the following are residents, namely -

- (a) a natural person ordinarily resident in Antigua and Barbuda for a period of not less than twelve months or a citizen of Antigua and Barbuda with a residence in Antigua and Barbuda;
- (b) any incorporated or other body, incorporated, formed or organised in Antigua and Barbuda, the majority of the shares or other ownership of which is beneficially held by persons who are residents within the meaning of paragraph (a);
- (c) any incorporated or other body, wherever incorporated, formed or organised, that is controlled directly or indirectly by a person described in paragraph (a) or (b);
- (d) any incorporated body or other body that is controlled by a body described in paragraph (c) by the Government of Antigua and Barbuda or any agency thereof;
- (e) Her Majesty in right of Antigua and Barbuda;
- (f) a trust -
 - i. established by a resident as defined in any of paragraphs (a) to (e), other than a trust for the administration of funds for the benefit of persons a majority of whom are persons resident outside Antigua and Barbuda; or
 - ii. in which residents are defined in any of paragraphs (a) to (e) have fifty percent or more of the beneficial interest; or
- (g) any incorporated or unincorporated body that is controlled directly or indirectly by a trust defined in this section as a resident of Antigua and Barbuda.

(2) A reference in this Part to any beneficial interest or to anything being beneficially owned or held, and includes ownership through a trust, legal representative, agent or other intermediary.

(3) A license financial institution controlled directly or indirectly by residents as defined in subsection (1) is, for the purposes of this Act, deemed not to be a resident in respect of any international trade or business for which it is licensed under this Part.

(4) A Person who holds a passport under the Antigua and Barbuda Citizenship by Investment Act No. 2 of 2013 (as amended).

(5) A Person is not resident for the purposes of this Part if he is not resident within the meaning of subsection (1) of the foregoing definition.

“significant shareholder” means a person who either alone or with an affiliate or related or connected person, is entitled to exercise or control more than five percent of the voting rights at any general meeting of the licensed financial institution or another company of which the licensed financial institution is a subsidiary;”

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

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

- (a) advances or credit facilities granted without security; or
- (b) in the case of advances or credit facilities against security, any part of such advances or credit facilities which at any given time exceeds the market value of the assets

comprising the security given, or which exceeds the valuation approved by the Commission whenever it deems that no market value exists for those assets.

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

(6) For the purposes of this Act, a person is connected to another person for the purposes of the ultimate beneficial ownership:

- (a) where that person is an individual, the person is:
 - i. the relative of that person;
 - ii. the trustee of any settlement under which that person has a life interest in possession;
 - iii. a company of which that person is a director or controlling or significant shareholder;
 - iv. an employee or partner of that person;
- (b) where that person is a company, the person is:
 - i. a director or controlling or significant shareholder of that company;
 - ii. a subsidiary or affiliate of that company;
 - iii. a director or employee of any such subsidiary or affiliate of that company;
- (c) where that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in a company or under which they undertake to act together in exercising their voting power in relation to the company, that other person.

PART II

LICENCES

3. Types of License

(1) A Person who desires to carry on international banking business in Antigua and Barbuda shall apply in writing to the Commission for the granting of a licence under any of the following categories -

- (a) Class I International Banking Licence;
- (b) Class II International Banking Licence;
- (c) Class III Composite International Banking and Trust Licence.

(2) A Class I International Banking Licence permits the licensed institution to carry on international banking business for an unrestricted list of customers.

(3) A Class II International Banking Licence permits the licensed institution to carry on international banking business for a restricted list of customers, approved by the Commission from time to time, or specified in the list issued as part of the terms upon which the licence is granted.

(4) A Class III International Banking and Trust Licence permits the licensed institution to carry on international banking and trust services for an unrestricted list of customers.

4. Requirement for licence

(1) A person shall not carry on international banking business or hold himself out as carrying on international banking business in Antigua and Barbuda without a licence granted by the Commission under subsection 3.

(2) A financial institution which, at the commencement of this Act, holds a valid licence to carry on international banking business in Antigua and Barbuda shall be deemed to have been granted a licence under section 9.

(3) Notwithstanding the provisions of subsection (2), the Commission, may, within such period of the commencement of this Act, issue to an existing financial institution which holds a license under the IBC Act.

(4) Any person who intends to carry on international banking business in Antigua and Barbuda shall, , apply for a license under the provisions of section 8.

(5) The Commission shall not issue a license to a person whose ownership is held directly or indirectly in “bearer shares” or otherwise unknown.

(6) No licensed institution shall accept currency or bearer negotiable instruments in any amounts for any transactions.

(7) No licensed financial institution shall serve as originator or recipient in the transfer of funds on behalf of a person who is not an account holder or in the process of opening an account at that institution.

(8) Any person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction:

- (a) in the case of a licensed financial institution, to a penalty not exceeding one hundred thousand US dollars.
- (b) in the case of a director or a manager, to a penalty not exceeding one hundred thousand US dollars.
- (c) The Commission may impose an administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues.

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

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

(2) Where the Commission has reasonable cause to suspect that-

- (a) any person is carrying on international banking business without a licence granted under this Act; and
- (b) evidence of contravention of subsection (1) of section 4 is to be found on any premises in Antigua and Barbuda

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

(3) Any order issued by the Court under subsection (2) may authorize:

- (a) the Commission to detain the relevant documents for a period not exceeding thirty days;
- (b) the officer or officers to make copies of the relevant documents; and
- (c) the Commission to retain copies of the relevant documents.

(4) It shall be lawful for any officer or officers, in whose name a warrant has been granted pursuant to subsection (2), in the case of resistance, to break open any door, and to force and remove any other impediment or obstruction to such entry, search or seizure.

(5) A person refusing to make available for examination any books, accounts and records having been requested to do so by the Commission commits an offence and is liable on conviction to a penalty not exceeding one hundred thousand US dollars.

(6) The Commission may impose an administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues.

6. Appointment of receiver for failure to hold licence

Notwithstanding subsection (8) of section 4, where a person is found under subsection (2) of section 5 to be conducting international banking business without a licence, the Commission may appoint a receiver for the person under paragraph (j) of section 104.

7. Repayment of funds obtained without licence

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

8. Application for licence

An application for a licence shall be made in writing to the Commission, and shall be accompanied by the non-refundable application fee specified in Schedule 1 and the following documents and other information:

- (a) authenticated copies of the instrument under which the applicant is organised;
- (b) a statement of the address of its head office and the locations of the principal and other places of business where the applicant proposes to do business;
- (c) detailed information regarding the persons who will hold or ultimately benefit from significant shareholdings, directly or indirectly, the respective values of the shares and the percentage of ownership;
- (d) detailed information regarding the directors and officers, including their qualifications and experience, financial position, business interests and performance of the business concerns under their control or management;
- (e) where the applicant will be a member of a financial holding company or other corporate group, a complete diagram of the group, including all direct and indirect affiliates and associates of the financial institution and the nature of their relationship to the group;
- (f) documentary evidence of the capital of the applicant seeking to be licensed, including the original sources, and any other sources of funds;
- (g) a business plan, including projected statement of financial position, financial performance and capital and full particulars of the business the applicant proposes to operate;
- (h) an operating plan and documented internal controls system; and
- (i) such other information as the Commission may require.

(2) A foreign financial institution that intends to open a subsidiary or an affiliate of an international bank within Antigua and Barbuda shall in addition to submitting the documents and other information required under subsection (1), submit with its application:

- (a) a certificate showing that the home banking supervisor of the jurisdiction in which it was incorporated, formed or organised has no objection to its application for a licence to do business in Antigua and Barbuda; and
- (b) evidence satisfactory to the Commission that it is subject to a comprehensive supervision on a consolidated basis by the home banking supervisor of the jurisdiction.

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

9. Grant or denial of licence

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

(2) A licence shall not be granted by the Commission, unless it is satisfied:

- (a) as to the validity of the documents submitted in accordance with section 8;
- (b) that the business plan and financial projections are based on sound analysis under reasonable assumptions and the business plan is feasible;
- (c) as to the financial condition and history of the applicant;
- (d) as to the character of the business of the applicant;
- (e) that the proposed directors and officers are fit and proper in accordance with the criteria under section 88;
- (f) as to the adequacy of the capital structure and compliance with the minimum capital requirement of section 31;
- (g) as to the earning prospects of the applicant;
- (h) as to the suitability of the significant shareholders;
- (i) as to the transparency of the ownership structure;
- (j) as to the acceptable sources of initial capital;
- (k) as to the adequacy of the applicant's arrangements for governance, including but not limited to accounting, risk management, and internal control systems and records; and
- (l) that the proposed legal and managerial structures will not hinder effective supervision, including supervision on a consolidated basis.

(3) A licence shall not be granted by the Commission for a subsidiary or branch of a foreign financial institution to conduct international banking business unless the Commission is satisfied that in addition to the satisfaction of the requirements in subsection (2), the following requirements are satisfied:

- (a) the foreign financial institution is subject to supervision and regulation that is satisfactory to the Commission, including supervision on a consolidated basis within its home country, and
- (b) arrangements satisfactory to the Commission for cooperation, coordination, and information-sharing with the home country supervisor are in place.

(4) Within a reasonable time of its receipt of a completed application for a licence and on completion of full due diligence reports on the proposed shareholders, directors, and members of the senior management team, the Commission shall either:

- (a) grant the licence and may place any restrictions as the Commission considers to be prudent in respect of the licence; or
- (b) refuse to grant the licence, if the Commission is of the opinion that it would be undesirable in the public interest to grant the licence or the criteria for approving a

license are not met. The Commission need not give any reason for so refusing but shall inform the applicant of the unsuccessful application.

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

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

(7) No person making an application for a licence under this Act is entitled to be granted a licence and this shall apply in circumstances where the applicant meets the requirements set out in this Act; the Commission shall have and maintain an absolute right to require and consider additional information and any other reasonable requirements from the applicant before the application for a licence is considered.

(8) The Commission shall have and maintain, the sole, absolute and exclusive right and authority to determine of the grant of a licence under the Act and, unless amended by an Act of Parliament, this right shall not be abridged, hindered or challenged or enquired into by any Court within Antigua and Barbuda except by way of judicial review.

10. Licence fees and penalty for default

(1) Every licensed financial institution shall pay an annual licence fee as specified in Schedule I.

(2) All licence fees paid under this Act shall be payable to the Commission no later than fifteen days after the anniversary date of its license.

(3) A licensed financial institution which fails to pay the annual licence fees under subsection (1), commits an offence and is liable on conviction to a penalty not exceeding one hundred thousand US dollars .

(4) The Commission may impose an administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues.

11. Permissible activities

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

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

- (a) acceptance of deposits and other repayable funds;
- (b) lending;
- (c) financial leasing;
- (d) investment in financial securities;
- (e) money transmission services;

- (f) issuing and administering means of payment, including credit cards, travellers cheques, bankers' drafts, and electronic money;
- (g) guarantees and commitments;
- (h) the keeping and administration of securities;
- (i) credit reference services;
- (j) electronic banking;
- (k) payment and collection services;
- (l) dealing in foreign currency;
- (m) trust business providing it's the holder of a composite international banking and trust licence; and
- (n) any other services that the Commission may determine as banking practice.

(3) The Commission may by prudential standards issued pursuant to section 184 restrict the permissible activities of a licensed financial institution in general, or a class of licensed financial institutions, or remove the restriction so imposed as it considers appropriate.

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

12. Conditions and variations of conditions to a licence

(1) A licence issued under this Act shall be subject to the conditions that the Commission may impose, including the activities in which the licensed financial institution is permitted to engage.

(2) The Commission may amend, add to, vary or cancel any condition attached to a licence.

13. Renewal of licence

(1) Where a licence issued under this Act

- (a) has ordinarily expired; or
- (b) has expired while the licence is under any action involving the Commission enforcing or attempting to enforce any part of this Act; or any other similar reason;

(2) The Commission is under no obligation to renew or issue a new licence to any person.

(3) The Commission's decision on the granting of a licence shall not be abridged, hindered, challenged or altered except to the extent that the Court may declare the decision of the Commission unreasonable but shall not make any award for damages of any kind.

(4) The Court shall have the power to order that the Commission reconsider the application in the first instance only but, in accordance with sections 9 (7) & (8), the Court shall be prohibited in all circumstances from ordering that the licence be granted to any person.

14. Register of licensed financial institutions

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

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

15. Revocation of licence

(1) The Commission may revoke any licence to carry on international banking business if the licensed financial institution:

- (a) fails to commence operations within a period of six months following the granting of the licence;
- (b) in connection with the application for the licence, provided false, misleading or inaccurate information or suppressed material information;
- (c) fails to comply with the conditions of its licence or the measures required by the Commission in accordance with section 12;
- (d) is in breach of any of the provisions of this Act which is applicable;
- (e) is conducting its affairs in a manner detrimental to the national and regional interests or to the interest of its depositors;
- (f) fails to maintain sufficient capital or liquidity to meet its liabilities;
- (g) has not fulfilled or is unlikely to fulfill the minimum criteria for licensing under this Act;
- (h) is convicted of an offence under the Money Laundering (Prevention) 1996 (as amended);
- (i) merges or amalgamates with another company or licensed financial institution and the licence is no longer required; or
- (j) loses or the parent company of the licensed financial institution loses its authorization to conduct banking business or business of a financial nature in its home jurisdiction or bankruptcy or insolvency proceedings have been or are to be initiated.

(2) Before revoking any licence under subsection (1), the Commission shall give the licensed financial institution concerned notice in writing of its intention to do so, specifying the grounds upon which it proposes to make the revocation and shall require the licensed financial institution to submit to the Commission within a specified period being not less than thirty days, a written statement of objections to the making of the revocation and thereafter, the Commission shall advise the licensed financial institution of its decision.

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

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

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

(6) Where a licence to carry on international banking business has been revoked, the Commission shall, as soon as practicable cause a notice of the revocation to be published in the official *Gazette* and a local newspaper and cause such other steps to be taken as it considers necessary to inform the public of the revocation.

16. Restricted words, names, and practices

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

(2) Except with the written consent of the Commission, no person other than a licensed financial institution shall:

- (a) use the words "bank", "financial institution", "savings" and "loan", or any of their derivatives or any mutations in any language, or any other word indicating the carrying on of international banking business, in the name, description or title under which a person is carrying on international banking business in Antigua and Barbuda; or
- (b) make any representation to the effect in any other manner for the purpose of indicating that a person is carrying on international banking business in Antigua and Barbuda.

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

(4) No person other than a licensed financial institution shall, except with the written consent of the Commission:

- (a) make or continue to make representations in any billhead, letter, letterhead, circular, paper, notice, advertisement or in any other manner that the person is carrying on international banking business;
- (b) in any manner solicit or receive deposits from the public, or any employee of that person.

(5) Any person who contravenes the provisions of this section commits an offence and is liable on summary conviction to a penalty not exceeding one hundred thousand US dollars or its equivalent in Eastern Caribbean Currency.

(6) The Commission may impose an administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues.

17. Display of licence certificate

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

18. Authorisation of location and approval of new business premises

(1) Any licence granted under this Act shall authorise the licensed financial institution to carry on international banking business in Antigua and Barbuda at the place of business designated in the licence and at such other place as the Commission may in writing authorise.

(2) A licensed financial institution shall not open a new place of business or change the location of an existing place of business in Antigua and Barbuda without the prior approval of the Commission.

(3) No licensed financial institution shall close an existing place of business in Antigua and Barbuda without having given ninety days prior notice to the Commission.

(4) The Commission, may direct the closing of a branch or subsidiary of a licensed financial institution operating outside Antigua and Barbuda or impose limitations on the activities of the licensed financial institution or subsidiary if the Commission determines that the supervision by the host country supervisor is not adequate compared to the risks that the branch presents to the viability or soundness of the licensed financial institution.

(5) No licensed financial institution may establish or change the location of an electronic banking system in a place other than a place of business approved under subsection (2), without having given thirty days prior notice to the Commission.

(6) Where a licensed financial institution operating under a valid licence has, at the commencement of this Act, established an electronic banking system in a place other than a place of business the licensed financial institution shall notify the Commission of the location of all the electronic banking systems within sixty days of the date of the commencement of this Act.

(7) A licensed financial institution which:

- i. opens a new place of business or changes the location of an existing place of business without the prior approval of the Commission under subsection (2);
- ii. closes an existing place of business without giving notice under subsection (3);
- iii. establishes or changes the location of an electronic banking system without giving notice under subsection (5),

commits an offence and is liable on conviction to a penalty not exceeding one hundred thousand US dollars.

(8) The Commission may impose an administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues.

PART III

OWNERSHIP STRUCTURES

19. Ownership or control of licensed financial institutions

(1) Except with the written approval of the Commission, no person, acting directly or indirectly, individually or jointly with one or more persons, shall hold or acquire shares in a licensed financial institution which, together with any existing direct or indirect holdings of that person, exceed the supervisory threshold of five per cent of the share capital as prescribed by regulation.

(2) Within three months of this Act coming into force, all licenced financial institutions which existed before the Act comes into force shall give written notice to the Commission of any holding which exceeds the supervisory threshold of five per cent of the share capital.

(3) All financial institutions registered for the first time after this Act comes into force shall be bound by (1) above.

(4) With reference to a licenced financial institution described at (2) above, the Commission shall have and retain the authority to order that holdings which exceed the supervisory threshold set at (a) above to be changed in a manner which the Commission believes would best serve the interest of all interested parties.

(5) No person shall, without the consent of the Commission, acquire any additional shares which shall have the effect of increasing that person's percentage of the voting rights.

(6) This Part shall not apply to the Government, a public body or a statutory corporation who, at the commencement of this Act, has acquired more than twenty per cent of the total voting rights of all the members of the licensed financial institution.

20. Written application for approval

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

21. Criteria for approval for ownership or control

The Commission, in determining whether or not to grant its approval, shall make such investigations and inquiries as it considers necessary, and shall consider:

- (a) the terms and conditions of the proposed acquisition;
- (b) the financial resources and history of the shareholder or proposed shareholder;
- (c) the financial condition and capitalisation of the licensed financial institution;
- (d) any proposed change in the business, corporate structure, or management, including the board, of the licensed financial institution;
- (e) the completeness and truthfulness of the information submitted by the shareholder or proposed shareholder;
- (f) whether the shareholder or proposed shareholder is a fit and proper person pursuant to sections 88;
- (g) whether the board of the shareholder or proposed shareholder are fit and proper persons pursuant to section 88;
- (h) the identity of the ultimate beneficial owner of the shares and whether such owner is a fit and proper person; and
- (i) any other matters that the Commission considers appropriate.

22. Granting of approval

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

23. Person with control to be fit and proper

A person who has received the approval of the Commission under section 22 shall at all times during which the person holds the shares or control, continue to be a fit and proper person pursuant to sections 88 and 89.

24. Grounds for disapproval of a transfer

The Commission may disapprove a proposed transfer of shares in the interest of sound and prudent management of a licensed financial institution by preventing:

- (a) the acquisition of shares by a person who, does not satisfy the fit and proper criteria issued by the Commission or may exercise control to the detriment of that licensed financial institution, or
- (b) a transaction in any other situation in which the Commission has reason to believe that the transaction will be detrimental to that licensed financial institution.

25. Prohibition against selling below supervisory threshold

Except with prior notice to the Commission, no person, shall sell or dispose of shares in a licensed financial institution to any other person, if as a result of the transaction the shareholding falls below the supervisory threshold of five per cent of the share capital.

26. Group holdings to be deemed holdings of single member

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

27. Quarterly reports on ownership and control

(1) A licensed financial institution shall submit quarterly reports to the Commission on ownership and control of the licensed financial institution, which shall include:

- (a) the names and addresses of any person who owns five per cent or more of the total voting rights of the licensed financial institution;
- (b) where a person is a nominee, the name and address of the ultimate beneficial owner for whom a person holds the shares or other ownership interests;
- (c) the name and address of any person that control the licensed financial institution, acting directly or indirectly, and acting individually or jointly;
- (d) the name and address of all directors and officers; and
- (e) any other information as the Commission may determine.

28. Sanctions

(1) In the event that the Commission, determines that the provisions of this Part have been violated, the Commission may take one or more of the following actions:

- (a) issue an order requiring the divestment of so much of the offending interest as is necessary to secure compliance with the provisions of section 19;
- (b) prohibit the payment of dividends in respect of the shares; or
- (c) prohibit the issue of 'bonus shares' or 'rights issue' in respect of the shares.

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

29. Prohibition against transfer and acquisition of interest

(1) A director of a licensed financial institution who knows or ought reasonably to know of a transfer made in violation of this Part and who fails to disclose it to the Commission commits an offence and is liable on conviction to a penalty not exceeding one hundred thousand US dollars .

(2) Any person who knowingly acquires an interest in violation of this Part commits an offence and is liable on conviction to a penalty not exceeding one hundred thousand US dollars .

(3) The Commission may impose an administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues.

30. Variation of supervisory threshold

The thresholds referred to in section 19 and 32 may be varied by the Commission.

PART IV

FINANCIAL REQUIREMENTS AND LIMITATIONS

31. Minimum paid-up or assigned capital

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

- (a) A licensed institution holding a Class I International Banking License shall maintain a minimum capital as may be determined by the Commission from time to time, but not being less than three million US dollars in paid up capital, of which five hundred thousand US dollars shall be deposited in the Commission or in a manner approved by the Commission.
- (b) A licensed institution holding a Class II International Banking License shall maintain a minimum capital as may be determined by the Commission from time to time, but not being less than five hundred thousand US dollars in paid up capital, of which one hundred thousand US dollars shall be deposited in the Commission or in a manner approved by the Commission.
- (c) A licensed institution holding a Class III International Banking and Trust License shall maintain a minimum capital as may be determined by the Commission from time to time, but not being less than three million US dollars in paid up capital, of which five hundred thousand US dollars shall be deposited in the Commission or in a manner approved by the Commission.
- (d) Notwithstanding paragraphs (a) and (b) of this subsection the Commission may increase the amount of paid up capital upon a change in the financial position of the licensee.

(2) No licensed financial institution carrying on the business of international banking shall withdraw from the funds deposited or invested terms of sub-sections (1)(a)(b) or (c) without the approval of the Commission and the Commission shall immediately grant approval when the business of the licensed institution is wound up in accordance with the provisions of this Act.

(3) The Commission may from time to time:

- (a) by written notice to a licensed financial institution; and
- (b) by notice in a newspaper of general circulation in Antigua and Barbuda or in the official *Gazette*;

increase or vary the minimum amounts of required capital specified in sub-section (1) in respect of all or any category of international banking institution.

(4) Any licensed financial institution which contravenes sub-section (1) commits an offence and is liable on conviction to a penalty not exceeding one hundred thousand US dollars.

32. Maintenance of reserve fund

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

(2) No licensed financial institution shall declare, credit or pay any dividend or make any other transfer from profits whenever the declaration, credit, payment or transfer:

- (a) would result in an impairment of the capital required under section 31; or
- (b) if the licensed financial institution realises a net loss for that financial year.

33. Adequacy of capital

(1) A licensed financial institution shall not at any time have a capital adequacy ratio of less than the percentage calculated in the manner, the Commission may determine, in respect of all or any category of licensed financial institution.

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

34. Additional capital in respect of special risks

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

35. Liquidity requirement

(1) The Commission shall issue liquidity requirements that require licensed financial institutions to hold adequate and appropriate forms of liquidity.

(2) Each licensed financial institution shall comply at all times with the liquidity requirements issued by the Commission.

36. Limit on exposures

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

- (a) any person;
- (b) any member of a borrower group; or
- (c) any borrower group,

so that the total value of the exposures in respect of such person, member or group, is at any time more than twenty-five per cent of the aggregate amount of the licensed financial institution's capital base, unless prior approval is obtained from the Commission.

(2) The limitation specified in subsection (1) shall not apply to transactions that represent loans to the Government of Antigua and Barbuda.

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

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

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

(6) The aggregate of large exposures of a licensed financial institution shall not exceed four hundred per cent of its capital base, or such other percentage as the Commission may determine.

37. Restrictions on exposures to related parties

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

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

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

(4) A licensed financial institution shall not grant an exposure to a related party where the aggregate of all financial exposures to related parties would exceed twenty five per cent of the capital base of the licensed financial institution.

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

38. Permitted Loans

(1) A licensed financial institution may grant financial assistance to a person, by means of a loan, guarantee or otherwise -

- (a) to a permitted person in the ordinary course of business, if the lending of money is part of the ordinary business of the licensed financial institution;
- (b) to a permitted person on account of expenditures incurred or to be incurred on behalf of the licensed financial institution;
- (c) to a holding body corporate if the licensed financial institution is a wholly-owned subsidiary of the holding body corporate;
- (d) to a subsidiary body corporate of the licensed financial institution;
- (e) to employees of the licensed financial institution or any of its affiliates on condition that the unsecured or aggregate unsecured credit facilities do not exceed more than 12 months of the employees' basic annual (without benefits and allowances) remuneration; and
- (f) to holders of passports issued under the Antigua and Barbuda Citizenship by Investment Act No. 2 of 2013 who are not resident.

(2) Nothing in this or any other Act shall prevent a licensed financial institution from lending to the Government of Antigua and Barbuda; the licensed financial institution shall, at all times, retain an unqualified right to decide its loan policy toward the Government of Antigua and Barbuda.

(3) All licensed financial institutions must first have the approval of the Commission before granting loans, guarantees, lines of credit or any other similar transaction, made under 38 (1) (c), (d) or (e) in which the amount, in an individual transaction or multiple transactions cumulatively add up to more than 25% of the capital in a single year.

(4) For the purpose of this section and to avoid any doubt the term "employee" shall mean any person employed by or in the service of the licensed financial institution or an affiliate, including persons employed pursuant to an outsourcing agreement, and shall include the immediate family members of such employees.

39. Prohibition of advances against security of own shares

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

40. Prohibition on engaging or investing in trade and outsourcing

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

(2) Six months after this Act is brought into force, no licensed financial institution shall be an affiliate of a company which does not conduct banking business or business of a financial nature, unless the Commission grants approval, except if such a relationship exists the licensed financial institution may only engage in activities permitted under section 41.

(3) Six months after this Act is brought into force, a licensed financial institution shall not acquire or continue in the acquisition of any ownership interest in any commercial, agricultural, industrial or other non-financial undertaking except such interest as a licensed financial institution may acquire for the satisfaction of debts due to its which shall, be disposed of as soon as possible, but not later than five years after the acquisition.

(4) Upon the approval of and subject to the terms and conditions the Commission may determine, that subsection (3) shall not prevent the purchase and sale or holding of shares or stocks:

- (a) for a trust account or upon the order and for the account of a customer without recourse;
- (b) in any company set up for the purpose of promoting the development of a money market or securities market or of improving the financial mechanism for the financing of economic development of Antigua and Barbuda;
- (c) in another company, the aggregate value of which does not at any time exceed ten per cent of the capital base of that licensed financial institution, and where there is no established market value for such shares the value of such shares shall be established on the basis of a valuation approved by the Commission.

(5) The total amount of the holdings of a licensed financial institution under paragraph (c) of subsection (4) may not exceed sixty per cent of the capital base of the licensed financial institution.

(6) An investment in a company under paragraph (c) of subsection (4) may not exceed five per cent of the shares of that company.

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

41. Financial subsidiaries permitted

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

(2) The investment of a licensed financial institution in a permitted subsidiary shall not exceed ten per cent of the capital base.

(3) The aggregate amount of investment which a licensed financial institution may take in respect of its subsidiaries, shall not exceed twenty-five per cent of its capital base.

(4) In considering the granting of approval under this section, the Commission shall take into account:

- (a) whether the acquisition of the shares is likely to prejudice the:
 - i. financial condition of the licensed financial institution;
 - ii. capitalisation of the licensed financial institution;
 - iii. interest of depositors of the licensed financial institution;
- (b) whether the corporate affiliations and structure of the licensed financial institution exposes the licensed financial institution to undue risks or hinder its effective supervision; and
- (c) any other criteria as the Commission may determine.

42. Maintenance of specified assets

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

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

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

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

(5) The Commission may determine the distribution of amounts required to be held between different classes of specified assets, and may also differentiate between classes of bank license.

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

(7) In this section "specified assets" means freely transferable assets free from any charge, lien or encumbrance and includes:

- (a) balances at the Commission;

- (b) net balances at licensed financial institutions but where the balances are negative they will be subtracted from the specified assets;
 - (c) treasury bills and other securities issued or guaranteed by a Government;
 - (d) net balances at licensed financial institutions in monetary areas as the Commission may approve and the Commission may provide for the treatment to be accorded the balance or any portion in respect of the head office of a licensed financial institution organised abroad, and where any balances are negative they will be subtracted from specified assets;
 - (e) money at call in monetary areas approved by the Commission under paragraph (d), bills of exchange bearing at least two good signatures drawn on and payable at any place in the approved monetary areas, and treasury bills issued by the government of a country in any approved monetary areas and maturing within one hundred and eighty days.
- (8) A licensed financial institution which:
- (a) fails to furnish promptly any information required by the Commission to satisfy itself that the licensed financial institution is observing the requirements of this section; or
 - (b) allows its holdings of specified assets to be less than the amount which is fixed from time to time; or
 - (c) during the period of any deficiency of specified assets the licensed financial institution grants or permits increases in its outstanding advances, whether by loans or overdrafts or investment portfolio other than investment in specified assets, licencing is an offence and is liable on summary conviction to a penalty not exceeding one hundred thousand US dollars or its equivalent in Eastern Caribbean Currency.
- (9) The Commission may impose an administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues.

43. Recordkeeping and reporting required

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

(2) The records stated at subsection (1) above shall be held and maintained at the principal office of the licenced financial institution with authenticated copies held at a secondary location and shall be maintained for a minimum period of twenty years calculated from the date of the issuance of the document.

(3) Notwithstanding subsection (2) above no licenced financial may destroy any document of the type stated in subsection (1) unless authorized by the Commission.

(4) The Commission, from time to time or as it deems necessary, shall issue guidelines on record keeping which shall be based on;

- (a) internationally accepted professional standards; and
- (b) evolving international law, treaty obligations and guidance notes; and
- (c) the Commission's aim to prevent, monitor and detect money laundering, Financing of terrorism as well as other financial crimes under the laws of Antigua and Barbuda and any other State.

44. Special Investments Permitted

(1) Subject to the approval of the Commission and the Ministry of Finance, a licensed financial institution may be permitted to invest, individually or jointly, in specified projects pursuant to the following conditions:

- (a) the investment constitutes a minimum of fifty percent of the value of the cost of the declared cost of the proposed investment project or group of investment projects;
- (b) the investment project has a minimum threshold of investment of Ten (10) Million United States Dollars for investment output over a twelve (12) month period;
- (c) a domestic banking institutions, have declined to fund or provide loans for the specified project after being offered first preference;
- (d) a domestic banking institutions have the option of a partnership agreement with the licenced financial institutions; and
- (e) proposal is submitted to the Commission and the Ministry of Finance outlining the scope of the project and investment for approval.

(2) A licensed financial institution may invest in either private or public projects in the following areas which include but are not limited to:

- (a) health care provisioning;
- (b) tourism;
- (c) infrastructure development;
- (d) renewable energy;
- (e) education; or
- (f) any other project approved by the Ministry of Finance and the Commission.

(3) A licenced financial institution may complete project solely on its own or may fund or provide loan facilities for projects approved under this section either:

- (a) in partnership with another corporate entity licenced under this Act;
- (b) in partnership with a domestic bank licenced by the Eastern Caribbean Central Bank;
or
- (c) in partnership with the Government of Antigua and Barbuda including any statutory body.

(4) The funding or loan facilities provided pursuant to this section shall be subject to all relevant laws of Antigua and Barbuda.

(5) All projects undertaken under this section shall be subject to such reasonable limitations as may be imposed from time to time by the Commission or the Ministry of Finance to secure the interests of the shareholders of the licenced institution.

(6) All limitations, notices and directives issued by the Commission or the Ministry of Finance shall be accepted by the licenced financial institution as peremptory.

(7) No licensed financial institution shall have any obligation to loan or fund or be in a partnership with the Government of Antigua and Barbuda pursuant to this section.

(8) For the purpose of this section and to avoid any doubt the term “invest” or “investment” in this section means the provision of approved loans or approved lines of credit to enable the above-stated activities.

PART V

AUDIT AND INFORMATION

45. Annual audit, report and publication of financial statements and results

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

46. Appointment of external auditor

(1) The shareholders of a financial institution shall appoint an external auditor annually subject to the written approval of the Commission

(2) If a licensed financial institution fails to appoint an external auditor satisfactory to the Commission, the Commission may appoint an external auditor for the licensed financial institution and the remuneration of the external auditor so appointed shall be determined by the Commission and paid by the licensed financial institution.

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

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

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

47. Duties of external auditor

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

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

- (a) examining the books and records and reporting on the annual financial statements which comprise
 - i. the statement of financial position, statement of changes in equity, statement of comprehensive income, statement of cash flows; and
 - ii. a summary of significant accounting policies and other explanatory notes on both a solo and consolidated basis if applicable, and in every report the auditor shall state whether in the external auditor's opinion the financial statements present fairly in all material respects the financial position of the licensed financial institution and of its financial performance and its cash flows for the year then ended; and
- (b) all or any of the following duties as may from time to time be required by the Commission:
 - i. submission of additional information in relation to the audit of the licensed financial institution as the Commission considers necessary;
 - ii. to carry out any other examination or establish any procedure in any particular case;
 - iii. to submit a report on any of the matters referred to in sub-paragraphs (i) and (ii);
 - iv. to submit a report on the financial and accounting systems and risk management controls of the licensed financial institution;
 - v. to submit a report on whether prudent credit-granting and investment criteria, policies, practices and procedures are approved and reviewed by the management and board and communicated to all credit officers and whether major credits and investments are decided at a high managerial level;
 - vi. to certify whether the systems of loan classification, provisioning and write-offs determined by the Commission are being adhered to; and
 - vii. to certify whether suitable measures to counter money laundering and to combat the financing of terrorism have been adopted by the licensed financial institution and are being implemented in accordance with the applicable laws.

48. Remuneration of external auditor

A licensed financial institution shall remunerate the external auditor in respect of the discharge by the external auditor of all or any of the duties set out in section 47.

49. Immediate reports to Commission

If in the course of the performance of an external auditor's duties an external auditor is satisfied that:

- (a) there has been a material breach of or non-compliance with the provisions of this Act or any Regulations, Notice, or Order made or prudential standards or directions issued under this Act;
- (b) there is evidence that a criminal offence involving fraud or other dishonesty may have been committed;
- (c) losses have been incurred which reduce the paid up capital or assigned capital, as the case may be, of the licensed financial institution by twenty-five per cent or more;
- (d) material irregularities have occurred, including but not limited to:
 - i. any change in accounting policy or the misrepresentation of the financial position of the licensed financial institution or licensed financial holding company;
 - ii. evidence that data reported to the Commission or data provided to the auditor is not valid;
 - iii. transactions that have a serious impact on the financial position of the licensed financial institution or licensed financial holding company;
 - iv. transactions giving rise to significant risks that have the potential to jeopardise the viability of the licensed financial institution or licensed financial holding company;
 - v. any other transactions or conditions which in the opinion of the external auditor could affect the interest of depositors;
- (e) the claims of depositors covered by the assets cannot be confirmed,

the external auditor shall report the matter to the licensed financial institution and the Commission by mid-day of the following business day after the discovery is made.

50. Resignation or removal of external auditor

(1) The licensed financial institution and the external auditor shall immediately report to the Commission:

- (a) the resignation of an external auditor; or
- (b) the removal of the external auditor by the licensed financial institution.

(2) Subject to subsection (3), the directors must forthwith fill a vacancy.

(3) If there is not a quorum of directors, the directors then in office must, within twenty-one days after a vacancy in the office of auditor occurs, call a special meeting of shareholders to fill the vacancy; and if they fail to call a meeting or if there are no directors, the meeting may be called by any shareholder.

(4) The articles of a corporation may provide that a vacancy in the office of auditor be filled only by vote of the shareholders.

(5) An auditor appointed to fill a vacancy holds office for the unexpired term of his predecessor.

51. Request for copies of reports

The Commission may request copies of reports submitted to the board of a licensed financial institution by both its internal and external auditors.

52. External auditor to report to Commission

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

53. No liability for breach of duty

No external auditor shall be liable for breach of any duty solely by reason of compliance with the provisions of this Part or any other request for information by the Commission.

54. Failure to comply with request

(1) A licensed financial institution or a licensed financial holding company which fails to comply with a request under paragraph (b) of subsection (2) of section 63 may be ordered by the Commission to pay a penalty of an amount not exceeding one hundred thousand US dollars or its equivalent in Eastern Caribbean Currency.

(2) Any director or officer responsible for a failure to comply with a request under paragraph (b) of subsection (2) of section 63 may be ordered by the Commission to pay a penalty of an amount not exceeding one hundred thousand US dollars .

(3) The Commission may impose an administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues.

55. Audited financial statements

(1) The report of the auditor made in accordance with section 49 shall be presented with the report of the board and the financial statements of the licensed financial institution at the annual meeting of shareholders of each local licensed financial institution.

(2) A copy of the financial statements and reports shall be sent to the Commission within three months of the end of the financial year.

(3) At the cost to a licensed financial institution, the Commission shall, within twenty-one days of receiving the audited financial statements from a licensed financial institution, publish in the *Gazette* and in a local newspaper a true and full yearly statement of its accounts and a consolidated balance sheet of all its operations in Antigua and Barbuda and abroad as the case may be as certified by its auditor. Such statement shall be signed by the manager or by such other officer of the licensed financial institution as may, from time to time, be authorised by the licensed financial institution to sign such statement on behalf of the licensed financial institution.

(4) A licensed financial institution which fails to comply with a request under subsections (1) and (2) is guilty of an offence and is liable on conviction to a penalty not exceeding one hundred thousand US dollars.

(5) The Commission may impose an administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues.

PART VI

SUPERVISION

56. Commission examination

(1) The Commission shall develop and implement risk-based supervisory and regulatory approaches for the examination of all licencees.

(2) The risk-based approaches developed and implemented by the Commission pursuant to subsection (1) shall form part of any assessment carried out by the Commission to determine whether a licencee ought to be placed under administration of a receiver manager, liquidation, dissolution or re-organisation.

(3) The Commission, shall examine or cause an examination to be made of each licensed financial institution from time to time or whenever in its judgment such examination is necessary or expedient in order to determine that such financial institution is in a sound financial condition and that the requirements of this Act have been complied with in the conduct of its business.

(4) For the purpose of determining the condition of a licensed financial institution and its compliance with this Act, the Commission may at any time examine or cause an examination to be made of any affiliate of the financial institution, in Antigua and Barbuda or abroad or any of its overseas offices and outsourced entities to the same extent that an examination may be made of the financial institution.

(5) The Commission shall assess a licensed financial institution for the reasonable expenses of conducting an examination whether on or offsite under subsections (3) and (4). These fees are set out in Schedule II of this Act and are payable by 31 March annually

(6) The Commission shall submit a report on the findings of any examination to the financial institution.

57. Consolidated supervision

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

(2) For purposes of consolidated supervision, the prudential requirements specified in section 58 shall be applied on a consolidated basis to a licensed financial institution and its affiliates.

58. Prudential requirements

(1) The prudential requirements to be applied on a consolidated basis include:

- (a) minimum capital adequacy ratio of section 31;
- (b) liquidity requirements of section 35;
- (c) exposure limits of section 36;
- (d) related-party lending limits of section 37;
- (e) prohibition on payment of dividends or transfers of profit under section 32; and
- (f) other prudential requirements as may be determined by the Commission to be necessary or appropriate.

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

59. Reporting of group structures

(1) For purposes of consolidated supervision, each licensed financial institution which is a member of a corporate group shall provide to the Commission once a year:

- (a) a complete diagram of the group, including all direct and indirect affiliates and associates of the licensed financial institution and the nature of their relationship to the group; and
- (b) any other information the Commission may require.

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

60. Disclosure and access to books and records by Commission examiner for examination

(1) A person, who is authorised by the Commission to examine, investigate or for any other purpose, shall:

- (a) have full access to the premises of a licensed financial institution under examination or investigation; and
- (b) have a right to call upon:
 - i. any director, officer or any other employee of a licensed financial institution;
 - ii. an affiliate, any external auditor, or any person to which the licensed financial institution has outsourced any of its functions; or
 - iii. any other person with information regarding the licensed financial institution,

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

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

(3) If any books, minutes, accounts, securities, documents and vouchers are not provided or information is not supplied in accordance with subsection (1), the defaulting financial institution or affiliate, or both shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding one hundred thousand US dollars.

(4) The Commission may impose an administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues.

(5) If any information supplied or item produced is false in any material particular, the licensed financial institution or affiliate or both commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand US dollars.

(6) The Commission may impose an administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues.

61. Commission's powers of remedial action

(1) If in the opinion of the Commission a licensed financial institution or any affiliate, director, officer, employee, or significant shareholder of the licensed financial institution:

- (a) engages in unsafe or unsound practices in conducting the business of the licensed financial institution;
- (b) violates any provision of this Act, Regulations or Order made under this Act to which the licensed financial institution, affiliate, or person is subject;
- (c) violates any prudential standard issued by the Commission to which the licensed financial institution, affiliate, or person is subject;

- (d) violates any condition attached to a licence issued by the Commission;
- (e) incurs losses,

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

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

- (a) issue a written warning as it considers necessary or appropriate;
- (b) conclude a written agreement with the licensed financial institution providing for a program of remedial action;
- (c) issue an order to the licensed financial institution or their affiliates or the person responsible for the management of the licensed financial institution;
- (d) issue such directions as it considers necessary in relation to the persons comprising the management of the licensed financial institution.

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

- (a) to cease and desist from the specified practice or violation;
- (b) affirmative action to correct the condition resulting from the specified practice or violation; or
- (c) any specified remedial action.

(4) Where the Commission determines that a licenced financial institution has committed an act or series of acts which would have likely resulted in or has resulted in any of the items listed at subsection (1) (a) to (e) and has subsequently failed to comply with any instruction or order issued under subsections (2) and (3) the Commission shall have the authority to;

- (a) impose an administrative penalty of not less than three thousand USD and not exceeding ten thousand USD; or
- (b) suspend the licence of the offending licensee for any period deemed necessary by the Commission to ensure compliance; or
- (c) revoke the licence of the offending licensee;

(5) Where a licence is revoked pursuant to subsection (4) this shall be in perpetuity.

(6) Where the Commission determines that a licenced financial institution has committed an act or series of acts which would have likely resulted in or has resulted in any of the items listed at subsection (1) (a) to (e) and involves criminal or possible criminal conduct, the Commission shall immediately make and submit report to the Commissioner of Police and Director of Public Prosecutions investigate the conduct and determine whether an offence has been committed.

62. Additional Commission remedial actions

The Commission may also take the following remedial actions:

- (a) restrict the licensed financial institution or affiliate from further lending or taking further financial exposures, including off-balance sheet transactions, investments, providing trust business or capital expenditure;
- (b) require the licensed financial institution or affiliate to suspend for a specified period of time, alter, reduce, or terminate any activity that in the opinion of the Commission has caused material losses to the licensed financial institution or affiliate, is detrimental to the interest of depositors, or presents excessive risk to the licensed financial institution or affiliate;
- (c) require the licensed financial institution or affiliate to sell, liquidate, or otherwise dispose of an affiliate or part of its business;
- (d) prohibit payment of bonuses or incentive compensation to any director or officer;
- (e) prohibit the licensed financial institution or affiliate from paying a dividend or making a distribution on its share capital or issue rights, shares or bonus shares to shareholders or to any person claiming under their authority;
- (f) require shareholders to contribute additional capital;
- (g) suspend or remove any officer of the licensed financial institution or affiliate or restrict the officer's powers;
- (h) remove any or all of the directors on the board of the licensed financial institution or affiliate or restrict their powers;
- (i) restrict or vary any restriction of a licence;
- (j) any other action necessary or appropriate to eliminate the basis for requiring remedial action; or
- (k) revoke the licence issued to the licensed financial institution to do international banking business pursuant to section 15.

63. Remedial actions against directors, officers, employees or significant shareholders

(1) In sections 63 and 64 "relevant person" means director, officer, employee or significant shareholder.

(2) The Commission pursuant to section 61 with respect to any relevant person of a licensed financial institution or affiliate may take the following remedial actions:

- (a) require the relevant person to reimburse the licensed financial institution for losses caused by any violations;
- (b) prohibit the relevant person from direct or indirect exercise of voting rights attached to shares of the licensed financial institution;
- (c) suspend the relevant person from his position with the licensed financial institution or declare him to be no longer fit and proper; and
- (d) prohibit the payment of capital distributions or dividends to a relevant person.

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

64. Additional Commission powers of remedial action against directors, officers, employees or significant shareholders

(1) If in the opinion of the Commission any relevant person of a licensed financial institution or affiliate:

- (a) willfully or repeatedly has caused violation of any provision of this Act, Regulations or Order issued under this Act or prudential standard issued by the Commission to which the institution or person is subject following a written warning or an order from the Commission under section 61;
- (b) has been engaging in an unsafe or unsound practice that has resulted in a material loss to the licensed financial institution or financial gain to a person; or
- (c) has been conducting his affairs in a manner detrimental to the interests of the depositors, that person shall be subject to the remedial actions specified in subsection (2).

(2) In addition to the actions in section 63, the Commission may require the relevant person to dispose of all or any part of his direct or indirect ownership interest in the licensed financial institution or affiliate or cease to hold a significant interest in it.

(3) The Commission, from time to time or as it deems necessary, shall issue guidelines on supervision and regulation of licencees which shall be based on;

- (a) internationally accepted professional standards; and
- (b) evolving international law, treaty obligations and guidance notes; and
- (c) the Commission's aim to prevent, monitor and detect money laundering, Financing of terrorism as well as other financial crimes under the laws of Antigua and Barbuda and any other State.

65. Supplemental powers

The powers of the Commission under sections 61 to 64 are in addition to any other provisions authorizing or requiring the Commission to take action or impose penalties under other sections of this Act.

66. Failure to comply with remedial actions

(1) A licensed financial institution, its affiliate, or any director, officer, employee or significant shareholder of a licensed financial institution who fails to comply with any requirement or contravenes any prohibition imposed on the licensed financial institution under this Part

commits an offence and is liable on conviction to a fine not exceeding one hundred thousand US dollars.

(2) The Commission may impose an administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues

67. Effective date of order, warning, agreement, direction

Any order, warning, agreement, or direction issued by the Commission under subsection (2) of section 61 shall be deemed to take effect from the date specified.

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

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

- (a) prohibit the licensed financial institution or affiliate from declaring and distributing any dividends which are, in the opinion of the Commission, likely to cause it not to comply with the capital requirements under this Act or prudential standards issued by the Commission or otherwise would be detrimental to the financial soundness of the licensed financial institution;
- (b) undertake more frequent inspection of the licensed financial institution or affiliate;
- (c) require additional or more frequent reporting;
- (d) require the directors or officers of the licensed financial institution or affiliate to provide a written explanation detailing the causes of those losses and the measures to be taken by the licensed financial institution or affiliate to rectify the position and prevent future losses.

(2) This section shall not be construed so as to preclude the Commission from taking action under any other section of this Act.

69. Actions required for under capitalised licensed financial institutions, or affiliates

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

- (a) the actions specified in section 68;
- (b) require the licensed financial institution, or affiliate to present a plan that is satisfactory to the Commission to reconstitute its capital adequacy ratio within thirty days or a longer period as may be determined by the Commission;

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

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

- (a) restrict the licensed financial institution or affiliate from engaging in new business;
- (b) impose restrictions on growth of assets or liabilities of the licensed financial institution or affiliate as it shall consider fit.

(3) If at any time:

- (a) after the period specified, the licensed financial institution or affiliate failed to raise its capital to the levels necessary to rectify its under capitalisation; or
- (b) before the end of the period specified, the financial position of the licensed financial institution or affiliate continues to deteriorate,

the Commission may without having to wait for the expiry of that period revoke its licence and initiate receivership and liquidation in accordance with Part IX.

(4) This section shall not be construed so as to preclude the Commission from taking action under any other section of this Act.

70. Submission of returns and production of information as required by the Commission

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

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

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

- (a) not later than fourteen days after the last day of the month to which it relates, a monthly statement of assets and liabilities at the end of each month;
- (b) not later than twenty-one days after the end of the quarter to which it relates, a quarterly return providing an analysis of customers' liabilities to the financial institution in respect of loans, advances, investments and other assets of the financial institution at the end of each quarter;

(c) within such period as the Commission may determine such other returns as may be required.

(4) All statements and returns submitted by a licensed financial institution under subsection (3), any data or information submitted by a licensed financial institution or affiliate under subsection (1) or (2), and any other information obtained under this Act regarding the identity, assets, liabilities, transactions or other information shall be regarded by the Commission as confidential.

(5) Notwithstanding subsection (4)

- (a) the Commission may provide foreign banking supervisors and any other local or foreign authorities responsible for the supervision or regulation of a licensed financial institution, or for maintaining the integrity of the financial system with such statements, returns, data and information on a reciprocal basis and subject to an agreement for confidentiality and a Memorandum of Understanding and in accordance with section 31 of the FSRC Act;
- (b) the Commission may publish statements on the assets and liabilities of each licensed financial institution furnished under paragraph (a) of subsection (3) but no information in respect of the affairs of a particular customer of a licensed financial institution shall be so published.

71. Commission may request further information

The Commission may require a licensed financial institution to submit any further information and data relating to the matters described in subsection (3) of section 70, and may from time to time call for any other information which it may require for the purposes of this Act from any licensed financial institution about its operations.

72. Extension of period for providing information.

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

73. Disclosure of basis for charges and fees

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

74. Restriction on advertising likely to mislead the public

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

- (a) the relationship of the licensed financial institution to the Commission or any department or official of the Commission;
- (b) the interest rate paid on deposits or charged on credit;
- (c) the insured or guaranteed status of deposits or other liabilities of the licensed financial institution;
- (d) the financial condition of the licensed financial institution.
- (e) the fees charged and the true returns on investments managed on behalf of customers.
- (f) The fees charged for managing assets as in the case with a licensed financial institution with a composite licence.

(2) Any licensed financial institution which contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding fifty thousand dollars for each contravention.

75. Agreement or arrangement with foreign supervisory authority

The Commission may enter into an agreement or arrangement for coordination, cooperation, and the exchange of information with a foreign supervisory authority with responsibility to supervise financial institutions, financial holding companies, or other similar institutions, and with a foreign resolution authority or other government agency with direct responsibility for matters relating to the resolution of failing or failed financial institutions, if different from the supervisory authority, where the Commission is satisfied that the foreign authority has the obligation to protect the confidentiality of the information imparted in accordance with section 20 of the FSRC Act.

76. Prohibition against providing false, misleading statements

(1) A licensed financial institution or an affiliate which fails:

- (a) to submit returns or to produce information and data required by the Commission in accordance with section 70;
- (b) to provide further information and data to the Commission pursuant to section 71;
- (c) to provide the information and data requested under sections 70 and 71 to the Commission in accordance with the extension granted under section 71,

commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand US dollars .

- (d) The Commission may impose an administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues

(2) Where a licensed financial institution supplies any statement, return, information or data knowing it to be false or misleading in any material particular it is liable on conviction to a penalty not exceeding one hundred thousand US dollars or its equivalent in Eastern Caribbean Currency.

(3) The Commission may impose an administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues

PART VII

TRUST ACTIVITIES AND ASSETS UNDER MANAGEMENT

77. Stated Capital Requirements

A licensed financial institution with a composite international banking and trust licence shall, as a condition of that licence, comply with the minimal capitalization requirements and such other requirements as prescribed in the regulations issued under this Act.

78. Powers

A licensed financial institution with a composite international banking and trust licence has all the powers, rights, duties and obligations properly applying to trustees under the laws of Antigua and Barbuda, but subject to any provisions of this Part.

79. Foreign Trust Law

Nothing in section 78 prevents an instrument of trust entered into by a licensed financial institution with a composite international banking and trust licence from applying the law of another country to the trust; but if it does so sections 249 to 253 of the IBC Act do not apply to the trust.

80 Perpetuities and Accumulations

(1) The rule of law known as the rule against perpetuities does not apply with respect to any property vested in a licensed financial institution with a composite international banking and trust licence as the trustee thereof.

(2) The rule of law relating to accumulations does not apply in respect of any trusts vested in a licensed financial institution with a composite international banking and trust licence.

81. Funds Awaiting Disposition

(1) Subject to subsection (2), a licensed financial institution with a composite international banking and trust licence that holds trust funds awaiting investment or distribution must not hold those funds uninvested or undistributed any longer than is reasonable for the proper management of the trust account.

(2) Unless it is contrary to the terms of the instrument establishing the trust, the trust funds described in subsection (1) may be held in any commercial or savings department that the licensed financial institution with a composite international banking and trust licence operates, subject to such conditions as are prescribed thereof.

82. Common Trust Funds

(1) A common trust fund is a trust that operates by the pooling of funds for a number of participants who share, as beneficiaries under the trust, in the income or other gains derived from the acquisition, holding, management or disposal of assets acquired for the trust.

(2) A licensed financial institution with a composite international banking and trust licence may, in the course of its business, establish, maintain and administer one or more common trust funds and, subject to subsection (3), invest assets held in trust accounts in a common trust fund.

(3) The assets of a trust account shall only be invested in a common trust fund if the instrument establishing the trust expressly permits that investment and the consent in writing of any co-trustee is obtained to the investment.

(4) A common trust fund must be established, maintained and administered by a licensed financial institution with a composite international banking and trust licence in accordance with a written declaration of trust in a form approved by the directors of the trust corporation and containing any particulars required by the regulations to be set out in the declaration.

(5) A person having an interest in a common trust fund, as beneficiary or otherwise, is entitled, at his own reasonable cost, to be supplied by the licensed financial institution with a composite international banking and trust licence with a copy of the declaration applying to that trust fund.

(6) A trust account that participates in a common trust fund has a beneficial interest in so much of the common trust fund as is proportionate to the amount of that participation.

(7) If the declaration of trust establishing a common trust fund so provides, an interest in a common trust fund is negotiable and assignable; and an interest in the fund may also be disposed of in the manner provided by the declaration of trust relating to the fund or as prescribed in the absence of any such provision relating thereto in the declaration.

83. Separation of Trust Assets

In carrying on its business, a licensed financial institution with a composite international banking and trust licence shall -

- (a) keep all assets held in trust separate from its other assets, and
- (b) keep separate from those of its other accounts the assets of each trust account unless they are properly identified as the property of the trust account, but subject to section 82.

84. Dealing With Trust Assets

(1) Subject to the terms of the instrument establishing the trust, the assets comprising the funds of the trust may be sold, converted, re-invested, exchanged, transferred or otherwise changed or disposed of at any time by the trust corporation administering the trust.

(2) A licensed financial institution with a composite international banking and trust licence may sell assets held by it in a trust account to another trust account held by it, if -

- (a) the transaction is fully disclosed to the parties who have an interest in those trust accounts and their prior consent is obtained to the transaction;
- (b) the transaction is fair to both accounts; and
- (c) the transaction is not prohibited by the terms of the instruments establishing the trust.

85. Assets Under Management

(1) A licensed financial institution shall, in carrying on its business, keep all assets held as assets under management separate from the licensed financial institution's assets.

(2) A licensed financial institution which fails to comply with a request under subsection (1) commits an offence and is liable on conviction to a penalty not exceeding one hundred thousand US dollars.

(3) The Commission may impose an administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues

PART VIII

CORPORATE GOVERNANCE

86. Number of Directors

(1) A licensed financial institution must have at least three directors. All directors must be natural persons.

(2) A licensed financial institution will be struck off the register if all the directors are removed until a substitute is appointed.

(3) A licensed financial institution shall be required to pay for the reinstatement of the company before the Notice of Director is issued.

87. Changes in Ownership or Management

No licensed institution shall make a change to its directors or the direct or indirect, legal or beneficial owner of five percent or more of a class of shares in that institution, without prior written approval from the Commission.

88. Minimum criteria for determining whether a person is fit and proper

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

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

- (a) the person's probity, competence and soundness of judgment for fulfilling the responsibilities of that position;
- (b) the academic or professional qualifications or effective experience in banking, finance, business or administration or any other relevant discipline of the person concerned;
- (c) the diligence with which the person is fulfilling or likely to fulfill the responsibilities of the position;
- (d) whether the interests of depositors or potential depositors of the licensed financial institution are, or are likely to be, in any way threatened by the person holding the position;
- (e) whether the person is a significant shareholder, director or officer or holds any position of authority in any licensed financial institution locally or elsewhere whose licence has been suspended, or revoked otherwise than as a result of an amalgamation or voluntary liquidation or which has been or is being wound up or compulsorily liquidated;
- (f) whether the person has failed to satisfy any judgment or order of a court locally or abroad including the repayment of a debt;
- (g) whether the person is an un-discharged bankrupt or has been declared a bankrupt locally or abroad; and
- (h) whether the person has been removed or suspended by a regulatory authority from serving as a director or officer in a licensed financial institution or any body corporate locally or abroad.

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

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

- (b) contravened any provision made by or under an enactment designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of a discharged or undischarged bankrupt;
- (c) engaged in any business practices appearing to the board to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on the person's method of conducting business;
- (d) an employment record which leads the board to believe that the person carried out an act of impropriety in the handling of his employer's business; or
- (e) engaged in or been associated with any other business practices or otherwise conducted himself in a manner as to cast doubt on his competence and soundness of judgment.

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

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

- (a) whether the directors of the company or person have satisfied the fit and proper criteria set out in this Part;
- (b) whether the company or person has been found guilty of insider trading or fraud involving trading in securities by local or foreign authorities;
- (c) whether the company or person has been convicted of an offence under this Act;
- (d) whether in the opinion of the Commission the company or person has failed to carry on its business or business affairs in a prudent manner;
- (e) whether in the opinion of the Commission the company is insolvent or is likely to become insolvent;
- (f) whether the company or person has suspended or is about to suspend payment in respect of, or is unable to meet their obligations, as they fall due;
- (g) whether in the opinion of the Commission the affairs of the company or person are being conducted in a manner prejudicial to the soundness of the licensed financial institution;
- (h) any other matter which the Commission may determine.

90. Determining whether business carried out in prudent manner

In determining whether a company has carried on its business in a prudent manner under paragraph (d) of section 89 the Commission shall take into consideration:

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

- (b) loan concentration or proposed loan concentration and risk exposures or proposed risk exposures in the company and the licensed financial institution;
- (c) separation of the business or proposed business of the company and the licensed financial institution from other business and from other interests of any significant shareholder of the company;
- (d) internal controls and accounting systems or proposed internal controls and accounting systems of the company;
- (e) risk management systems and policies or proposed risk management systems and policies of the company and the licensed financial institution;
- (f) arrangements for any business, or functions relating to any business of the company or the licensed financial institution to be carried on by any person other than the company, the licensed financial institution; and
- (g) such other matters as the Commission may determine.

91. Requirement for fit and proper policy

(1) Licensed financial institutions shall have a fit and proper policy in accordance with this Act, or prudential standards issued by the Commission and shall apply such fit and proper policy in assessing directors and officers.

(2) A licensed financial institution or licensed financial holding company shall give written notice to the Commission of the appointment or election of a director or officer within thirty days of the election or appointment of the director or officer.

(3) Where the Commission receives a notice under subsection (2) and is not satisfied that a director or officer is a fit and proper person in accordance with the criteria in section 88, it shall direct the removal of the director or officer.

(4) The Commission may notify in writing the person whose removal is required with a copy of the direction via an official notice sent in hard copy or electronically to the person or the licenced institution and it shall be considered to have been received once delivered to the intended address or in the case of any notice sent to the licenced institution.

92. Responsibility of board for corporate governance

(1) The board of a licensed financial institution shall establish policies over the entire operations of the licensed financial institution, including without limitation:

- (a) adequate policies and procedures for risk management;
- (b) corporate governance;
- (c) internal controls;
- (d) internal audit and compliance;
- (e) external audit;
- (f) anti-money laundering / counter terrorism financing; and

(g) executive compensation.

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

- (a) credit;
- (b) country and transfer;
- (c) market;
- (d) interest rate risk in the banking book;
- (e) legal and reputational risk; and
- (f) operational risks on a bank-wide basis.

(3) Where the board of a licensed financial institution fails to comply with this section, the Commission may take any action against the licensed financial institution and the directors under sections 61 to 64.

93. Removal and disqualification of director or officer

(1) Any person who is a director or officer of a licensed financial institution shall cease to hold office:

- (a) upon notification by the board of a finding by two-thirds of its members:
 - (i) of that person's permanent incapacity or serious neglect of, or misconduct in, office; or
 - (ii) that the person is not a fit and proper person in accordance with this Act or prudential standards issued by the Commission;
- (b) if that person:
 - (i) is or was convicted of an offence under this Act;
 - (ii) has been declared bankrupt or is compounding with, or suspending payment to, the person's creditors; or
 - (iii) has been convicted in a court of law in any jurisdiction of any offence involving fraud, dishonesty, or violence.

(2) Any person who:

- (a) has been sentenced for an offence involving a term of imprisonment exceeding six months or in default of the payment of a fine;
- (b) has been a director or officer of a company which has been wound-up by a court or has been placed in receivership; or
- (c) has been a director or officer of, or directly or indirectly concerned in the management of a former licensed financial institution, the licence of which has been revoked, unless such revocation was due to:
 - i. its amalgamation with another licensed financial institution or other company; or

ii. its voluntary winding up,

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

(3) A licensed financial institution shall within fifteen days of becoming aware that any of its directors or officers is ineligible to hold the office, cause the removal of the ineligible director or officer and notify the Commission accordingly.

(4) Where the Commission is satisfied that any of the directors or officers of a licensed financial institution who is ineligible under subsection (1), continues to hold office, the Commission may:

- (a) direct the licensed financial institution in writing to remove the person from the office within the period specified in the direction; and
- (b) notify in writing the person whose removal is required with a copy of the direction.

94. Right to make representation

A licensed financial institution to which a direction is given and a person who is served a copy of it under subsection (4) of section 93 may, within the period of fourteen days commencing from the day after which the direction is given, make written representations to the Commission and the Commission shall take the representations into account in deciding whether to confirm the direction.

95 Notice of confirmed removal

Where the Commission decides to confirm the direction it shall serve written notice of the confirmation on the licensed financial institution and the person whose removal is required.

96. Person to be removed from office

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

97. Effective date of removal

The removal of the director or officer in accordance with the directions given under subsection (4) of section 91 shall take effect from the date of receipt by the director or officer of the notification of removal given by the Commission or any later date specified in the notice notwithstanding the provisions of any other law or the constituent documents of the licensed financial institution.

98. Failure to comply with a direction

If a licensed financial institution fails to comply with a direction under subsection (4) of section 91 the Commission may take any action against the licensed financial institution and the director or officer under sections 61 to 64.

99. Failure to comply with section 92

(1) A person who contravenes section 92 commits an offence and is liable on summary conviction to a penalty not exceeding one hundred thousand US dollars.

(2) The Commission may impose an administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues

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

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

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

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

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

- (a) after assuming office as a director of the licensed financial institution; or
- (b) if already a director, after the date of commencement in office or possession of the property.

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

(5) A director who contravenes subsection (1) or subsection (3) commits an offence and is liable on conviction to a penalty not exceeding one hundred thousand US dollars or (6) The Commission may impose an administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues

101. Responsibility for deceiving statements and obstruction of audit or authorised examination

Any director, officer, secretary, employee or agent of a licensed financial institution who:

- (a) with intent to deceive:
 - i. makes any false or misleading statement or entry;
 - ii. omits any statement or entry that should be made in any book, account, report or statement of the licensed financial institution; or
- (b) obstructs or endeavours to obstruct:
 - i. the proper performance by an auditor of his duties in accordance with the provisions of this Act; or
 - ii. a lawful examination of the licensed financial institution by a duly authorised examiner appointed by the Commission,

commits an offence and is liable on summary conviction to a penalty not exceeding one hundred thousand US dollars.

- (c) The Commission may impose administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues

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

Any director, officer, secretary or other officer concerned in the management of a licensed financial institution who:

- (a) fails to take all reasonable steps to secure compliance by the licensed financial institution or the licensed financial holding company with the requirements of this Act; or
- (b) is implicated in an offence committed under section 74,

commits an offence and is liable on summary conviction to a penalty not exceeding one hundred thousand US dollars.

- (c) The Commission may impose an administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues

103. Liability of directors, officers and partners

- (1) Where an offence under this Act is committed by a body of persons which is:

- (a) a body corporate, society or other body of persons, every person who at the time of the commission of the offence was a director, secretary or other officer of the body corporate, society or other body of persons as well as that body corporate, society or other body of persons commits the offence;
 - (b) a partnership or firm, every partner of the partnership or firm as well as that partnership or firm commits the offence, and shall be liable to be prosecuted.
- (2) No person referred to in subsection (1) shall be found guilty of an offence if he proves, that -
- (a) the act constituting the offence took place without his knowledge or consent; or
 - (b) he exercised all due care and diligence to prevent the commission of the offence.

PART IX

OFFICIAL ADMINISTRATOR

104. Grounds for appointing an Official Administrator.

The Commission, under its own authority and sole discretion, may appoint an official administrator for a licensed financial institution where:

- (a) the Commission determines that the licensed financial institution has:
 - i. violated any provision of this Act or Regulations made under this Act or prudential standards issued by the Commission; or
 - ii. engaged in any unsafe and unsound practices, in such a manner as to weaken the licensed financial institution's condition, threaten depositors' interests, or dissipate the licensed financial institution's assets;
- (b) the licensed financial institution's regulatory capital level falls below the minimum regulatory capital required pursuant to section 31 and related prudential standards issued by the Commission;
- (c) the Commission has reasonable cause to believe that the licensed financial institution or its directors, officers, or significant shareholders has engaged or is engaging in illegal activities in a manner as to jeopardize depositors' interests;
- (d) the Commission determines that the licensed financial institution is in an unsafe or unsound condition to transact business and the licensed financial institution or licensed financial holding company or its directors or officers are unable to promptly improve such condition;
- (e) the licensed financial institution fails in any manner to cooperate with the Commission or its examiners to enable the Commission to perform its supervisory responsibilities, including through concealment or failure to submit for inspection any of the licensed financial institution's books, papers or records;
- (f) the licensed financial institution fails in any manner to cooperate with its external auditors;

- (g) the licensed financial institution or its directors, officers, employees, or significant shareholders wilfully violate or fail to comply with an order or direction of the Commission; or
- (h) the licensed financial institution, by resolution of its directors or shareholders, requests the appointment of an official administrator.

105. Notice of appointment of official administrator.

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

106. Effective date of appointment.

The appointment of an official administrator shall be effective from the time specified by the Commission.

107. Persons qualified to be official administrator.

The official administrator may be a person from the private sector, a statutory body (except the Commission) or a public officer who meets the qualifications determined by the Commission.

108. Period of appointment.

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

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

109. Replacement and removal of official administrator.

(1) The official administrator may at any time be replaced by the Commission.

(2) The official administrator may be removed prior to the end of the period specified.

110. Official administrator to be fit and proper person.

An official administrator shall in addition his professional qualification, be subject to the fit and proper provisions Part VII of this Act and any prudential standards issued by the Commission.

112. Declaration of conflict of Interest.

Before being appointed by the Commission any person who is being considered for appointment as an official administrator must declare to the Commission any existing or potential conflict of interest which may arise from such an appointment.

113. Transactions to be approved by Commission.

Any transaction involving the licensed financial institution in official administration in which the official administrator has a material interest or relationship in the matter may be engaged in only with the prior approval of the Commission.

114. Failure to declare interests.

If an official administrator fails to disclose an interest or relationship as required, the contract may be set aside and the Commission shall remove the official administrator who may be subject to criminal charges where applicable.

115. General powers of the official administrator.

(1) Upon the appointment of an official administrator, all powers, functions and responsibilities of the licensed financial institution's or licensed financial holding company's shareholders, directors, and officers shall vest in the official administrator, except where the official administrator requests the shareholders or directors or officers to carry out any activity provided under this Act.

(2) The official administrator shall have full and exclusive powers to manage and operate the licensed financial institution, including taking any action:

- (a) necessary or appropriate to carry on the business of the licensed financial institution or licensed financial holding company in accordance with this Act, Regulations made pursuant to this Act, Orders or prudential standards issued by the Commission;
- (b) to preserve and safeguard its assets and property of the licensed financial institution;
or
- (c) to implement a plan of action including reorganization with respect to the licensed financial institution which must be approved by the Commission.

(3) The official administrator may, subject to the approval of the Commission, and notwithstanding any other law or the constituent documents of the licensed financial institution:

- (a) remove any or all directors and officers, and appoint their replacements subject to the fit and proper criteria set out in this Act;
- (b) issue shares, or rights to acquire shares, in the licensed financial institution or licensed financial holding company;

- (c) cancel shares, or rights to acquire shares, in the licensed financial institution or licensed financial holding company;
- (d) reduce the share capital by cancelling any paid-up share capital that is not represented by available assets; or
- (e) sell shares, or rights to acquire shares, in the licensed financial institution or licensed financial holding company.

(4) The official administrator may employ, at the expense of the licensed financial institution in official administration:

- (a) legal counsel;
- (b) accountants;
- (c) valuers;
- (d) appraisers;
- (e) and other independent professionals or consultants, to assist the official administrator, on terms the Commission shall approve.

116. The Commission oversight of official administration.

- (a) In the exercise of his powers under this Part, the official administrator shall act in accordance with Regulations made pursuant to this Act, directions and prudential standards issued by the Commission, at any given time in the course of the official administration, and shall be accountable only to the Commission for the performance of his duties and the exercise of his powers as official administrator.
- (b) The official administrator may delegate any of his powers or duties to other persons, in accordance with the instructions issued by the Commission.

117. Suspension of dividends.

The official administrator shall immediately suspend the payment of capital distributions in general and payment of any kind to directors, officers, and significant shareholders however base compensation may be paid to directors or officers for services rendered in their capacity as directors or officers of the licensed financial institution.

118. Moratorium and effect of official administration on proceedings.

(1) The Commission may impose a moratorium suspending some or all payments by a licensed financial institution in official administration, except payments to central clearing counterparties and to payment, settlement and clearing systems.

(2) On and during the appointment of an official administrator, no creditor, shareholder, depositor or any other person shall have any remedy against the licensed financial institution in respect of any claim

(3) Without prejudice to the generality of subsection (2), no creditor, shareholder, depositor or any other person shall:

- (a) commence or continue any action, execution or other proceedings; or
- (b) seek to enforce in any way any judgment or order obtained against the licensed financial institution or licensed financial holding company or its successor or the transferee of the whole or any part of any property, assets or undertaking of the licensed financial institution for the recovery of any claim or in respect of any other liability, until the termination of official administration in relation to the licensed financial institution or without the prior leave of the court, unless the court directs otherwise.

(4) Where official administration has not yet been terminated, the Commission may, where it is of the opinion that it is no longer necessary to impose a stay, publish in the Gazette and in such newspapers as it thinks appropriate, a notification to lift the stay imposed under this section.

(5) Where a stay has been lifted under subsection (4), no person shall take any steps to institute winding up, receivership, administration or any other related proceedings in relation to that licensed financial institution without the prior leave of the court unless the court directs otherwise.

(6) No creditor, shareholder, depositor or any other person shall:

- (a) commence or continue any claim, action, execution or other proceedings; or
- (b) seek to enforce in any way any judgment or order obtained against the official administrator,

in respect of any act, commission, claim, fact or matter connected with or arising out of the acts or omissions of the official administrator in respect of the licensed financial institution, until the termination of official administration in relation to the licensed financial institution without the prior leave of the court unless the court directs otherwise.

(7) No provision of a security agreement, lease or licence between the licensed financial institution and a secured or other creditor that provides, in substance, that on:

- (a) the winding up of the licensed financial institution or any related entity or any insolvency restructuring or reorganization proceedings being commenced, continued or ordered in respect of the licensed financial institution or licensed financial holding company or any related entity; or
- (b) the default by the licensed financial institution of an obligation under the security agreement, lease or licence,

the licensed financial institution ceases to have such rights to use or deal with assets secured or dealt with under the agreement, lease or licence as the licensed financial institution would otherwise have, or is given lesser rights or priorities in respect of any assets or property as the licensed financial institution would otherwise have, shall have any force or effect, until the

termination of official administration in relation to the licensed financial institution or without the prior leave of the court, unless the court directs otherwise.

(8) No provision in any contract or agreement or any other document which gives any party a right to acquire any property or assets of the licensed financial institution on the grounds of any change of control or on any analogous ground or on the grounds of insolvency shall have any effect, until the termination of official administration in relation to the licensed financial institution or without the prior leave of the court unless the court directs otherwise.

(9) For the purposes of this section:

- (a) the rights, property and assets referred to in this section are taken to be the rights, property and assets where ever located; and
- (b) the agreement, lease or licence referred to in this section are taken to be an agreement, lease or licence governed by any law.

(10) A stay pursuant to subsection (2) shall only operate as a temporary stay of a claim against the licensed financial institution and shall not have or be taken to have the effect of extinguishing such a claim.

(11) Where a claim is stayed pursuant to this section, for the purposes of the computation of time limits under any applicable law on limitation of actions, the period of time commencing with the date of appointment of the official administrator and ending with the date of termination of appointment of the official administrator shall be excluded.

(12) For the purposes of this section, “claim” means any claim whatsoever, including claims which are secured or unsecured, present or future, actual, prospective or contingent, or arising out of contract, tort, bailment, restitution, breach of trust or any other cause of action and whether or not made by a creditor, shareholder, depositor or any other person.

119. Suspension of contractual early termination rights

No right or obligation of a third party under any contract to which the licensed financial institution in official administration is a party, may be terminated, accelerated, or modified solely because of the appointment of the official administrator or any action taken by the official administrator.

120. Taking control of the licensed financial institution.

(1) Immediately upon appointment, the official administrator shall secure the properties, offices, assets, books and records of the licensed financial institution or licensed financial holding company, and may take all necessary or appropriate steps aimed at such purpose, including without limitation:

- (a) cancelling authorisations of persons to engage the financial responsibility of the licensed financial institution and issuing new authorisations, as appropriate, and notifying third parties;

(b) informing correspondent financial institutions, registrars and transfer agents of securities, and external asset managers of the licensed financial institution's or licensed financial holding company's assets that persons who previously had authorization to give instructions on behalf of the licensed financial institution with respect to dealing in the licensed financial institution's assets or assets held in trust by the licensed financial institution are no longer so authorised and that only the official administrator, and persons authorised by the official administrator have such authority.

(2) In the course of the official administration, the official administrator shall have unrestricted access to, and control over, the properties, offices, assets and the books of account and other records of the licensed financial institution.

(3) The official administrator may request the assistance of law enforcement officials, who shall, if necessary, use force to assist the official administrator to gain access to any premises of the licensed financial institution, to gain control over and to secure such properties, offices, assets, books and records of the licensed financial institution.

(4) The licensed financial institution, its affiliated institutions and their directors, officers and agents other than its auditors shall give every assistance to the official administrator including the supply of information or explanation in any form as may be required, the production of books, documents, minutes, cash, securities and vouchers, and generally the provision of all necessary facilities required for the performance of any function of the official administrator save that in the case of its auditors they shall only be required to supply any information which is in their possession or knowledge other than their internally generated working papers.

(5) A person who does not comply with subsection (4) or otherwise obstructs the Commission or an official administrator in the performance of functions under this section commits an offence and is liable on conviction to a fine of fifteen thousand dollars Eastern Caribbean Currency or to a term of imprisonment not exceeding two years.

121. Inventory and plan of action to resolve the licensed financial institution.

(1) Not later than thirty days after the appointment, the official administrator shall prepare and deliver to the Commission an inventory of the licensed financial institution's assets and liabilities.

(2) The official administrator in his report shall classify the assets in accordance with applicable asset classification criteria.

(3) Not later than ninety days after the appointment, the official administrator shall prepare and deliver to the Commission a report on the financial condition and future prospects of the licensed financial institution.

(4) The official administrator shall include in the report an assessment of the amount of assets likely to be realized in a liquidation of the licensed financial institution or licensed financial holding company.

(5) In the report referred to under subsection (3), the official administrator shall propose a plan of action which, as appropriate, may recommend:

- (a) returning the licensed financial institution to compliance with the provisions of this Act by carrying out a plan of corrective actions that may include a capital increase;
- (b) compulsory liquidation of the licensed financial institution or licensed financial holding company if in the administrator's assessment there is no reasonable prospect for the return of the licensed financial institution to financial soundness through reorganization or otherwise; or
- (c) any other course of action designed to resolve the licensed financial institution in a manner that minimizes disruption to depositors and preserves the stability of the financial system.

(6) The official administrator shall promptly provide any additional report or information requested by the Commission.

(7) The Commission may:

- (a) approve the report or additional report mentioned in subsection (3) or (6) without modification;
- (b) approve the report or additional report mentioned in subsection (3) or (6) subject to such conditions as it considers necessary; or
- (c) refuse to approve the report.

(8) On the basis of the report and with the approval of the Commission, the official administrator shall implement the plan of action.

(9) In carrying out any resolution pursuant to this Part, the Commission shall take into account the order of priorities of claims that would be applicable in liquidation under this Act and ensure that similarly situated creditors are treated in a similar manner.

(10) The Commission may take any action otherwise authorised by this Part that does not comply with subsection (9) if it determines that the category of claims that are benefitted by an action are of strategic importance to the economy or that the action is necessary to contain potential systemic impact in connection with the resolution of the licensed financial institution or to maximise the value for the benefit of all creditors as a whole.

(11) The official administrator and the Commission shall have no liability to depositors, creditors, and shareholders of the licensed financial institution as a result of actions taken in accordance with this Part, except to the extent that the amount received by a depositor, creditor, or shareholder as a result of the completion of the plan of action is less than the amount that would have been received if the licensed financial institution had been liquidated and wound up.

(12) In assessing any liability under subsection (11), actual or potential financial assistance provided by the Government to the licensed financial institution or to a third party to facilitate the resolution must be disregarded.

122. Capital increase by existing shareholders.

(1) On the basis of the report under section 120 and with the approval of the Commission the official administrator may take the following actions to increase the licensed financial institution's capital through the issuance of new shares:

- (a) determine the extent of losses and prepare the licensed financial institution's balance sheet covering the amount of such losses through the licensed financial institution's profits, reserves and, if necessary, capital; and
- (b) notify existing shareholders of the amount of additional capital needed to bring the licensed financial institution's into compliance with all capital requirements and allow the shareholders to subscribe and purchase additional shares, by submitting binding commitments equal to the full amount of additional capital needed within three business days of such notification.

(2) Existing shareholders of a licensed financial institution or licensed financial holding company in official administration shall have no pre-emptive or other rights to purchase additional shares issued except as provided in this section.

123. Recapitalization by new shareholders.

(1) On the basis of the report produced under section 120 and with the approval of the Commission, the official administrator may take the following actions to increase the licensed financial institution's capital through the issuance of shares to new shareholders in the following circumstances:

- (a) in the event that binding commitments are not submitted in an amount equal to the full amount of additional capital needed by existing shareholders; or
- (b) without offering shares to existing shareholders, where the Commission determines that:
 - i. an expedited resolution of the licensed financial institution to maintain financial stability is necessary;
 - ii. the existing shareholders are no longer fit and proper to maintain a significant capital position in the licensed financial institution; or
 - iii. there has been a failure to comply with a remedial measure under this Act requiring an increase in the capital of the licensed financial institution.

(2) To carry out a recapitalisation by new shareholders, the official administrator shall:

- (a) if not already carried out in accordance with section 120, determine the extent of losses and prepare the licensed financial institution's or licensed financial holding

company's balance sheet covering the amount of losses through the licensed financial institution's profits, reserves and, if necessary, capital;

- (b) if necessary to reflect losses, reduce the par value of outstanding shares, notwithstanding any other provision of law;
- (c) determine the amount and type of funding needed to bring the licensed financial institution or licensed financial holding company into compliance with all capital requirements;
- (d) cause the licensed financial institution to issue additional shares in the amount necessary and carry out the sale of shares by the licensed financial institution and purchase of such shares by new investors.

(3) Any new significant shareholders may acquire interests pursuant to this provision only if the Commission is satisfied that they are fit and proper.

124. Mergers, Sales and Other Restructurings.

(1) On the basis of the report produced under section 120 and subject to the approval of the Commission, the official administrator may carry out a merger of the licensed financial institution or a transfer, in whole or in part, of the licensed financial institution's assets and liabilities, without obtaining any approval, assignment, or consent with respect to such transfer or assumption from any other person.

(2) A transfer of the licensed financial institution's assets and liabilities may include a transfer to a bridge financial institution or an asset management vehicle established by the Government or any of its agencies for the purpose of resolving the licensed financial institution.

(3) The transferee may be required to continue operating at the premises of the transferor for a specified period of time, including safe deposit box and safekeeping activities.

(4) The transferee of assets of the licensed financial institution shall have no liability to depositors, creditors, or shareholders of the licensed financial institution except to the extent liabilities are explicitly assumed.

(5) In accordance with the instructions given by the Commission, the official administrator may approve a restructuring of the licensed financial institution's liabilities through arrangements with the creditors, including a reduction, modification, rescheduling and novation of their claims.

(6) In carrying out a transfer of assets and liabilities, where a depositor whose deposit is to be transferred owes the licensed financial institution an amount for a matured or past-due loans, that amount may be set-off against the deposit amount in accordance with prudential standards issued by the Commission.

125. Mandatory Restructuring of Liabilities.

(1) On the basis of the report produced under section 120 and subject to the approval of the Commission, the official administrator may restructure the liabilities of the licensed financial institution in accordance with this section without the approval of depositors, creditors, shareholders of the court.

(2) The Commission may approve mandatory restructuring of liabilities if the Commission determines that the restructuring, either alone or combined with recapitalisation or other resolution measures, will restore the licensed financial institution to viability.

(3) The official administrator shall not apply mandatory restructuring to secured debt.

(4) The official administrator may restructure liabilities directly or may convert the liabilities to shares.

(5) In the exercise of his powers under this section the official administrator shall act in accordance with this Act, the Regulations made under this Act, where available and applicable, and prudential standards issued by the Commission.

126. Misconduct by shareholders, directors, officers or others.

If the official administrator has reasonable cause to believe that significant shareholders, directors, officers, attorneys, accountants or other professionals have engaged or are engaging in illegal activities punishable by imprisonment or in fraudulent activities, it shall immediately notify:

- (a) the Commission and shall pursue civil actions seeking damages and restitution; and
- (b) the authorities responsible for investigating and prosecuting the activities.

127. Expenses of the official administration.

(1) The official administrator shall receive a remuneration determined by the Commission.

(2) All costs and expenses incurred on account of the official administration shall be borne by and charged to the licensed financial institution or licensed financial holding company subject to any proceedings

128. Termination of official administration.

(1) The official administration shall terminate at the expiry of the term specified in the decision appointing the official administrator or any extension of the term of appointment by the Commission.

(2) An official administration may be terminated prior to the expiry of the term identified in subsection (1) if the Commission determines that:

- (a) official administration is no longer necessary because the grounds for appointment of the official administrator have been remedied; or
- (b) the licensed financial institution cannot be rehabilitated and the Commission issues a decision to revoke the licensed financial institution's license and to commence liquidation proceedings pursuant to this Act.

(3) In the case of a termination of official administration that does not involve a closure of the licensed financial institution the official administrator shall carry out the duties of the licensed financial institution's directors and officers, until nomination or election of new directors and appointment of officers, at which time all powers of control over the affairs of the licensed financial institution and its properties, offices, assets, books and records that were vested in the official administrator shall vest in the licensed financial institution

(4) The decision of the Commission to terminate an official administration shall be accompanied by a recommendation by the official administrator and a detailed report prepared by the official administrator supporting the recommendation.

(5) Within thirty days of the termination of the appointment, the official administrator shall prepare and submit to the Commission a final report and accounting of the official administration.

PART IX

VOLUNTARY LIQUIDATION

129. Voluntary liquidation

A voluntary liquidation of a licensed financial institution shall be subject to authorisation by the Commission when:

- (a) the licensed financial institution is solvent and has sufficient liquid assets to repay its depositors and other creditors within three days; and
- (b) the liquidation has been properly approved by the members or shareholders of the licensed financial institution

130. Cessation of business operations

When it has received the authorisation of the Commission the licensed financial institution shall:

- (a) immediately cease to carry on business, retaining only the powers necessary to effect an orderly liquidation;
- (b) repay its depositors and other creditors; and
- (c) wind up all operations undertaken prior to the receipt of the authorisation.

131. Notice to depositors of voluntary liquidation

(1) Within thirty days from the receipt of authorisation referred to in section 158 a notice of voluntary liquidation, setting out any information as the Commission may determine, shall be sent by mail to all depositors, other creditors and persons otherwise entitled to the funds or property held by the licensed financial institution or as a trustee, lessor of a safe deposit box or bailee.

(2) The notice shall be posted conspicuously on the premises of each office and branch of the licensed financial institution and shall be published as the Commission, shall direct.

(3) The Commission may exempt the mailing of such notice to specified persons upon a showing of cause by the licensed financial institution.

132. Rights of depositors and creditors in voluntary liquidation

(1) The authorisation to go into voluntary liquidation shall not prejudice the rights of a depositor or other creditor to payment in full of his claim nor the right of an owner of funds or other property held by the licensed financial institution or to the return.

(2) All deposits shall be paid within three days, all other lawful claims shall be paid promptly, and all funds and other property held by the licensed financial institution or shall be returned to their owners within such maximum period as the Commission shall determine.

133. Distribution of assets

(1) When the Commission, is satisfied that the licensed financial institution or has discharged all the obligations referred to in section 161, it shall be struck from the list of licensed financial institutions and the remainder of its assets shall be distributed among its shareholders in proportion to their respective rights, but no such distribution shall be made before:

- (a) all claims of depositors and other creditors have been paid or, in the case of a disputed claim, before the licensed financial institution or has turned over to the Commission sufficient funds to meet any liability that may be determined by a court of competent jurisdiction;
- (b) any funds payable to a depositor or other creditor who has not claimed them have been turned over to the Commission;
- (c) any other funds and property held by the licensed financial institution or that could not be returned to the owners in accordance with the provisions of section 161 have been transferred to the Commission, together with the inventories.

(2) Any funds or property not claimed within a period of fifteen years following a transfer to the Commission shall be presumed to be abandoned property for the purposes of section 167.

134. Insufficiency of assets in discharge of obligations in voluntary liquidation

If the assets of a licensed financial institution, whose voluntary liquidation has been authorised will not be sufficient for the full discharge of all its obligations or completion of the liquidation is unduly delayed, the Commission may cause the commencement of proceedings leading to its compulsory liquidation or resolution in conformity with the procedures set out in Part X.

1345. Audited accounts, and conclusion of liquidation

(1) When all assets have been distributed in accordance with the provisions of this Act, the licensed financial institution or shall render an audited account to the Commission.

(2) Upon approval of this account the Commission shall terminate the legal existence of the licensed financial institution or as a company.

136. Review of bank resolutions under Parts IX or X

(1) After completion of an official administration under Part IX or a receivership under Part X (a resolution action), the Commission shall conduct a review to ascertain why the licensed financial institution's problems required a resolution action under either of those Parts.

(2) The Commission shall prepare a written report that describes in detail the circumstances leading to the resolution action, the actions taken by the Commission prior to action under Part IX or Part X to address any problems, the reasons why those actions did not succeed in preventing the need for resolution.

137. Non-application of Companies Act

The provisions of the Companies Act shall not apply to the liquidation of a licensed financial institution under this Act.

PART X

RECEIVERSHIP AND COMPULSORY LIQUIDATION

138. Grounds of receivership

(1) The Commission may appoint a receiver for a licensed financial institution where the Commission is of the view that the institution:

- (a) is insolvent;
- (b) is not viable;

- (c) its capital is impaired or its condition is otherwise unsound;
- (d) it has experienced substantial dissipation of assets or earnings due to any of the grounds for action by the Commission under subsection 1 of section 59 this Act;
- (e) it or its directors, officers, employees, or significant shareholders willfully, ,violate or fail to comply with an order or direction of the Commission under sections 61;
- (f) its business is being conducted in an unlawful or imprudent manner;
- (g) the continuation of its activities is detrimental to the interests of its depositors;
- (h) it conceals or refuses to submit any of its records or its operations for examination as provided for 58 in this Act, or has otherwise obstructed such examination;
- (i) its licence has been revoked;
- (j) official administration is terminated pursuant to paragraph (b) of subsection (2) of section 127; or
- (k) it is carrying on banking business without a licence.

(2) A receiver appointed under this Part shall liquidate the licensed financial institution for which it has been appointed receiver and wind up its affairs in an orderly manner that minimizes any risk to financial stability, minimizes disruption to depositors, and, consistent with the preceding goals, maximizes the value of the assets of the licensed financial institution or licensed financial holding company.

(3) For purposes of this section, “insolvent” means the licensed financial institution is not paying or is unable to pay its obligations as they fall due or the value of its liabilities exceeds the value of its assets;

(4) The value of a licensed financial institution’s assets, liabilities and capital shall be determined in accordance with valuation standards and procedures issued by the Commission which shall be consistent with international professional standards, treaty commitments of Antigua and Barbuda and any other profession risk based guidelines and standards required by the Commission.

139. Qualifications and compensation for receiver.

(1) A receiver may be:

- (a) a person from the private sector, employee of a statutory body (excluding the Commission) or a public officer who meets the qualifications determined by the Commission; or
- (b) any institution established by the Government whose mandate includes that of receivership.

(2) The Commission may dismiss a receiver and replace the receiver with another qualified person without need for authorization from any person.

(3) The terms of the receiver’s compensation shall be set by the Commission but shall be reasonable and within regional industry levels.

(4) The Commission may on a current basis pay:

- (a) compensation to the receiver;
- (b) compensation to the experts engaged by the receiver;
- (c) reimbursement to both the receiver and the experts for their expenses.

(5) Any amounts paid by the Commission under this section and any remaining costs of the receivership at the end of the term of receivership shall be paid from the proceeds of the sales of the licensed financial institution's assets with the priority described in section 143.

140. Commencement and notice of receivership.

(1) The Commission shall provide immediate notice regarding the appointment of a receiver and revocation of licence to the chairman of the board of directors of a licensed financial institution.

(2) The appointment of a receiver of a licensed financial institution shall be effective from the date of issuance of the notice, unless the notice states otherwise.

(3) The receiver shall immediately post in each office of the licensed financial institution and publish in the Gazette and at least one local newspaper a notice announcing the revocation of the licence and appointment by the Commission, specifying the effective date and time and the procedures and time frame for depositors and other creditors and stakeholders to present their claims against the licensed financial institution or licensed financial holding company to the receiver.

(4) The notice shall also specify that:

- (a) authorisations of persons to engage the financial responsibility of the licensed financial institution have been cancelled;
- (b) persons who previously had authorisation to give instructions on behalf of the licensed financial institution with respect to payment or transfer of the licensed financial institution's or licensed financial holding company's assets or assets managed by the licensed financial institution's are no longer so authorised; and
- (c) the licensed financial institution licence has been revoked.

(5) The receiver shall mail a notice to any depositor or other creditor shown on the books of the licensed financial institution or licensed financial holding company at the address as shown on the books or, if not shown, upon discovery of the name and address.

141. Commission's oversight of receiver.

(1) The receiver shall act in accordance with Regulations under this Act, directions, and prudential standards issued by the Commission at any time in the course of the liquidation, and shall be accountable only to the Commission for the performance of its duties and the exercise of its powers as receiver.

(2) The receiver shall report to the Commission at least once a month, or more frequently if the Commission so requires, on the progress of the receivership in a form determined by the Commission and provide any other information upon the request of the Commission.

142. General powers of receiver.

(1) Upon appointment the receiver shall become the sole legal representative of the licensed financial institution, and shall succeed to all the rights, titles, powers and privileges of the licensed financial institution and its shareholders, directors and officers.

(2) Notwithstanding paragraph (1), subject to the approval of the Commission shareholders, directors and officers may be instructed by the receiver to exercise specified functions for the licensed financial institution.

(3) The receiver may:

- (a) hold title to the books, records, and assets of the licensed financial institution;
- (b) manage, operate and represent the licensed financial institution with all of the powers of the shareholders, directors and officers;
- (c) marshal assets and claims;
- (d) transfer or dispose of assets and liabilities;
- (e) take any other action necessary for the efficient liquidation of the licensed financial institution or licensed financial holding company;
- (f) continue or discontinue any operation of the licensed financial institution;
- (g) borrow money on a secured or unsecured basis;
- (h) hire any necessary staff, specialists, experts or professional consultants and terminate their employment;
- (i) administer the licensed financial institution's accounts;
- (j) collect the debts due to the licensed financial institution and recover goods owed by the third parties;
- (k) execute any instrument in the name of licensed financial institution;
- (l) initiate, defend and conduct in its name any action or proceeding to which the licensed financial institution may be party.

(4) A receiver shall not take any deposits and shall make no loans except to extend funds for the protection of collateral assets where necessary.

(5) The receiver may, in its sole discretion, make partial or complete payment on proven claims at any time, and no liability shall attach to the receiver, by reason of any payment or for failure to pay dividends to a claimant whose claim is not proved at the time of any payment.

143. Transfer of assets and liabilities.

(1) The receiver may transfer any asset or liability of the licensed financial institution without obtaining any approval, assignment, or consent with respect to the transfer or assumption.

(2) The receiver may, upon the prior written approval of the Commission and according to its directions, pursue the following activities:

- (a) dispose of part or all of a licensed financial institution's and liabilities through a purchase and assumption transaction with an acquiring licensed financial institution; or
- (b) transfer part or all of a licensed financial institution's assets and liabilities to a bridge financial institution by the Government.

(3) The arrangements for a transfer of assets and liabilities shall provide for the removal of any director, secretary, officer or employee responsible for the circumstances which led to the appointment of a receiver for the licensed financial institution.

144. Effects of Receivership.

(1) Upon and after appointment of a receiver:

- (a) any term, statutory, contractual or otherwise, on the expiration of which a claim or right of the licensed financial institution would expire or be extinguished shall be extended by six months;
- (b) the calculation of interests and penalties against the licensed financial institution's obligations shall be suspended and no other charge or liability shall accrue on the obligations of the licensed financial institution;
- (c) all legal proceedings against the licensed financial institution are stayed and a third party shall not exercise any right against the licensed financial institution's assets without the prior leave of the court unless the court directs otherwise;
- (d) no depositor or other creditor may sell or take possession of any assets of the licensed financial institution as a means of enforcing a claim or initiate or continue any legal proceeding to recover the debt or perfect security interests in the licensed financial institution's assets;
- (e) no attachment or lien, except a lien created by the receiver in the application of the provisions of this Part, shall attach to any of the property or assets of the licensed financial institution;
- (f) No execution shall be returned against the assets of a licensed financial institution for which a receiver has been appointed, except an execution effected pursuant to a judgment rendered prior to the date of the appointment of the receiver for an amount not exceeding one thousand United States dollars.

145. Taking control of the licensed financial institution.

(1) The receiver shall have unrestricted access to and control over the offices, books of account and other records, and assets of the licensed financial institution and its subsidiaries.

(2) The receiver may request the assistance of law enforcement to gain access to the premises of the licensed financial institution or control over the records of the licensed financial institution.

(3) The receiver shall secure the property, offices, books, records, and assets of the licensed financial institution to seek to prevent their dissipation by theft or other improper action.

(4) Any person who wilfully interferes with a receiver's access to or control over the offices, books of account and other records, and other assets of a licensed financial institution commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars Eastern Caribbean Currency or imprisonment for a period not exceeding one year.

146. Repudiation of Contracts.

(1) Within ninety days from the date of appointment, the receiver may repudiate any contract to the extent that the fulfilment of the contract is determined to be burdensome for the licensed financial institution and the repudiation would promote the orderly administration of the licensed financial institution's or licensed financial holding company's affairs and protect depositors' interest.

(2) Any liability arising from the repudiation shall be determined as of the date of repudiation and shall be limited to actual direct damages incurred and shall not include any damage for lost profits or opportunity or non-monetary damages.

(3) In case of repudiation of a lease agreement of immovable and movable property, the receiver shall give the owner thirty days' notice.

(4) This section shall not apply to contracts entered into by an official administrator appointed in accordance with this Act, except with the prior approval of the Commission.

147. Avoidance of pre-receivership Transfers.

(1) The receiver may set aside the following transactions affecting the assets of the licensed financial institution and recover the assets from the transferee or other beneficiary of the transaction:

- (a) gratuitous transfers to directors, officers, and significant shareholders of the licensed financial institution or licensed financial holding company or their relatives made within three years prior to the effective date of the receivership;
- (b) transactions with related parties or affiliates conducted within three years prior to the effective date of the receivership, if detrimental to the interest of depositors and other creditors;
- (c) gratuitous transfers to third parties made within three years prior to the effective date of the receivership;

- (d) transactions in which the consideration given by the licensed financial institution considerably exceeded the received consideration, made within three years prior to the effective date of the receivership;
- (e) a transaction based on a forged or fraudulent document that the licensed financial institution or licensed financial holding company has executed to the detriment of creditors;
- (f) any act done with the intention of all parties involved to withhold assets from a licensed financial institution's depositor and creditors, or otherwise impair their rights, within five years prior to the effective date of the receivership; and
- (g) transfers of property of the licensed financial institution to, or for the benefit of a depositor or creditor on account of a debt incurred within one year prior to the effective date of the receivership which has the effect of increasing the amount that the depositor or creditor would receive in a liquidation of the licensed financial institution but payment of deposits in an amount equal to or less than one hundred thousand United States dollars per depositor shall not be subject to this provision;
- (h) any attachment or security interest, except one existing six months prior to the effective date of the receivership.

(2) Any action to set aside a transfer under this section shall be taken by the receiver within one year following the effective date of the receivership.

(3) Notwithstanding subsections (1) and (2), the receiver may not set aside a payment or transfer by the licensed financial institution if it was made in the ordinary course of business, or if it was part of a contemporaneous exchange for reasonably equivalent value, or to the extent that following the transfer the recipient extended new unsecured credit to the licensed financial institution which had not been satisfied by the licensed financial institution as of the effective date of the receivership.

(4) The receiver may recover property or the value of property transferred by the licensed financial institution from a transferee of an initial transferee only if the second transferee did not give fair value for the property and knew or reasonably should have known that the initial transfer could be set aside under the provisions of this Act.

(5) The receiver may order that notice of an action to set aside a transfer be recorded in the public records for real estate ownership and any other rights in property and a person taking title to or acquiring any security interest or other interest in the property after the filing of a notice takes his title or interest subject to the rights of the receiver to recover the property.

(6) This section shall not apply to transfers to an asset management company established by the Government or transfers by the official administrator.

148. Obligations of lessors of licensed financial institution premises and utility providers

A lessor of a licensed financial institution's premises or a utility company or other provider of utility services including, without limitation, a company that supplies electricity, water or telecommunication services (including internet), may not alter, refuse or discontinue the services to a licensed financial institution or licensed financial holding company because of its receivership or because the licensed financial institution has failed to pay for the services prior to its receivership.

149. Protection of payment, clearance, and settlement systems.

(1) Irrevocable money and securities transfer orders entered by a licensed financial institution into a payment or securities settlement system recognized as such by the Commission shall be legally enforceable and binding on third parties, even upon a decision revoking the licence and appointing a receiver, but only if the transfer orders become irrevocable before the decision takes effect.

(2) Where a licensed financial institution enters irrevocable money or securities transfer orders into a payment or securities settlement system after the decision revoking the licence and appointing a receiver takes effect and the transfer orders are carried out on the day of the decision, the transfer orders shall be legally enforceable and binding on third parties, unless the receiver proves that the system operator was aware of the decision before the transfer orders became irrevocable.

(3) No provision authorizing the setting aside of contracts and transactions entered into before the appointment of a receiver takes effect shall be applied in a way as to require the unwinding of netting by a payment or securities settlement system recognized by the Commission, but the preservation of the netting shall not prevent the ability of the receiver to recover assets directly from the transferee or beneficiary.

(4) For the purposes of subsections (1), (2), and (3):

- (a) a transfer order entered into a money or securities settlement system becomes irrevocable at the time defined by the rules of that system;
- (b) "netting" means the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant or participants in a settlement system either issue to, or receive from, one or more other participants in that system with the result that only a net claim or a net obligation remains.

150. Determination of claims.

(1) The procedures for determinations of the validity and priority of claims and for liquidation of assets and return of the licensed financial institution customers' property shall be determined by the Commission.

(2) Any sale of the licensed financial institution's assets shall be accomplished in a transparent and reasonable manner.

(3) Any right of a creditor other than a depositor to set off a debt owed by the creditor to the licensed financial institution against a claim of a creditor may be asserted if it would be enforceable under applicable non-insolvency law, except to the extent that the claim of the creditor is disallowed or the set off is based on a transaction that has been avoided under section 137.

(4) If a depositor owes the licensed financial institution an amount for a matured or past-due loan, that amount shall be set off against the deposit amount owed by the licensed financial institution.

(5) If a depositor owes the licensed financial institution an amount for a loan and the loan is not matured or past-due, then, at the sole option of the depositor, the amount owed may be set-off against the deposit amount owed by the licensed financial institution.

151. Authority to disallow claims.

(1) The receiver may disallow any claim or portion of a claim against the licensed financial institution, including a claim based on a security interest, preference, setoff, or priority which is not proved to the satisfaction of the receiver.

(2) In the case of a claim that is secured by any property or other asset of the licensed financial institution, the portion of the claim which exceeds the fair market value of the property or assets shall be treated as an unsecured claim.

(3) This section shall not apply to an extension of credit from the Government to the licensed financial institution.

152. Claims relating to eligible financial contracts.

(1) In determining the rights and obligations between the licensed financial institution and its contractual counterparties, effect shall be given to the termination provisions of eligible financial contracts between them, except during the period of any temporary stay on the exercise of the right that the Commission may determine.

(2) The temporary stay of termination provisions shall be subject to any safeguard standards as the Commission shall issue to facilitate liquidation of the licensed financial institution while at the same time minimizing disruption to the markets for eligible financial contracts.

(3) The net termination value determined in accordance with an eligible financial contract between them shall be a claim of the licensed financial institution on the counterparty or shall be admitted after its validation as a claim of the counterparty on the licensed financial institution.

(4) For the purposes of this section:

- (a) “eligible financial contracts” includes securities contracts, commodities contracts, swaps, repurchase agreements, and similar financial contracts, determined by the Commission, and may include a master agreement covering more than one type of contract; and
- (b) “net termination value” means the net amount obtained after setting off the mutual obligations between the parties to an eligible financial contract in accordance with its provisions.

153. Priorities in payment of claims.

(1) In any liquidation of a licensed financial institution’s assets, allowed secured claims shall be paid to the extent of the realization of the security or the security shall be delivered to the secured creditor.

(2) Other allowed claims shall be paid in relation to all other debts, in the order described below:

- (a) necessary and reasonable expenses of official administration and the receivership, including those paid by the Commission in accordance with section 126;
- (b) wages and salaries of employees of the licensed financial institution in liquidation for the six-month period preceding the appointment of the receiver for the licensed financial institution except for wages and salary earned by a director or officer;
- (c) the net amount due to any depositor of the licensed financial institution up to two hundred thousand dollars United States Dollars, except to a depositor identified in paragraph (e);
- (d) the net amount due to any depositor of the licensed financial institution in excess of the amount due under paragraph (c), if any, except to a depositor identified in paragraph (e);
- (e) the net amount of deposits due to directors, officers and significant shareholders of the licensed financial institution;
- (f) national insurance contributions for officers and employees, wherever applicable, due but not paid;
- (g) taxes, rates and deposits owed to the Government and local authorities concerned;
- (h) unsecured credits extended to the licensed financial institution prior to the appointment of the receiver;
- (i) subordinated debt;
- (j) fees and assessments due to the Commission.

(3) After payment of all other claims filed, with interest at a rate to be fixed by the Commission, any remaining claims which were not filed within the prescribed time shall be paid.

(4) After payment of all claims filed, any remaining allowable claims that were not filed within the time specified by rule for the filing shall be paid.

(5) Any proceeds remaining after all claims of depositors and other creditors have been paid shall be distributed among the shareholders of the licensed financial institution in accordance with their rights.

(6) Notwithstanding subsection (2), the Commission may take actions that would treat similarly situated creditors differently, but only if the Commission determines that:

- (a) the category of claims that are benefitted by the action are of strategic importance to the economy or the action is necessary to contain potential systemic impact or to maximise the value for the benefit of all creditors as a whole; and
- (b) no creditor will receive less in the liquidation than it would have without the disparate treatment.

(7) For the purpose of determining the net amount due to any depositor under subsections (2) (c), (d) and (e), the Commission shall aggregate the amounts of all deposits in the licensed financial institution which are maintained by a depositor in the same capacity.

154. Unclaimed funds.

Unclaimed funds remaining after the final distribution made by the receiver which are not subject to other provisions of this Act shall be deposited by the receiver in the Commission for fifteen years, unless claimed by the owner before the expiration of that period, and on the expiration of that period the funds remaining unclaimed shall be presumed to be abandoned property for the purposes of Part XV of this Act.

155. Safe deposits and unclaimed property.

(1) Any safe deposit box, the contents of which have not been withdrawn before a date specified by the receiver, shall be opened by the receiver and their contents inventoried and the contents and the inventory shall be deposited by the receiver in the Commission.

(2) Any unclaimed property held by the licensed financial institution or licensed financial holding company as bailee, together with inventories, shall be deposited by the receiver in the Commission.

(3) Any contents of a safe deposit box or unclaimed property deposited not claimed within a period of fifteen years following its deposit in the Commission shall be presumed to be abandoned property for the purposes of Part XV of this Act.

156. Termination of receivership and final reporting to the Commission.

(1) Once the proceeds for the sale of assets of a licensed financial institution or licensed financial holding company have been distributed, the receiver shall provide a report to the Commission that includes a statement of income and expense and sources and uses of funds during the period of receivership.

(2) Upon approval by the Commission of the report, the receivership shall be terminated and the Commission shall proceed to terminate the legal existence of the licensed financial institution as a company and the Commission and the receiver shall be relieved of any further responsibility in connection with the receivership of the licensed financial institution.

(3) A receivership shall be terminated within five years of its initiation or as soon as is practicable.

157. Receiver to notify the Commission of fraudulent activities.

(1) If the receiver has reasonable cause to believe that a licensed financial institution or its shareholders, directors, officers, attorneys, accountants or other professionals have engaged or are engaging in fraudulent activities or other criminal activities, the receiver shall immediately notify:

- (a) the Commission and shall pursue civil actions seeking damages and restitution; and
- (b) the authorities responsible for investigating and prosecuting the activities.

PART XI

PRIORITIES OF CLAIMS ON WINDING-UP

158. Priorities of claims

(1) In a winding up of a licensed financial institution under this Act, the following claims have, against the general assets of the licensed financial institution, priority over all the other debts of the licensed financial institution -

- (a) firstly, the necessary and reasonable expenses incurred in carrying out the winding-up;
- (b) secondly, the wages and salaries of the officers and employees of the licensed financial institution that accrued during the three months immediately preceding the seizure of the administration and control of the licensed financial institution;
- (c) thirdly, the severance payments of the officers and employees of the licensed financial institution.
- (d) fourthly, all parochial or other local rates due from the licensed financial institution and all taxes and other debts due from the licensed financial institution to the Crown, or held in trust for the Crown, at the time of the seizure of the administration and control of the licensed financial institution or at the time a voluntary liquidation is proposed;
- (e) fifthly, the fees and assessments owing to the Commission;
- (f) sixthly, if the case requires, the savings and time deposits or trust accounts in amounts not exceeding two hundred and fifty thousand United States Dollars respectively; and

(g) seventhly, if the case requires, all the other deposits, trust accounts and policy claims, and all other claims filed within the time limited thereof pursuant to this Act.

(2) After payment of all other claims against the licensed financial institution, and, notwithstanding any other law, with interest at such rate as the court determines, all remaining claims against the licensed financial institution that were not filed within the time limited therefore pursuant to this Part may then be paid.

(3) When the amount available to pay the claims of any class of claimant specified in this section in respect of priorities is not sufficient to provide payment in full to claimants in that class, the amount available shall be distributed on a pro rata basis among the claimants in that class.

159. Left over assets.

The assets of a licensed financial institution being compulsorily wound up, that remain after the final distribution to claimants pursuant to section 124 must be distributed among the shareholders of the licensed financial institution in proportion to their respective rights.

PART XII

REVIVING LICENSED FINANCIAL INSTITUTIONS

160. Revival of licensed financial institution

(1) When a licensed financial institution has been dissolved under this Part, any interested person may apply to the licensed financial institution to have the licensed financial institution revived.

(2) If the Commission approves the application for the revival of a licensed financial institution, articles of revival in the prescribed form may be sent to the Commission who must thereupon issue a certificate of revival for the licensed financial institution in accordance with section 332 of the IBC Act.

(3) A licensed financial institution is revived on the date shown in its certificate of revival; and thereafter the licensed financial institution, subject to such reasonable terms as may be imposed by the Commission and to any rights acquired by any person after the dissolution of the licensed financial institution, has all the rights and privileges and is liable for the obligations that it would have had if it had not been dissolved.

PART XIV

ABANDONED PROPERTY

161. Abandoned property

(1) Subject to subsection (2) the items in paragraphs (a), (b), and (c) which are held or owing by a licensed financial institution for ten years shall be presumed to be abandoned:

- (a) any general deposit (demand, savings or matured time deposit), and funds prepaid on credit cards and other electronic funds made with a licensed financial institution, together with any interest or dividend, but excluding any lawful charges;
- (b) any funds paid toward the purchase of shares or other interests in a licensed financial institution, together with any interest or dividend, but excluding any lawful charges;
- (c) any sum payable on cheques certified or on written instruments on which a licensed financial institution is directly liable.

(2) The items enumerated in paragraphs (a), (b) and (c) of subsection (1) shall not be presumed to be abandoned if the owner has, within ten years of the date of deposit, payment of funds or issuance of instruments, as the case may be:

- (a) increased or decreased the amount of the deposit or funds or presented the passbook or other record for the crediting of interest or dividends in respect of the items enumerated in paragraphs (a) or (b) of subsection (1);
- (b) corresponded in writing with the licensed financial institution concerning the items; or
- (c) otherwise indicated an interest in the items enumerated in paragraphs (a), (b) and (c) of subsection (1) as evidenced by a memorandum concerning them written by a licensed financial institution.

162. Report, publication and disposal of abandoned property

(1) Every licensed financial institution holding any of the items enumerated in paragraphs (a), (b) and (c) of subsection (1) of section 160 shall during the filing of its quarterly regulatory financial returns report to the Commission all its holding of abandoned property, and from time to time transfer to the Commission all property presumed to be abandoned listed in the report in accordance with Regulations made under this Act.

(2) Upon paying the items enumerated in paragraphs (a), (b) and (c) of subsection (1) of section 167 into the custody of the Commission a licensed financial institution shall be relieved of all liability to the extent of the value of the property for any claim.

(3) Except with the approval of the Commission, on the terms and conditions as it may determine, no reduction in the amount of interest or dividends payable and no charges in excess of those made in respect of comparable active accounts shall be made by a licensed financial

institution either during the period of inactivity of the items set out in subsection (1) of section 167 or at the time payment and delivery of them under subsection (1) is required.

(4) Within thirty days after a licensed financial institution reports to the Commission pursuant to subsection (1), the Commission must publish in the Gazette and a local newspaper general circulation and its website a notice of the name of the owner and particulars concerning the abandoned property and mail a copy of that notice to the beneficial owner of the property, at his latest known address;

but, with the approval of the court on publication to it, the Commission may be exempted from mailing the copy of the notice to the owner.

163. Abandoned property to vest in the Crown

Any abandoned property paid into the custody of the Commission under subsection (1) of section 169 shall vest for fifteen years from the date on which it was paid into the custody of the Commission.

164. Safe deposit boxes

(1) The contents of a safe deposit box at a licensed financial institution shall be presumed to be abandoned where:

- (a) the lease or rental has expired; and
- (b) five years has elapsed from the expiration of the lease or rental.

(2) Every licensed financial institution holding any contents of a safe deposit box presumed abandoned shall:

- (a) within ninety days after the end of its financial year report the holdings to the Commission; and
- (b) deliver to the Commission the contents of the safe deposit boxes reported under paragraph (a).

(3) Upon delivering the property into the custody of the Commission a licensed financial institution shall be relieved of all liability to the extent of the value of the property for any claim.

165. Sale of Abandoned Property

(1) The Commission may sell at public auction (1) any property that has been transferred to it under section 165 after the expiration of thirty days from the latest date of publication of the notice referred to in subsection (4) of section 164 and after the mailing of the copy of the notice to the owner, as the case may be.

(2) The public auction may be held after such reasonable advertising of the sale as the Commission considers suitable.

(3) The Commission must pay into the Consolidated Fund all money received by him as abandoned property and the proceeds of the public auction of any abandoned property less, in each case -

- (a) such amount as the Commission considers necessary to reserve for the payment of claims later made and approved by him; and
- (b) amounts deducted by the Commission for reasonable expenses incurred in connection with the publishing and mailing of notices, service charges, and the sale of abandoned property.

166. Claims on abandoned property

(1) A person who claims a beneficial interest in any abandoned property transferred to the Commission may make a claim for the value thereof within the prescribed time and in the prescribed manner.

(2) If the Commission is satisfied that a claimant is entitled to the abandoned property, the Commission must deliver up the property, or make payment for the value thereof, as the circumstances require.

(3) Upon the expiration of the periods under section 164 no person may make any claim against the Commission or the Antigua and Barbuda in respect of property.

(4) A person aggrieved by a refusal of his claim for abandoned property by the Commission may, within twenty-one days of receiving notice of the refusal, appeal the decision to a judge of the court in chambers, who may make such order thereon as he considers equitable.

167. Failure to file report or to pay property

- (1) Any licensed financial institution which wilfully:
 - (a) fails to file the report or to pay property presumed to be abandoned into the custody of the Commission in accordance with subsections (1) and (4) of section 162 or
 - (b) fails to file the report or to deliver the property presumed to be abandoned into the custody of the Commission in accordance with subsection (2) of section 162, is liable on summary conviction to a penalty not exceeding one hundred thousand US dollars or its equivalent in Eastern Caribbean Currency.
 - (c) The Commission may impose an administrative penalty of an amount not exceeding five thousand US dollars per day for each day that the offence continues.

PART XIII

SPECIAL TAXATION PROVISIONS

168. Exempt Licensed Financial Institutions.

For purposes of this Part, an exempt licensed financial institution means any licensed financial institution formed or continued under this Act.

169. Tax on profits

(1) By way of income tax but *in lieu* of income tax there shall be levied and paid to the Commissioner of Inland Revenue, upon the profits and gains of a licensed financial institution in respect of the international financial services carried on by it, tax at the following rates:

- (a) 2 ½ per cent on all profits and gains up to \$10 000 000;
- (b) 2 per cent on all profits and gains in amounts exceeding \$10 000 000 but not exceeding \$20 000 000;
- (c) 1 ½ per cent on all profits and gains in amounts exceeding \$20 000 000 but not exceeding \$30 000 000; and
- (d) 1 per cent on all profits and gains exceeding \$30 000 000.

(2) A licensee may elect to take a credit in respect of taxes paid to a country other than Antigua and Barbuda where such an election does not reduce the tax payable in Antigua and Barbuda to a rate of less than 1 per cent of the profits and gains of the licensed financial institution in any income year.

170. Withholding tax and report

(1) Notwithstanding any provision of the Income Tax Act but subject to subsection (2) no exempt licensed financial institution need withhold any portion of any dividend, interest or other returns payable to any person in respect of any borrowings of the exempt licensed financial institution from that person.

(2) All dividends, interest or other returns attributable to the securities of, or the management of, assets by an exempt licensed financial institution that are payable to a resident who is known to be a resident by the exempt licensed financial institution or who, with the exercise of reasonable care by the exempt licensed financial institution, could be known by him to be a resident must be reported to the Commissioner of Inland Revenue and the Commission by the exempt licensed financial institution.

171. Exempt trusts.

When a trust is established by a settlor who is not a resident in favour of an exempt licensed financial institution or in favour of a person who is not a resident, the trust is exempt from any tax,

duty or impost in Antigua and Barbuda, if the cash funds of the trust consist solely of currencies and debt obligations expressed in currencies that are foreign in every member state of CARICOM and the trust is under the management of an exempt licensed financial institution.

172. Customs relief

The Minister may by order grant a further exemption to an exempt licensed financial institution in respect of its international banking business from all or so much of any duty payable under the Customs Duties Act or any other customs impost or surcharge in respect of its business as the Minister thinks reasonable, if the exempt licensed financial institution satisfies the Minister that the goods concerned are not being manufactured in the CARICOM Grouping, are essential as equipment or fixtures for carrying on his business from within Antigua and Barbuda and are not merely goods that will be used up or expended in the ordinary course of business.

173. Specialist incentives

(1) When the Minister is satisfied that an exempt licensed financial institution requires the services of specially qualified persons in order to do its business effectively from within Antigua and Barbuda and that it can neither acquire those services in Antigua and Barbuda nor acquire them elsewhere without special benefits being made available for them, the Minister may, by order, in a special case or generally, provide that those persons -

- (a) be exempted from specified taxes in Antigua and Barbuda;
- (b) be permitted to be paid in a foreign currency into a trust account without being liable to be taxed thereon or on the interest thereon; and
- (c) be permitted to be paid in some other prescribed manner in another currency or otherwise without being liable to be taxed thereon in Antigua and Barbuda, Notwithstanding any legislation relating to income tax or the Exchange Control Act.

PART XV

TRANSFER OF BANKING BUSINESS

174. Banking business vesting order

(1) Where an agreement has been entered into for the acquisition by a licensed financial institution (herein referred to as the "transferee financial institution") of the undertaking of another financial institution, whether or not a financial institution to which the provisions of this Act apply (herein referred to as the "transferor financial institution) the transferor financial institution may, for the purpose of effecting the transfer to, and the vesting in, the transferee financial institution of the undertaking, make a written application to the Commission, notice of which shall be published in the *Gazette* in any case where the Commission so directs.

(2) Upon the making of an application under subsection (1), the Commission shall investigate the application including in particular the circumstances leading to the proposed transfer, the ability of the transferee to discharge its obligations under the transfer and the effect, which the transfer is likely to have on the banking services available to the public.

(3) On completion of the investigation, the Commission may, if it thinks fit, make a recommendation to the Minister to make a Banking Business Vesting Order transferring to and vesting in the transferee financial institution the undertaking, as from the date specified therein, and on the making of such an order, all such existing property, rights, liabilities and obligations as are intended by the agreement to be transferred and vested shall, by virtue of this Act, and without further assurance be transferred to, and shall vest in, the transferee financial institution to the intent that the licensed financial institution shall succeed to the whole or such part of the undertaking of the transferor financial institution as is contemplated by the agreement.

(4) No transfer or vesting effected by a Banking Business Vesting Order shall:

- (a) operate as a breach of covenant or condition against alienation;
- (b) give rise to a forfeiture; or
- (c) invalidate or discharge a contract or security.

(5) Notwithstanding anything contained in any enactment to the contrary, the Minister may issue a Banking Business Vesting Order which, for the purposes of corporation tax, contain provisions respecting:

- (a) the carry forward; and
- (b) the set off,

by the transferee financial institution of such of the losses of the transferor financial institution as may be specified in the Banking Business Vesting Order as if the undertaking of the transferor financial institution had not been permanently discontinued on the date specified in the Banking Business Vesting Order and a new banking business had been then set up and commenced by the transferee financial institution.

175. Supplementary provision as to transfers.

(1) Without prejudice to the generality of section 170, the effect of a banking business Vesting Order as regards the banking business transferred is that on and from the date of transfer:

- (a) every existing contract to which the transferor financial institution was a party, whether in writing or not, has effect as if
 - i. the transferee licensed financial institution had been a party thereto instead of the transferor financial institution;
 - ii. for any reference (however worded and whether expressed or implied) to the transferor financial institution there were substituted as respects anything falling

- to be done on or after the date of the transfer, a reference to the transferee financial institution; and
- iii. any reference (however worded and whether express or implied) to the directors or to any director, officer or servant of the transferor financial institution were, as respect anything falling to be done on or after the date of transfer, a reference (as the case may require) to the directors of the transferee financial institution may appoint, or in default of appointment, to the director, officer, clerk or servant of the transferee financial institution who corresponds as ready as may be to the first mentioned director, officer, clerk or servant;
- (b) any account between the transferor financial institution and a customer shall become an account between the transferee financial institution and that customer;
- (c) any existing instruction, direction, mandate, power of attorney or consent given to the transferor financial institution shall have effect as if given to the transferee financial institution;
- (d) any negotiable instrument or order for payment of money which is expressed to be drawn on, or given to, or accepted or endorsed by the transferor financial institution, or payable at any of its places of business, shall have effect as if it had been drawn on, or given to or accepted or endorsed by the transferee financial institution, or payable at the same place of business of the transferee financial institution;
- (e) any security transferred to the transferee financial institution by a Banking Business Vesting Order that immediately before the date of the transfer was held by the transferor financial institution as security for the payment or discharge of any debt or liability or obligation (whether present or future, actual or contingent) shall be held by, and be available to, the transferee financial institution as security for the payment or discharge of such debt or liability or obligation; and any such security which extends to future advances or liabilities shall, from the date of the transfer, be held by, and be available to, the transferee financial institution as security for future advances by, and future liabilities to, the transferee financial institution, in the same manner and in all respects as future advances by, or liabilities to, the transferor financial institution were secured immediately before the date of the transfer;
- (f) any judgment or award obtained by or against the transferor financial institution and not fully satisfied before the date of the transfer shall be enforceable by or against the transferee financial institution;
- (g) unless the agreement by the parties to the transfer provides to the contrary, any officer or servant employed by the transferor financial institution immediately before the date of the transfer shall become an officer, clerk or servant, as the case may be, of the transferee financial institution on terms and conditions no less favourable than those on which he was so employed immediately before the date of the transfer, and such employment with the transferor, and transferee financial institution respectively shall be deemed, for all purposes, to be a single continuing employment, save that no director, secretary or auditor of the transferor financial institution shall by virtue only

of a Banking Business Vesting Order become a director, secretary or auditor, as the case may be, of the transferee financial institution.

- (2) The provisions of subparagraphs (1)(a)(ii) and (1)(a)(iii) shall apply to:
- (a) any statutory provision;
 - (b) any provision of any existing contract to which the transferor financial institution was not a party; and
 - (c) any provision of any other existing document (not being a contract but including in particular a will), as they apply in relation to a contract to which paragraph (1)(a) applies.

(3) Any property or rights transferred to, and vested in, the transferee financial institution which immediately before the date of the transfer were held by the transferor financial institution, whether alone or jointly with any other person -

- (a) as trustee or custodian trustee of any trust, deed, settlement, covenant, agreement or will, and whether originally so appointed or not, and whether appointed under hand or seal or by order of any court;
- (b) as executor of the will of a deceased person;
- (c) as administrator of the estate of a deceased person;
- (d) as judicial trustee appointed by order of any court; or
- (e) in any other fiduciary capacity whatsoever;

shall, from the date of the transfer, be held by the transferee financial institution whether alone or jointly with such other person, in the same capacity upon the trusts, and with, and subject to, the powers, provisions, liabilities and obligations, applicable thereto respectively.

176. Transfers to be subject to stamp duty.

The transfer of, and vesting in, the transferee financial institution of an undertaking by a Banking Business Vesting Order shall, unless exempted (either generally or in some particular case) by the Banking Business Vesting Order, be subject to the provisions of the (Stamp Duty and any other relevant law as if the Banking Business Vesting Order was, in each of the cases in which the duty is imposed on the several instruments, and the instrument between party and party within the contemplation of the Act.

PART XVI

MISCELLANEOUS PROVISIONS

177. Permission to operate domestic Account

The Commission may in a special case where a licensed financial institution carries on business in Antigua and Barbuda in accordance with this Act or other law, permit a licensed financial institution to operate an account with an approved domestic bank to facilitate the operations of the business in an effective and efficient manner.

178. Confidentiality and disclosure

Confidentiality and disclosure are subject to section 31 of the FSRC Act, No. 5 of 2013

179. Administrative penalties

- (1) An administrative penalty levied pursuant to this Act may be recovered as a civil debt.
- (2) An administrative penalty is levied at the full discretion of the Commission

180. Administrative penalties to be placed to the credit of Commission

- (1) All penalties imposed under this Act shall be paid to the Commission to be paid directly into the Consolidated Fund.
- (2) The Commission may, without prejudice to any other remedies available to it under the law recover such penalties by deduction from any funds maintained by a licensed financial institution with the Commission.

181. Regulations

The Minister upon the recommendation of the Commission may make Regulations as may be required from time to time for giving effect to the provisions of this Act, and without limiting the generality of the foregoing, may make Regulations respecting –

- (a) reports or other information to be supplied by persons to whom licences have been granted and any other matter associated with their use;
- (b) records to be kept, returns and reports to be made to the Commission by persons who are appointed as auditors under the Act;
- (c) character of the records to be kept by any licensed financial institution and the form of the report and returns to be made by the licensed financial institution and fixing the times when such reports and returns shall be made;
- (d) forms necessary for the administration of this Act;

- (e) penalties that may be imposed for violations of Orders and Regulations made under this Act and may also prescribe the penalties to be imposed on summary conviction, but no such penalty shall exceed a penalty of fifty thousand dollars or imprisonment of a term exceeding twelve months;

182. Prudential standards

The Commission may issue such prudential standards as may be required from time to time for giving effect to the provisions of this Act, and without limiting the generality of the foregoing, may issue prudential standards respecting:

- (a) policies, practices and procedures for evaluating
 - i. the quality of assets, including off-balance sheet items;
 - ii. the adequacy of asset loss provisions; and
 - iii. asset loss reserves;
- (b) a system of asset classification, provisioning and write-offs;
- (c) the method of valuation of collateral;
- (d) rules for non-accrual of income on non-performing or impaired assets;
- (e) the suspension and reversal of accrued interest;
- (f) policies, procedures and systems for identifying, monitoring and controlling country risk, transfer risk, market risk, liquidity risk, interest rate risk, operational risk, and such other risks as the Commission shall specify;
- (g) liquidity requirements and ratios;
- (h) treatment of assets and investments;
- (i) treatment of loans and other credit facilities;
- (j) related party transactions;
- (k) accounting policies;
- (l) auditors;
- (m) disclosure;
- (n) anti-money laundering and combating the financing of terrorism matters;
- (o) corporate governance matters of a licensed financial institution and a licensed financial holding company to ensure prudent operations, including without limitation matters relating to the scope and nature of the duties of directors; executive compensation; requirements for audit and other specific committees of the board; responsibilities of key management personnel; risk management; internal audit; internal controls, and compliance;
- (p) capital adequacy requirements and capital ratios to be maintained by a licensed financial institution or licensed financial holding company; and
- (q) consolidated supervision.

183. Court's powers in legal claims against Commission

(1) In any court proceedings under this Act, the Court shall take into consideration the public interest.

(2) In considering the public interest, the court shall have regard to:

- (a) the critical importance of financial stability to the public interest;
- (b) the importance of permitting the Commission to discharge its functions in an expeditious and efficient manner in the interest of maintaining financial stability.

(3) Any action under this Act by the Commission or receiver that is the subject of any court proceedings shall be allowed to continue unrestricted notwithstanding the challenge or review before the Court.

(4) Where the Court is satisfied in any proceedings under this Act that:

- (a) a remedy in damages is available to the person who seeks relief; and
- (b) it would be just in all the circumstances, having regard to the public interest, to limit relief to an award of damages, the Court shall limit relief in such proceedings to an award of damages.

184. Amendment of Schedules

The Minister, on the recommendation of the Commission, may by Order published in the Gazette amend the Schedules.

185. Consequential and miscellaneous amendments.

(1) The International Business Corporations Act Cap. 222 as amended as follows-

- (a) in section 3(2) repealing the words "international banking" and "trust".
- (b) in section 3(3) repealing the words "international banking" and "trust".
- (c) in section 4(1)(a)(b) repealing the words "international banking" and "trust".
- (d) in section 5(2a) repealing the words "banking" and "trust".
- (e) in section 6(1a) repealing the words "international banking" and "trust".
- (f) in section 9(1) repealing the words "international banking" and "trust".
- (g) in section 9(2) repealing the words "international banking" and "trust".
- (h) in section 124(4) repeal the words "international banking" and "trust".
- (i) in section 124(5) repealing the words "international banking" and "trust".
- (j) in section 132(2) repealing the word "banking".
- (k) in section 150(4) repealing the words "international banking" and "trust".
- (l) in section 176 (2)(a)(b) repealing the words "international banking" and "trust".
- (m) in section 182(4) repealing the words "banking" and "trust".
- (n) in section 183(1) repeal the words "banking" and "trust".
- (o) in section 227(1) repealing the words "international banking" and "trust".

- (p) in section 227(2) repealing the words “international banking” and “trust”.
- (q) in section 227(3) repealing the words “international banking” and “trust”.
- (r) in section 227(6) repealing the words “international banking” and “trust”.
- (s) in section 228(1) repealing the words “international banking” and “trust”.
- (t) in section 259(1) repealing the words “bank” and “trust”.
- (u) in section 259(3) repealing the words “bank” and “trust”.
- (v) in section 260(1) repealing the words “bank” and “trust”.
- (w) in section 260(2) repealing the words “banks” and “trust”.
- (x) in section 284(2) repealing the word “trust accounts”.
- (y) in section 284(3) repealing the words “international banking” and “trust”.
- (z) in section 284(3)(b) repealing the words “deposits”.
- (aa) in section 285(2) repealing the words “international banking” and “trust”.
- (bb) in section 286(1) repealing the words “international banking” and “trust”.
- (cc) in section 287(c) repealing the words “international banking” and “trust”.
- (dd) in section 289(e) repealing the words “saving and time deposits and trust accounts”.
- (ee) in section 289(f) repealing the words “deposits” “trust accounts”.
- (ff) in section 335(5) repealing the words “international banking” and “trust”.
- (gg) in section 335(6) repealing the words “international banking” and “trust”.
- (hh) in section 354(1)(da) removal of the words “bank” and “trust”

186. Repeals

Sections - 4(2)(3), 9(3), 176 (2)(a)(b), 213, 214, 215, 216, 217, 218, 219, 229, 221, 222, 223, 224, 225, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 270 (f), 275, 279 (b), 284, 285, 286, 287 (b)(c), 288, 289, 290 of the International Business Corporation Act (Cap. 222) are repealed

SCHEDULE I

Fees for Licensed Financial Institution

USD

Description	Non Refundable Application Fee	Initial Licence Fee	Annual Licence Fee
Class I International Banking License	\$4,000	\$40, 000	\$40, 000
Class II International Banking License	\$3,000	\$30, 000	\$30, 000
Class III Composite International Banking and Trust License	\$5,000	\$50, 000	\$50, 000

SCHEDULE II
Examination Fees

USD

Onsite Examination Fee – Local	\$19, 000
Onsite Examination Fee - Operations Based Overseas	\$25, 0000

Passed by the House of Representatives on
the _____, 2016.

Passed by the Senate on the _____, 2016.

.....
Speaker.

.....
President.

.....
Clerk to the House of Representatives.

.....
Clerk to the Senate.

EXPLANATORY MEMORANDUM

The Bill seeks to provide the Financial Services Regulatory Commission with greater regulatory and supervisory power to ensure the licencees conduct business in a manner consistent with international best practices and standards and Antigua and while helping to create and maintain a stable and prosperous international banking and trust sector.

The Bill has seventeen parts.

Part I provides for the interpretation of the terms used in the Bill.

Part II provides general information about the application process for a licence, renewal and variation of conditions of a licence as well as a list of the categories and classes of licences which may be issued. This part also provides the basic requirements for applicants to qualify to be considered for being granted a licence under the Act. This part also provides the Financial Services Regulatory Commission a set of options which can be used to address situations of unlicensed persons carrying on business in the sectors covered by the Act for which this is the Bill. This part also expresses the restricted activities which licencees are permitted to conduct while operating under their issued licences.

Part III provides for the regulation and supervision of the ownership and proper administration of an entity licenced under the Act for which this is the Bill.

Part IV provides for the regulation and supervision of certain licencees' financial requirements and the limitations. This Part establishes certain licencees' minimum paid up or assigned capital as well as a reserve fund. It also provides for a risk-based approach to capital use and allocation by certain licencees. In addition it also provides for the making and maintenance of records by the licencees in a manner which would aid the Financial Services Regulatory Commission to detect, assess and limit the licencee's financial risk as well as their vulnerability to money laundering and other financial crimes.

Part V provides for the auditing of licencees and the appointment, duties and removal of auditors. This Part also provides greater regulatory and supervisory power to the Financial Services Regulatory Commission to enable it to better detect, assess and limit the licencees' financial risk as well as their vulnerability to money laundering and other financial crimes.

Part VI provides for the Financial Services Regulatory Commission to examine each licencee including consolidated groups. This part also provides for the Financial Services Regulatory Commission to be able to issue and amend prudential guidelines to licencees. It also provides the Financial Services Regulatory Commission with greater supervisor authority over its licencees as well as greater powers of intervention along with a greater range of remedies when intervention may become necessary.

Part VII provides for the establishment, licencing and administration of "Trust Activities and Assets Under Management".

Part VIII provides the administrative framework for corporate governance of licencees. The Part provides a fit and proper test for prospective and current shareholders and prudential standards for the administration of licencees.

Part IX provides for the Financial Services Regulatory Commission to have the sole authority to appoint an official administrator where it is satisfied that the licencee has breached or is likely to become in breach of some part of the Act. This Part establishes the duties and powers of the official administrator as well as remedies which may be implemented to prevent or remedy the licencees' breach of the Act.

Part X deals with receivership and compulsory liquidation of a licencee's assets. This Part outlines the grounds which the Financial Services Regulatory Commission will use to determine whether a licencee shall be placed in receivership and the procedure by which this is secured. This Part provides for the Financial Services Regulatory Commission to unilaterally appoint a receiver where it is satisfied that such an action has become necessary. It also outlines the duties and powers of the receiver as well as the authority of the Financial Services Regulatory Commission while a licencee is under receivership.

Part XI deals with priority claims and left over assets upon the winding up of a licencee.

Part XII deals with the voluntary winding up of a licencee. This Part deals with the authority and conditions under which the Financial Services Regulatory Commission, under its own authority or through the Court, may institute the dissolution of a licencee. This Part also provides the supervisory framework for Court supervised dissolution of a licencee including the appointment, duties and powers of a liquidator and the disposal of the licencee's property as well as property held by the licencee.

Part XII provides the legal framework for the reviving of an entity which had previously been licenced.

Part XII deals with unclaimed and abandoned property being held by or formerly held by certain licencees. This Part deals with the categorization, return (to owner), transfer and vesting and claims on unclaimed and abandoned property.

Part XVI establishes the regulatory and supervisory framework for the transfer of the banking business of certain licencees to another person.

Part XVII provides for miscellaneous items including confidentiality and disclosure of information, administrative penalties, regulations, prudential standards, the Court's powers in legal claims against the Financial Services Regulatory Commission, Amendment of Schedules and Miscellaneous amendments.

*Hon. Gaston Browne
Prime Minister
Minister of Finance and
Good Governance*