

Problem solve....

THE FINANCIAL INSTITUTIONS ACT, 1993

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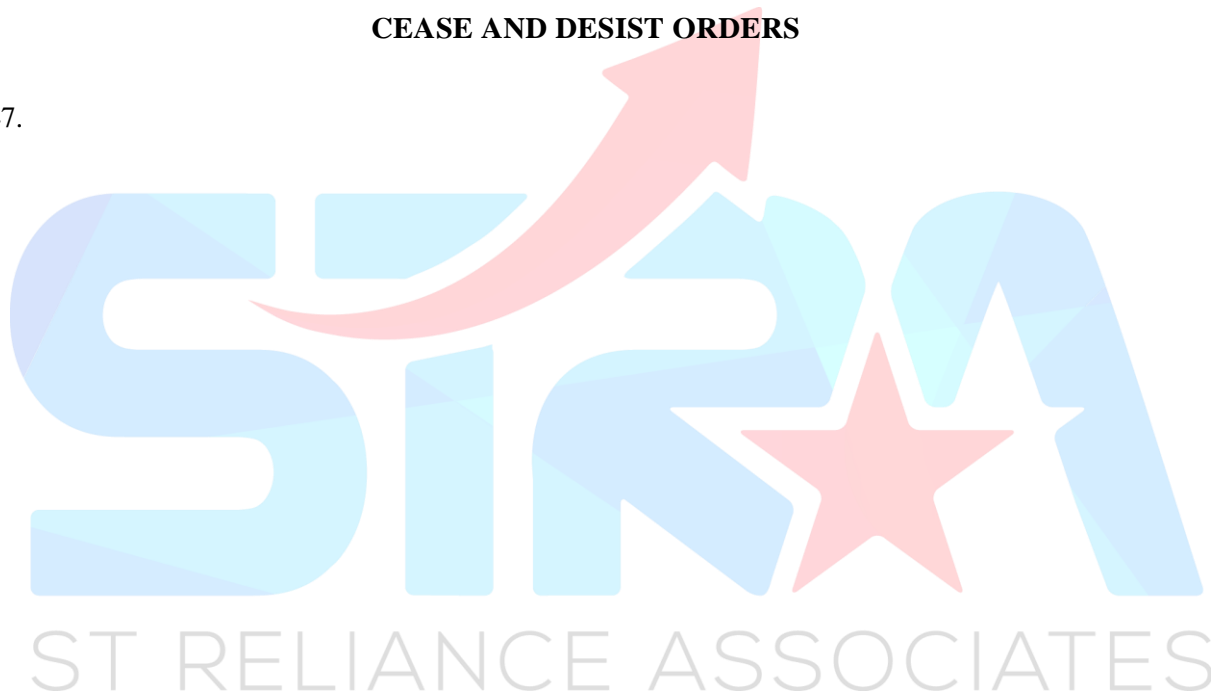


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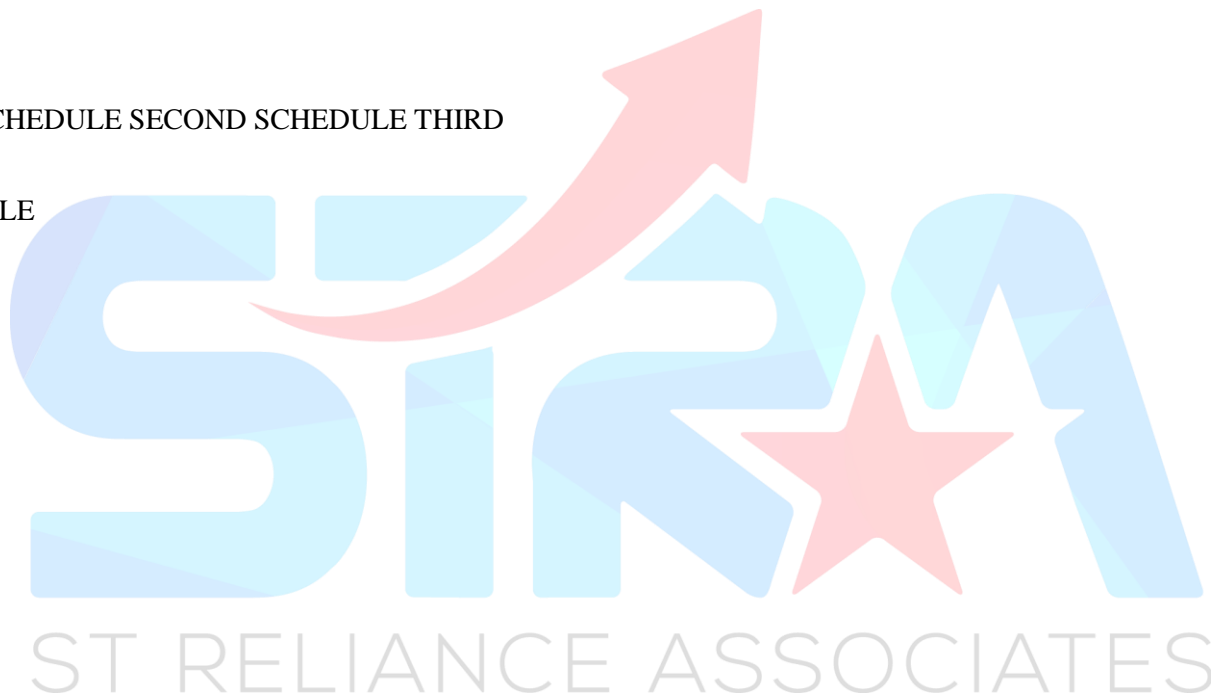
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Legal Supplement Part A to the "Trinidad and Tobago Gazette", Vol. 32, No. 209, 18th August, 1993

Second Session Fourth Parliament Republic of Trinidad
and Tobago

REPUBLIC OF TRINIDAD AND TOBAGO
Act No. 18 of 1993

[L.S.]

AN ACT to provide for the regulation of banks and other financial institutions which engage in the business of banking and business of a financial nature, for matters incidental and related thereto, for the repeal of the Banking Act (Chap. 79: 01) and the Financial Institutions (Non-Banking) Act, 1979 (Chap. 83: 01) and the re-enactment of certain provisions of those Acts in consolidated form.

ST RELIANCE ASSOCIATES
[Assented to 11th August, 1993]

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

PART I PRELIMINARY

Short title 1. This Act may be cited as the Financial Institutions Act, 1993.

Interpretation 2. In this Act—

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

Ch. 31. No. 1 of an advertisement shall be construed accordingly;

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

- (a) a company which is or has at any relevant time been:-
 - (i) a holding company or a subsidiary of C;
 - (ii) a subsidiary of a holding company of C;
 - (iii) a holding company of a subsidiary of C; or
 - (iv) a holding company of a holding company or a subsidiary of a subsidiary of C:-,
- (b) any company over which C has control;
- (c) any company over which C and persons connected with C have control;

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"Appeal Board" means the Tax Appeal Board referred to in Section 53(1):

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

"banking business" or "business of banking" has the meaning assigned to that expression in Section 4(2);

"Board" means the Board of Directors of the Central Bank as defined in the Central Bank Act;

"borrower group" means:-

- (a) a family group comprising an individual and his spouse, parents, children, brothers or sisters where each member of the group is substantially dependent upon the same income sources;
- (b) a company in which the family group indicated in paragraph (a) has controlling interest;
- (c) a group of companies which has a common controlling interest;
- (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 which is prescribed by the Central Bank;

"business of a financial nature" has the meaning assigned to that expression in Section 5(2);

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

Chap.79:02

"Central Bank" means the Central Bank of Trinidad and Tobago established under the Central Bank Act:

"chief executive" means a person who, either alone or jointly with one or more other persons is responsible under the immediate authority of the board of directors of an institution for the conduct of the business of that institution;

"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 to secure, through voting rights or power in a licensee or other company or by an agreement or other powers conferred by the articles of association of the licensee or other company, that the business and affairs of the licensee or other company are conducted in accordance with the wishes of that person;

"controller" in relation to a licensee, means:-

- (a) a managing director of the licensee or of another licensee of which it is a subsidiary;
- or
- (h) a chief executive of the licensee or of another company of which it is a subsidiary;

"Controlling shareholder" means a person who either alone or with an affiliate or relative or connected person, is entitled to exercise or control twenty-five per cent or more of the voting power at any general meeting of the licensed institution or another company of which the licensee is a subsidiary;

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

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

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

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

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

"holding company" includes any person who owns shares which entitle him to exercise twenty-five per cent or more of the voting power at any meeting of shareholders of the Company;

"Inspector" means the Inspector of Banks appointed under Section 30 and includes any person appointed to act temporarily for him;

"licence" means a licence issued under this Act;

"licensee" or "licensed institution" means a company duly licensed under this Act;

"manager" in relation to a licensee or an institution. means a person however designated, but excluding a chief executive, who under the immediate authority of a director or chief executive of the licensee or institution-

(a) exercises managerial functions;

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(b) is responsible for maintaining the accounts or other records of the licensee or



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institution;



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

"prescribed" means prescribed by any written law;

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

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

"relative" in respect of any person means the spouse, parent, grandparent, brother or sister, children, including step-children, and the spouses of those persons;

"security" means any form of collateral, mortgage, pledge, hypothecation, debenture, debenture stock, guaranty, warranty, surety ship, indemnity, share, stock or bond, treasury bill, bill of exchange, a confirmed irrevocable letter of credit and any other form of collateral as may be used in the banking industry, and the term "secured" shall be construed accordingly.

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

"unsecured" in relation to credit facilities means:-

- (a) credit facilities granted without security; or
- (b) in the case of credit facilities granted against security, any part of such credit facilities which at any given time exceeds the market value of the assets comprising the security or which exceeds the valuation approved by the Central Bank whenever it deems that no market value exists for such asset, or where the Central Bank determines that the security if not supported by assets is inadequate to support the credit facilities in the event that the borrower defaults.

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3. (1) Except with the approval of the Minister, an institution shall not be licensed under this Act if its name or description includes the words "central bank" or "reserve bank".
- (2) Except with the approval of the Central Bank a person other than a bank shall not trade or carry on any business or undertaking under any name or title of which the word "Bank" or any variation of the word forms part.
- (3) Any person who contravenes subsection (1) or (2) is liable on summary conviction to a fine of one hundred thousand dollars.

PART II

LICENSING OF FINANCIAL INSTITUTIONS

4. (1) A person other than a company licensed by the Central Bank for that purpose shall not carry on any banking business in Trinidad and Tobago.
- (2) "Banking business" or "business of banking" means the business of receiving of deposits of money from the public on current account or deposit account which may be withdrawn on demand, by cheque, draft, order or notice, and the making of loans, or the granting of credit facilities, and generally the undertaking of any business appertaining to the business of commercial banking.
- (3) A person intending to carry on the business of banking shall, before commencing such business, apply for a licence under section 7.
- (4) A person shall not carry on banking business without having a minimum paid-up share capital of fifteen million dollars or such larger amount as may be specified from time to time by Order of the Minister on the advice of the Central Bank.
- (5) An institution which at the commencement of this Act holds a valid licence under the Banking Act to carry on banking business shall be deemed to have been issued a licence under Section 8

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whether or not it has the minimum share capital required by subsection (4).

- (6) An institution which, under subsection (5), is deemed to be licensed, and which does not have a minimum paid-up share capital of fifteen million dollars may be required by the Central Bank to increase its paid-up share capital within a specified period and where it fails to do so, the Central Bank may limit its business and impose conditions until the share capital requirement has been met.
- (7) Notwithstanding subsections (5) and (6) a licensee may be required by the Central Bank to provide additional capital for the businesses it is conducting and may be required to satisfy the Central Bank that its capital base is adequate in accordance with the capital adequacy requirements imposed by regulations made under this Act.
- (8) Where a person carries on business of banking without a license issued or deemed to be issued under this Act then in any such case:-
 - (a) every director and controller of such institution is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for ten years and in the case of a continuing offence to a fine of ten thousand dollars for every day on which the offence continues;
 - (b) the institution is liable on summary conviction to a fine of two hundred thousand dollars and in the case of a continuing offence to a fine of twenty thousand dollars for every day on which the offence continues.

5. (1) A person shall not carry on any business of a financial nature in Trinidad and Tobago unless
- (a) licensed for that purpose by the Central Bank; or
 - (b) licensed under this Act to carry on business of banking.
- (2) "Business of a financial nature" means the collection of funds in the form of deposits, shares, loans, premiums, and the investment

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of such funds in loans, shares and other securities and includes the performance for reward, of the functions and duties of a trustee, administrator, executor or attorney as well as the types of business set out in the First Schedule but does not include the business of banking.

- (3) A person other than a bank licensed under this Act, intending to carry on business of a financial nature shall, before commencing such business, apply for a licence under section 7.
- (4) A person shall not carry on business of a financial nature without having a minimum paid-up share capital of fifteen million dollars, or such larger amount as may be specified from time to time by Order of the Minister on the advice of the Central Bank.
- (5) An institution which at the commencement of this Act holds a valid licence under the Financial Institutions (Non Banking) Act to carry on business of a financial nature shall be deemed to have been issued a licence under section 8 to carry on the class of business for which it was licensed whether or not it has the minimum share capital required by subsection (4).
- (6) An institution which, under subsection (5), is deemed to be licensed, and which does not have a minimum paid-up share capital of fifteen million dollars may be required by the Central Bank to increase its paid-up share capital within a specified period and where it fails to do so, the Central Bank may limit its business and impose conditions until the share capital requirement has been met.
- (7) Notwithstanding subsections (5) and (6) a licensee may be required by the Central Bank to provide additional capital for the business it is conducting and may be required to satisfy the Central Bank that its capital base is adequate in accordance with the capital adequacy requirements imposed by regulations made under this Act.
- (8) Where a person carries on business of a financial nature without a licence issued or deemed to be issued under this Act, then in any such case:-
 - (a) every director and controller of such institution is liable on summary conviction to a fine of one hundred thousand

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- dollars and to imprisonment for ten years and in the case of a continuing offence to a fine of ten thousand dollars for every day on which the offence continues;
- (b) the institution is liable on summary conviction to a fine of two hundred thousand dollars and in the case of a continuing offence to a fine of twenty thousand dollars for every day on which the offence continues.
- (9) A person licensed under this section shall not:-
- (a) accept a deposit upon terms that it is repayable on demand or in less than one year, and shall inform the depositor of this limitation at the time when a deposit is made;
- (b) without the written permission of the Central Bank repay any deposit within less than one year from the date on which the deposit was received by the licensee;
- (c) grant loans for periods of less than one year.
- (10) Subsection (9) shall not apply to deposits taken from, and loans granted to other licensees, insurance companies, the Central Bank and the National Insurance Board.
- 6.** (1) A licensee shall not establish—
- (a) a branch;
- (b) a representative office; or
- (c) a subsidiary;
- without prior approval of the Central Bank
- (2) Upon the coming into force of this Act, each existing branch of a licensee licensed under section 4(5) or section 5(5) shall be deemed to have approval of the Central Bank.
- (3) The Minister may make such regulations as he may think expedient to regulate branches of licensed institutions.

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- (4) In this Section, "branch" means an office or place of business in Trinidad and Tobago. other than its principal place of business in Trinidad and Tobago where a licensee carries on all or any part of its business of banking or business of a financial nature
7. Every application for a licence to operate financial institution or a licence to carry on business of banking shall be made to the Central Bank in writing and shall be accompanied by:-
- (a) a statement of the applicant's name and the address of its registered office in Trinidad and Tobago;
 - (b) the name, address, nationality, experience, and other relevant information pertaining to each director, chief executive and manager or proposed director, chief executive and manager;
 - (c) a concise history of the applicant's business experience, proposed business dealings including the type of business which it proposes to carry on, **and the** management arrangements for the institution;
 - (d) a certified statement or such proof as the Central Bank may require of the applicant's ability to meet the requirement of a minimum paid-up share capital of not less than fifteen million dollars or such increased amounts as may be required pursuant to Section 4(4) or 5(4);
 - (e) a certified copy of the memorandum and articles of association or other instrument under which the applicant is incorporated;
 - (f) in the case of an applicant who has been carrying on business prior to its application for a licence, a copy of its Profit and Loss Account, Balance Sheet and the auditor's report thereon for the three consecutive years immediately preceding its application, except that where such applicant has been functioning for less than three years, a copy of its Profit and Loss Account, Balance Sheet and the auditor's report thereon for each year it has been in operation shall be sufficient;

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- (g) such further information as the Central Bank may require.
8. (1) The Central Bank may, on an application duly made in accordance with section 7, and after being provided with all such information and documents as it may require under that section, and after consultation with the Minister, approve or refuse the application.
- (2) The Central Bank, upon being satisfied that this Act and any regulations made thereunder have been complied with? and upon payment of the fees specified in section 9, may issue a licence to the applicant. duly signed by the Governor.
- (3) A licence to carry on business of a financial nature may contain such terms and conditions relating to the type of business which may be carried on by the licensee thereof as may be specified.
- (4) Notice of the issue of a licence by the Central Bank shall be published in the *Gazette* and a daily newspaper and notwithstanding the date of publication the licence shall take effect on the date specified therein.
- (5) A licence issued under this Act shall be valid until it is revoked.
- (6) A licensee which is deemed under section 5(5) to have been issued a licence and wishes to vary or increase the type and class of business for which it is licensed shall first obtain the approval of the Central Bank so to do and the Central Bank may require the licensee to increase its paid-up share capital and satisfy such prudential criteria under this Act and requirement as to management as the Central Bank considers necessary.
- (7) It shall be a condition of every licence that the licensee—
- (a) comply with such terms and conditions as may be specified in the licence; and
- (b) within seven days of any change in the directors or managers, notify the Central Bank in writing of such change.

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9. (1) The following fees shall be payable annually to the Central Bank not later than the thirty-first day of January or such later date as may be specified by the Central Bank in respect of-

- (a) an institution licensed to carry on business of banking, fifty thousand dollars;
- (b) an institution licensed to carry on business of a financial nature, twenty thousand dollars;

except that where in either case a licence is issued for the first time after the first quarter in any year, the fee payable shall be calculated on a *pro rata* basis.

(2) Every licensee shall pay to the Central Bank an annual fee of ten thousand dollars for each of its branches.

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(3) The fees payable under this section may be varied by the Minister after consultation with the Central Bank, by Order published in the Gazette and a daily newspaper.

10. (1) The Board may revoke a licence where-

- (a) any of the criteria other than paragraph A specified in the second Schedule is not or has not been fulfilled or is unlikely to be or may not have been fulfilled in respect of the licensee;
- (b) the licensee has failed to comply with any obligation imposed on it by or under this Act;
- (c) the Central Bank or the Inspector has been provided with false, misleading or inaccurate information by or on behalf of the institution or, in connection with an application for a licence, by or on behalf of a person who is or is to be a director, controller or manager of the licensee;
- (d) the interests of depositors or potential depositors of the licensee were in any way threatened, whether by the manner in

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which the licensee is conducting or proposes to conduct its affairs or for any other reason;

- (e) the licensee has not accepted a deposit in Trinidad and Tobago within the period of twelve months from the day on which the licence was issued or having accepted a deposit or deposits has subsequently not done so for any period of more than six months;
- (f) a Receiver or Manager of the licensee's undertaking has been appointed;
- (g) the licensee fails to comply with a condition imposed wider section 11 or to take measures required by the Central Bank under Section 47;
- (h) the licensee's capital or liquidity is inadequate or insufficient to meet its liabilities;
- (i) possession has been taken by or on behalf of the holder of any debenture secured by a charge on any property of the licensee comprised in or subject to the charge;
- (j) the licensee has merged or been amalgamated with another company or institution and the licence is no longer required-;
- (k) the business of the licensee is no longer the business for which it was licensed;
- (l) the licensee has failed to pay its premium to the Deposit Insurance Fund established under the Central Bank Act.

(2) Before revoking a licence, the Board shall give to the licensee notice in writing of its intention to do so, specifying the grounds upon which it proposes to revoke the licence and shall require the licensee to submit to it within a specified period a written statement of objections to the revocation of the licence, and shall give to the licensee notice in writing 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 grounds for the decision and of the licensee's rights under Section 53.

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- (4) When the Board proposes to revoke a licence under this section it shall direct the Inspector to take charge of all books, records and assets of the licensee or any portion thereof for the purpose of safeguarding the interests of depositors, creditors and shareholders of the licensee until any such appeal has been determined.
- (5) Where any licensee is aggrieved by a decision of the Board to revoke its licence, that licensee may appeal to the Appeal Board within fourteen days of the date of notice of revocation setting forth the grounds of such appeal, and the Appeal Board may confirm or set aside the decision of the Central Bank.
- (6) Where a licence is revoked under this section the licensee shall cease carrying on business as from the date notified to it as the date on which the revocation shall take effect.
- (7) When a decision is made revoking a licence and such decision is not set aside by the Appeal Board, the Inspector shall apply to the Court for an Order for the winding-up of the licensee.
- (8) Where in the case of a licensee having an affiliate located outside Trinidad and Tobago, the relevant supervisory authority in that country has withdrawn from the affiliate an authorisation or licence corresponding to any which may be conferred by this Act, the Board may restrict or revoke the licence granted under this Act.
- (9) Where in the case of an affiliate, wherever incorporated, of a licensee:-
 - (a) a winding-up order has been made; or
 - (b) a resolution for *s voluntary windingup has been passed, the Board may restrict or revoke the licence of the licensee if it considers that the winding-up of the affiliate is likely to affect adversely the licensee or its depositors.
- (10) The Board shall revoke the licence of a licensee if:-
 - (a) a winding-up order has been made against it;
 - (b) all the assets of the licensee have passed into the ownership of another person; or

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- (c) a resolution for its voluntary winding-up has been passed.
- 11.** (1) Where it appears to the Board that there are grounds on which its power to revoke a licence is exercisable but the circumstances are not such as to justify revocation, it may place restrictions on the licence instead of revoking it.
- (2) A licence may be restricted by imposing such conditions as the Board thinks necessary to protect the interests of the licensee's depositors or potential depositors.
- (3) The conditions imposed under this section may, in particular-
- (a) require the licensee to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
 - (b) stipulate limitations on the acceptance of deposits, the granting of credit facilities, the making of investments or the distribution of profit;
 - (c) prohibit the licensee from soliciting deposits, either generally or from persons who are not already depositors;
 - (d) prohibit it from entering into any other business of banking or business of a financial nature;
 - (e) require the removal of any director, controller or manager;
 - (f) specify such other requirements as the Board may think fit.
- (4) Where the Board varies a restriction on may be varied or withdrawn by the Board.
- (5) A licensee or any director or manager thereof who fails to comply with any requirement or contravenes any prohibition imposed on it by a condition under this section is liable on summary conviction, in the case of a licensee, to a fine of two hundred thousand dollars and in the case of a director or manager to a fine of one hundred thousand dollars.

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- 12.** (1) Where the Board proposes:-
- (a) to restrict a licence; or
 - (b) to vary the restrictions imposed on a licence otherwise than with the agreement of the licensee, it shall serve written notice of its intention to do so on take licensee.
- (2) A notice under subsection (1) shall specify the proposed restriction, or as the case may be, the proposed variation and such notice shall state the grounds on which the Board proposes to act and particulars of the licensee's rights under subsection 4
- (3) Where:-
- (a) the ground for a proposed restriction or variation of a restriction is that it appears to the Board that the criterion in paragraph A of the record Schedule is not or has not been fulfilled or is unlikely to be or may not have been fulfilled in the case of any person; or
 - (b) a proposed restriction consists of or includes a condition requiring the removal of any person as director, controller or manager, the Board shall serve on that person a copy of the notice mentioned in subsection (1) together with a statement of his rights under subsection (4).
- (4) A licensee which is served with a notice under subsection (1) and a person who is served a copy of it under sub-section (3) may, within the period of fourteen days commencing from the day after which the notice was served, make representation to the Board.
- (5) After serving a notice under subsection (1) or under section 10(2), and taking into account any representations made under subsection (4) or any objection under section 10(2), the Board shall decide whether:-
- (a) to proceed with the action proposed in the notice;-or
 - (b) to take further action; or

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- (c) if the proposed action was to revoke the licence, to restrict it instead; or
 - (d) if the proposed action was to restrict the licence or to vary the restrictions on a licence, to restrict it or to vary the restriction in a different manner.
- (6) The Board shall serve on the licensee and on any such person as is mentioned in subsection (3), written notice of its decision and, except where the decision is to take no further action, the notice shall state the reasons for the decision shall give particulars of the rights conferred by section 13(2) and section 53.
- 13.** (1) A notice under section 12(6) of a decision to restrict or to vary the restrictions on a licence shall have the effect of restricting the licence or varying the restrictions in the manner specified in the notice.
- (2) Where the decision notified under section 12(6) is to restrict the licence or to vary the restrictions on a licence otherwise than as stated in the notice given under section 12 (1) the licensee may, within the period of seven days commencing from the day after which the notice was served under section 12(6), make written representations to the Board with respect to the restrictions and the Board may, after taking those representations into account alter the restrictions.
- (3) A notice under section 12(6) shall be served within the period of twenty-one days commencing from the day after which the notice under section 12(1) was served and if no notice under section 12(6) is served within that period the Board shall be treated as having at the end of that period served a notice under that subsection to the effect that no further action is to be taken.
- (4) Where the Board varies a restriction on a licence with the licensee's agreement or withdraws a restriction consisting of a condition the variation or withdrawal shall be effected by written notice to the licensee.

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- (5) Where, under the provisions of this section a licence is restricted, or varied, the licensee concerned shall comply with the terms of the restriction or variation, as the case may be.

14. (1) The Board may give a licensee directions:-

- (a) when giving it notice under section 10(2) that the Board proposes to revoke its licence;
- (b) at any time after such a notice has been given to the licensee, whether before or after its licence is revoked;
- (c) when giving the licensee a notice of revocation under section 16(2) in the case of members' voluntary winding-up as referred to in section 10(10)(c).

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

- (a) require the licensee to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
- (b) impose limitations on the acceptance of deposits, the granting of credit facilities or the making of investments;
- (c) prohibit the licensee from soliciting deposits either generally or from persons who are not already depositors;
- (d) prohibit it from entering into any other transaction or class of transactions;
- (e) require the removal of any director, controller or manager;
- (f) contain such other requirements as may be considered necessary in any particular case.

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- (3) Where the Board gives a licensee notice that it does not propose to take any further action pursuant to the notice referred to in



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subsection 1(a) or (b) it shall not give any directions and any directions previously given shall cease to have effect.

- (4) Under this section no direction shall be given to a licensee or former licensee after it has ceased to have any liability in respect of deposits for which it had a liability at a time when it was licensed and any such direction which is in force with respect to a licensee or former licensee shall cease to have effect when it ceases to have any such liability.
 - (5) Any person who fails to comply with any requirement or contravenes any prohibition imposed by a direction under this section shall be guilty of an offence and liable on summary conviction to a fine of two hundred thousand dollars and in the case of a continuing offence, to a fine of twenty thousand dollars for every day that the offence continues.
- 15.**
- (1) A direction under section 1 shall be given Notification and by notice in writing and shall state the reasons for which it is given and may be varied by a further direction or cancelled by the Board by a notice in writing to the licensee or former licensee.
 - (2) Where a direction requires the removal of a person as director, controller or manager the Board shall serve on that person a copy of the direction together with a statement of his rights under subsection (3).
 - (3) A licensee to which a direction is given and a person who is served a copy of it under subsection (2) may, within the period of fourteen days commencing from the day after which the direction is given, make written representations to the Board and the Board shall take any such representations into account in deciding whether to confirm the direction.

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- (4) Where the Board decides to confirm the direction it shall serve written notice of such confirmation on the licensee or former licensee and such notice shall state particulars of the rights of the licensee or former licensee under section 53.

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- 16.** (1) No notice need be given:-
- (a) under section 10(2) in respect of the revocation of a licence in any case in which revocation is mandatory under subsection 10(10); or
 - (b) under section 12(1) in respect of the imposition or variation of a restriction on a licence in any case in which the Board considers that the restriction should be imposed or varied as a matter of urgency.
- (2) In any such case as is mentioned in subsection (1) the Board may by written notice to the licensee revoke the licence or impose or vary the restriction.
- (3) Any such notice shall state the reasons for which the Board has acted and in the case of a notice imposing or varying a restriction, particulars of the rights conferred by subsection (5) and by section 53.
- (4) A notice under subsection (2) shall state the reasons for which the Board has acted and, in the case of a notice imposing or varying a restriction, give particulars of the licensee's rights under subsection (5)
- (5) A licensee on which a notice is served under subsection (2) for the imposition or variation of a restriction and a person who is served a copy of it by virtue of subsection (4) may, within the period of fourteen days commencing from the day after which the notice was given. make representations to the Board.
- (6) After serving a notice under subsection (2) imposing or varying a restriction and taking into account any representations made in accordance with subsection (5) the Board shall decide whether:-
- (a) to confirm or rescind its original decision; or
 - (b) to impose a different restriction or to vary the restriction in a different manner.

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- (7) The Board shall, within the period of twenty-one days commencing from the day after which the notice was served under subsection (2), give the licensee concerned written notice of its decision under subsection (6) and, except where the decision is to rescind the original decision, the notice shall state the reasons for the decision.
 - (8) Where the notice under subsection (7) contains a decision to take the action specified in subsection (6)(b) the notice under subsection (7) shall have the effect of imposing the restriction or making the variation specified in the notice and with effect from the date on which it is given.
 - (9) Where a notice of the proposed revocation of a licence under section 10 is followed by a notice revoking a licence under this section, the latter notice shall have the effect of terminating any right to make representations in respect of the proposed revocation.
- 17.**
- (1) Not later than the thirty-first day of March in each year, the Central Bank shall publish in the Gazette and a daily newspaper a list of institutions licensed to carry on business in Trinidad and Tobago.
 - (2) The Central Bank shall make available to any person on request and on payment of such fee, if any, as it may reasonably require, a list of the licensees licensed either at the date of the request or at such earlier date, being not more than thirty days earlier, as may be specified in the request.
 - (3) Within seven days of a person ceasing to hold a licence the Central Bank shall publish notice of that fact in the *Gazette* and in a daily newspaper.
- 18.**
- (1) A licensee shall not make an alteration to its memorandum or articles of association unless it has notified the Central Bank in writing that it proposes to make the alteration and the Central Bank either:-
 - (a) has in writing approved the proposed alteration; or

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- (b) has not, within thirty days of receipt of the notification, indicated in writing to the licensee any disapproval of the proposed alteration.
 - (2) The Central Bank shall not disapprove of a proposed alteration unless such proposed alteration is or is likely to result in, a breach of:-
 - (a) the terms and conditions of the licensee's licence; or
 - (b) the provisions of this Act or any regulations made thereunder.
 - (3) Notwithstanding any written law to the contrary an alteration made to the memorandum or articles of association of a licensee in contravention of subsection (1) shall be void.
 - (4) Every licensee shall within fourteen days of the date on which any alteration is made to its memorandum or articles of association, submit to the Central Bank a copy of such alteration.
19.
 - (1) A person other than a licensee shall not:-
 - (a) describe himself as a licensed institution; or
 - (b) so hold himself **out as to indicate** or be reasonably understood to indicate that he is a licensed institution.
 - (2) A person shall not falsely state, or do anything which falsely indicates, that he is entitled, although not a licensed institution, to carry on the business of banking or the business of a financial nature.
 - (3) Any person who contravenes this section is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for a term of five years.

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20. (1) Any person who:-

- (a) has been a director, controller or manger of a company which has been wound-up by a court or has been placed in receivership; or
- (b) has been convicted by a court for an offence involving dishonesty; or
- (c) has been adjudged a bankrupt under the Bankruptcy Act; or
- (d) has been a director, controller or manager of a former licensee, the licence of which has been revoked, unless such revocation was due to:-
 - (i) its amalgamation with another licensed institution or company; or
 - (ii) its voluntary winding-up;
- (e) is or was convicted of an offence under this Act; or
- (f) is not a fit and proper person in accordance with the criteria specified in the Second Schedule,

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

- (2) Where for the purpose of subsection (1) (f) a person is not regarded as fit and proper the Central Bank shall serve a notice on the licensee and on the person concerned informing them of the disqualification, stating the reasons for its decision and particulars of the rights conferred by subsection (4) and by section 53.
- (3) The licensee on which notice is served and the person to whom a copy is served under subsection (2), may, within the period of fourteen days, commencing from the day after which the notice is given, make written representations to the Central Bank which

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shall take such representations into account in deciding whether or not to grant approval.

- (4) Where—
- (a) the Central Bank places a restriction on the licence of a licensee;
 - (b) it appears to the Central Bank that a licensee's capital or liquidity is inadequate to meet its liabilities and it has so notified the licensee;
 - (c) the Central Bank has exercised any of its powers under section 44D of the Central Bank Act,

the licensee shall notify the Central Bank at least thirty days before the effective date of appointment or employment of any director, controller or manager and shall not appoint to the board such director or employ such controller or manager if within the thirty- day period the Central Bank disapproves such appointment or employment.

- (5) It shall be the duty of every licensee to ensure that its directors, controllers and managers do not act or continue to act in contravention of this section and subject to subsection (7), any licensee which contravenes this subsection shall be guilty of an offence.
- (6) Any person referred to in subsection (1)(a), (b), (c), (d) or (e) and any licensee upon which notice has been served under subsection (2), who contravenes subsection (1) is liable on summary conviction in the case of a person to a fine of one hundred thousand dollars or to imprisonment for five years and to a fine of ten thousand dollars for each day that the offence continues and in the case of a licensee to a fine of one hundred thousand dollars for each day that the offence continues.
- (7) Any person referred to in subsection (1)(f) who after receipt of a copy of a notice under subsection (2) contravenes the provisions of subsection (1) is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for five years or both and to a fine of ten thousand dollars for each day that the offence continues.

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- 21.** (1) A director of a licensee shall not be present, or vote at a meeting of the board of directors or a committee of the board of directors of that licensee when a loan or an advance or other credit facilities to or by:-
- (a) the director, his relative or any person connected with the director; or
 - (b) a company of which he or his relative is an employee, or in which he or his relative owns not less than twenty-five per cent of the paid-up share capital, is being considered, unless such loan, advance or other credit facility is to a company controlled by that licensee and all the issued shares except the qualifying shares of directors are owned by that licensee.
- (2) Any person who contravenes the provisions of this section is liable on summary conviction to a fine of one hundred thousand dollars and imprisonment for five years.

PART IV PROHIBITIONS

- 22** (1) subject to this Act—
- (a) a Bank shall not engage in or carry on any business other than business of banking or business of a financial nature;
 - (b) a licensee other than a Bank shall not engage in or carry on any business other than business of a financial nature.
- (2) A licensee shall not directly or indirectly:-
- (a) engage in any trade except so far as may be necessary in the ordinary course of business operations and services, including the satisfaction of debts due to such licensee and the due performance of its functions as a trustee, executor, administrator or attorney;

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- (b) acquire land except 80 far as may be necessary—
 - (i) for the purpose of conducting its business or housing its officers or employees;
 - (ii) for the satisfaction of debts due to it and the due performance of its functions as a trustee, executor, administrator or as attorney;
- (c) beneficially hold land or any interest in land acquired in the course of satisfaction of debts due to it but shall dispose of it at the earliest possible time but not later than five years from the date of acquisition;
- (d) acquire, deal, underwrite or provide financing for underwriting or dealing in its own shares;
- (e) grant unsecured credit facilities to any of its directors in a principal amount exceeding five per cent of the sum of its paid-up share capital and statutory reserve fund or such other proportion thereof as the Central Bank may from time to time approve;
- (f) grant unsecured credit facilities in a principal amount exceeding five per cent of the sum of its paid-up share capital and statutory reserve fund or such greater proportion thereof as the Central Bank may from time to time approve to any firm or corporation in which such licensee, its manager or a director has an interest in an amount equivalent to ten per cent of its paid-up share capital or more;
- (g) grant unsecured credit facilities to any officer or employee thereof beyond the amount of two years' emoluments of such officer or employee or five per cent of its paid-up share capital, whichever is the less;
- (h) grant unsecured credit facilities to any one person or borrower group preceding in the aggregate five per cent of its capital base or of such proportion thereof as the Central Bank may from time to time approve;

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- (i) grant secured credit facilities to any one person preceeding twenty-five per cent of its capital base or to a borrower group preceeding thirty-two per cent of its capital base or such greater proportion thereof as the Central Bank may from time to time approve
 - (j) acquire or hold in the aggregate any part of the share capital of any commercial, agricultural or industrial undertaking, not including a financial institution, in excess of one hundred per cent of the licensee's capital base and such share holding shall not, in respect of any one such undertaking exceed twenty-five per cent of the licensee's paid-up share capital and statutory reserve fund.
- (3) The directors of a licensee shall propose payment of a dividend to shareholders in the following circumstances only:-
- (a) where all capitalised expenditure of the licensee not represented by tangible assets and all prior losses have been written off;
 - (b) where any impairment of the paid-up share capital has been corrected;
 - (c) where the requirement for the annual payment to the Statutory Reserve Fund has been met in accordance with section 26(1)(a);
 - (d) where, having regard to the licensee's liabilities, it is not imprudent to do so;
 - (e) where the requirements of this Act relating to reserves have been met;
 - (f) where all sums due and payable to the Central Bank by the licensee have been paid, unless the Central Bank otherwise agrees;

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- (g) where, in the event of Central Bank intervention under section 44D of the Central Bank Act, its prior approval has been obtained.
- (4) The Central Bank may direct that the time specified in subsection (2)(c) for the sale or disposal of land be extended for such further period as may be determined.
- (5) The restriction imposed under subsection (2)(j) shall not apply where such shareholding is acquired in the administration of the estate of a deceased person or pursuant to an underwriting arrangement or in the course of the satisfaction of debts due to the licensee but such shareholding shall be disposed of at the earliest suitable time but not later than two years from the date of acquisition.
- (6) The Central Bank may, on the application of the licensee, vary the proportion in any of paragraphs (f), (h) and (i) of subsection (2) in regard to a loan to a particular person or borrower group if it is satisfied—
- (a) that the financial position of the licensee is sound; and
 - (b) that the financial position of the borrower is sound; or
 - (c) that the borrower is a company or corporation which is majority owned by the State and the minister agrees in writing to the loan being made by the licensee.
- (7) Within four months of the coming into force of this Act a person deemed to be licensed under section 4(5) or section 5(5) shall notify the Central Bank of all credit facilities to persons and borrower groups which are in excess of the limits fixed under this section and the licensee shall take such measures as it considers necessary to reduce the excess credit facilities granted within the limits laid down in subsection (2)(h) and (i) and in accordance with subsections (8) and (9) or to provide additional capital in accordance with the capital adequacy requirements under this Act.
- (8) Where unsecured credit facilities referred to in subsection (2)(h) are in excess of the limits imposed by that subsection, the excess shall with effect from two years from the date of commencement

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of this Act, be reduced by annual instalments of at least thirty-three and one-third per cent of that excess until the aggregate of the credit facilities at the end of a period of five years from the commencement of this Act are within the limits imposed by subsection (2)(h).

- (9) Where secured credit facilities referred to in subsection (2)(i) are in excess of the limits imposed by that subsection, the excess shall, with effect from two years after the commencement of this Act, be reduced:-
- (a) in the case of borrower groups, by annual instalments of at least thirty-three and one third per cent of the amount by which the credit facilities exceed forty per cent of the capital base two years after the commencement of this Act so that at the end of a period of five years from the commencement of this Act the credit facilities do not exceed forty per cent of the capital base and thereafter the credit facilities shall be further reduced by annual instalments of at least thirty-three and one-third per cent of the amount by which the credit facilities exceed the limits imposed by subsection (2)(i) so that at the end of a period of eight years from the commencement of this Act the credit facilities are within the limits imposed by subsection (2)(i);
 - (b) in the case of any one person, by annual instalments of at least thirty-three and one third per cent of the amount by which the credit facilities exceed twenty-five per cent of the capital base two years after the commencement of this Act so that at the end of a period of five years from the commencement of this Act the facilities are within the limits imposed by subsection (2)(i).
- (10) Nothing in this section shall prohibit a licensee from providing in accordance with any scheme for the time being in force, money for the purchase by trustees of fully paid-up shares in that licensee to be held by or for the benefit of employees of the licensee, including any director holding a salaried employment or office, so,

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however, that the financing of such shares for such employees shall not exceed twenty-five per cent of any class of shares of the licensee except with the prior approval of the Central Bank.

- (11) Where a licensee contravenes the provisions of this section it is liable on summary conviction to a fine of two hundred thousand dollars, and where such offence is committed with the consent or connivance of, or attributable to any negligence on the part of any director, controller, manager, or other officer of the licensee responsible for granting credit facilities or any person purporting to act in any such capacity, he is liable on summary conviction to a fine of one hundred thousand dollars and imprisonment for five years.

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

- (2) Nothing in subsection (1) preclude the licensee from:-

- (a) requiring such insurance to be placed with insurance companies approved by it,
- (b) acting as agent for an insurance company.

- (3) Any person who contravenes the provisions of this section is liable on summary conviction to a fine of fifty thousand dollars or imprisonment for five years.

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

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

- (3) The Minister upon the recommendations of the Central Bank may make regulations governing the issue of advertisements.

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- (4) Regulations made under subsection (3) shall be subject to negative resolution of Parliament.
- (5) For the purpose of this section:-
 - (a) an advertisement issued by any person by way of display or exhibition in a public place shall be treated as issued by him on every day on which he causes or permits it to be displayed or exhibited;
 - (b) an advertisement issued by any person on behalf of or to the order of another person shall be treated as an advertisement issued by that other person;
 - (c) an advertisement inviting deposits with a person specified in the advertisement shall be presumed, unless the contrary is proved, to have been issued by that person.
- (6) Any person who contravenes this section is liable on summary conviction to a fine of fifty thousand dollars and in the case of a continuing offence to a fine of five thousand dollars for each day that the offence continues.
- (7) Without prejudice to section 58(2), in any proceedings for an offence under this section it shall be a defence for the person charged to prove that he is a person whose business it is to publish or to arrange for the publication of advertisements and that he received the advertisement in the ordinary course of business and did not know and had no reason to suspect that the publication would constitute such an offence.

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PART V RESERVES AND OTHER REQUIREMENTS

25. (1) Every licensee shall hold and maintain:-
- (a) a reserve fund to be known as the Statutory Reserve Fund into which no less than ten per cent of the net profit of that licensee after deduction of taxes shall be transferred at the end of each financial year until the amount standing to the credit of the Statutory Reserve Fund is not less than the paid-up capital of the licensee;
 - (b) as a deposit with the Central Bank a cash reserve balance to be known as a Reserve Account which shall bear a ratio to the total prescribed liabilities of that institution in such form and to such extent as the Central Bank may by notice published in the Gazette prescribe from time to time.
- (2) For the purpose of this section, the Central Bank may, by notice published in the *Gazette*:-
- (a) define the classes of prescribed liabilities;
 - (b) stipulate different ratios in respect of each class of prescribed liabilities;
 - (c) when in the opinion of the Central Bank special monetary conditions warrant, set additional reserve account ratios in respect of increases in total prescribed liabilities.
- (3) For purposes of determining the amount of the cash reserve balance required to be maintained by any licensee in the Reserve Account during a period of one week:-
- (a) the amount of the prescribed liabilities of such licensee shall be the average of its prescribed liabilities at the close of business on Wednesday in each of the four preceding consecutive weeks ending with the last Wednesday but one;

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- (b) the amount of the cash reserve balance of such licensee with the Central Bank shall be the average amount of such balance at the close of business on each day of the current week.
- (4) Subject to subsection (5), whenever any licensee fails to maintain the balance in the Reserve Account required to be maintained under this section, the Central Bank shall notify such licensee of the deficiency, and the licensee shall pay to the Central Bank interest on the amount of the deficiency at such rate, not in excess of one-thirtieth of one per cent per day, as the Central Bank may set by notice published in the *Gazette*.
- (5) If any licensee fails to maintain the amount in the Reserve Account required by this section for a period longer than one week, the Central Bank may require such licensee to pay additional interest not in excess of three times the amount of interest fixed in accordance with subsection (4).
- (6) Notwithstanding anything contained in this section, the Central Bank may by notice published in the *Gazette*:
 - (a) permit licensees to count all or part of their notes and coins as cash reserve balance required under this section;
 - (b) decide to pay interest at such rate as it may determine on the balance in the reserve account.
- (7) The provisions of any notice shall apply uniformly to all institutions except for those licensees referred to in subsection (8).
- (8) When the Central Bank has assisted in the restructuring of a licensee which is in financial difficulties or it has provided financial assistance to support a licensee in difficulty, it may waive the requirement under this section for a specified period of time and on such conditions as it may determine.

26. (1) In order to determine what steps, if any, are necessary to be taken to encourage the expansion



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of credit in any or all sectors of the economy, the Central Bank shall, from time to time, consult with licensees.



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- (2) The Central Bank may, after consultation with licensees and with the approval of the Minister, impose controls in respect of the volume, terms and conditions upon which credit may be made available to all or any sectors of the economy, when in its judgment, the imposition of such controls is necessary to restrict or prevent an undue expansion of credit.
 - (3) The imposition of any controls under subsection (2) shall be by notice published in the *Gazette*, and a daily newspaper and the provisions of any such notice shall take effect on or after the date of publication as may be stated in the notice and shall apply uniformly to all licensees.
27.
 - (1) The Central Bank may permit any licensee to hold working balances in any specified foreign currency excess of the maximum amount set or determined for such currency under subsection (2).
 - 2) The Central Bank may from time to time prescribe the manner of determination of the maximum amount of the working balances which licensees may hold in foreign currencies generally or in any specified currency or currencies.
 - (3) In ascertaining whether the working balances of any licensee in any foreign currency are in excess of the maximum amount fixed or determined as herein before provided, there may be deducted from such balances the net liabilities of that licensee in currencies into which such currency is convertible.
28.
 - (1) No licensee shall incur, in Trinidad and Tobago, deposit liabilities of an amount exceeding twenty times the sum of its paid-up share capital and Statutory Reserve Fund.
 - (2) The Central Bank may, by notice published in the *Gazette*, determine the minimum ratio that after the expiration of six months from the date of service of the notice, Trinidad and Tobago assets held by licensees will bear to their respective liabilities in Trinidad and Tobago but any variation of such ratio shall not exceed ten percentage points in any one period of six months.

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

- 29.** (1) A licensee shall 80 conduct its business as to ensure that in the placing of its liquid assets preference at all times given to short- dated instruments originating in Trinidad and Tobago.
- (2) The Central Bank may fix the percentage which the liquid assets of a licensee should bear to its respective total prescribed liabilities and the percentage which its respective liquid assets originating in Trinidad and Tobago should bear to the total of its liquid assets.

PART VI

INSPECTION, INVESTIGATION AND WINDING

- 30.** (1) The President shall, upon the recommendation Appointment of the Governor, appoint a fit and proper person to be Inspector of Banks who shall be an officer of the Central Bank.
- (2) The Inspector shall be appointed to hold office during good behaviour but may be removed from office by the President, on the recommendation of the Governor, for inability or failure to perform his duties properly.
- (3) The Inspector shall be paid such remuneration and allowances as may be determined by the Central Bank.
- (4) Subject to the provisions of this Act and any other written law the Inspector, while holding office, shall not occupy any other office or employment whether remunerated or not but the Inspector with the approval of the Central Bank, may become a director or member of the board of any international bank, monetary authority or other agency to which the government subscribes, contributes or gives support or become a director of any company, corporation or other body in which the Central Bank holds stock, shares or otherwise participates and may be appointed by the Central Bank

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to hold an office including the office of Receiver or Manager, or to perform any function under section 44D of the Central Bank Act.

- (5) In the event of absence or inability of the Inspector from whatever cause arising, to perform his duties the Governor may appoint any qualified person to act temporarily in place of the Inspector.
- (6) The Central Bank shall appoint, upon such terms and conditions as it may think fit, such persons as may be considered necessary to assist the Inspector in the performance of his duties.

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- (7) A person appointed or employed under this section shall not borrow money from any licensee unless he obtains the permission of the Governor to do so.
- (8) Where any person appointed or employed under this section is a shareholder, whether directly or indirectly, in any licensee, he shall notify the Governor in writing of such share holding and the Governor may, if he thinks fit, require such person to dispose of any such share holding or interest therein within a specified time.

31. (1) The Inspector shall:-
 - (a) examine all applications for licences and make recommendations thereon to the Central Bank;
 - (b) make or cause to be made such examination and inquiry into the affairs or business of each licensee as he considers necessary or expedient, for the purpose of satisfying himself that the provisions of this Act are being observed and that the licensee is in a sound financial condition;

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- (c) r he conclusion of each examination and inquiry;
e
p (d) take and maintain such steps or proceedings as may be necessary for the
o winding-up of a licensee or for the appointment of a Receiver or
r Manager thereof subject to
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the direction of the Central Bank and the provisions of this Act.

- (2) For the purpose of determining the condition of a licensee and its compliance with this Act, the Central Bank or the Inspector may call upon any auditor, director, controller or manager of any affiliate of the licensee to provide such information that is related to or may affect the financial condition of the licensee or any transaction between the licensee and the affiliate so as to satisfy itself that the licensee is in compliance with the provisions of the Act.
- (3) In the performance of the duties under this Act, the Central Bank, the Inspector and the assistants to the Inspector shall at all reasonable times have access to all books, records, accounts, vouchers, minutes of meetings, securities and any other documents of any licensee and the right to call upon any director, manager, auditor or employee of any such licensee for any information or explanation as they consider necessary for the due performance of their duties.
- (4) If an examination reveals that a licensee is conducting its business in an unlawful or unsound manner or that it is otherwise in an unsound condition the Central Bank may require that the licensee forthwith or within such time as may be specified, take all such measures as it may consider necessary to rectify the situation and may issue to the licensee a cease and desist order in accordance with section 47.
- (5) Where a person fails to comply with a request under subsection (2) the Central Bank shall restrict any further transactions between the licensee and affiliate and take such other measures as it may think fit against the licensee if it considers that the transactions or relationship between the licensee and affiliate may be risky and could prejudice the interests of depositors or potential depositors.
- (6) Any person who fails to comply with a request made pursuant to subsection (3) and a restriction made pursuant to subsection (5) or who obstructs a person in the performance of his duties under this section is liable on summary conviction to a fine of one hundred dollars and to imprisonment for five years.

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- (7) Any licensee which fails to take measures required by the Central Bank pursuant to subsection (4) is liable on summary conviction to a fine of one hundred thousand dollars and in the case of a continuing offence to a fine of one thousand dollars for each day that the offence continues.

- 32.** (1) Where the Inspector is satisfied after examination of the affairs of any licensee that it is insolvent or that it is unable to meet the minimum capital adequacy requirement stipulated in the prudential criteria or is unlikely to meet the demands of its depositors or that its continuation in business is likely to involve a loss to its depositors or creditors he shall advise the Board accordingly.
- (2) The Board may, after receiving the advice of the Inspector and after considering all the relevant facts and circumstances, order the licensee to suspend business forthwith and may direct the Inspector to take charge of all the books, records, other documents and assets of the licensee and to take all such measures as may be necessary to prevent the continuation in business by that licensee during the period of suspension and preserve the assets of the licensee and all costs incurred shall be a first charge on the assets of the licensee.
- (3) Notwithstanding the provisions of any other law, no action or proceedings may be instituted in any court for the purpose of securing the enjoining, review or revocation of any order made or direction given under subsection (2) or in respect of any loss or damage incurred or likely to be or alleged to be incurred by reason of such order or direction.
- (4) An order made under subsection (2) shall cease to have effect:-
- (a) if the Board makes a further order permitting the licensee to resume business either unconditionally or subject to such conditions as it may consider necessary in the public interest or in the interests of the depositors, potential depositors and other creditors of such licensee; or
- (b) upon the expiration of a period of thirty days from the day on which it is made, unless:-

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- (i) the Board extends the order for a period not exceeding sixty days;
 - (ii) an application is made to the Court for the appointment of a Receiver or Manager on behalf of the depositors; or
 - (iii) an application is made to the Court for the winding- up of a licensee on behalf of the depositors by the Inspector.
- (5) Any person who prevents the Central Bank, the Inspector or his assistants from having access to the licensee, its books, records or other documents or fails to make them available is guilty of an offence and liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for five years.
33. (1) In any case where application is made by the Winding-up Inspector for the winding-up of a licensee:-
- (a) the licensee shall remain in suspension and shall not carry on business during the pendency of the application unless it is authorised to do so by the Court and except in accordance with such conditions, if any, as may be specified by the Court; and
 - (b) the Court, if it is of the opinion after such inquiry as it may consider necessary:-
 - (i) that the licensee is not insolvent;
 - (ii) that it is able to meet the minimum capital adequacy requirement;
 - (iii) is able to meet the demands of its depositors and its continuation in business is not likely to involve a loss to its depositors or creditors, may permit the licensee to resume business either unconditionally or subject to such conditions as the Court may consider necessary in the public interest or the interests of the

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depositors and other creditors of the licensee but shall otherwise order that the licensee be wound-up.

- (2) In any case where an order of the Court is made, whether in pursuance of an application under this section or otherwise, for the winding-up of any licensee or for the appointment of a Receiver or Manager then, notwithstanding the provisions of any other law, the Inspector or such other person as may be nominated by the Central Bank shall be appointed as Liquidator, Receiver or Manager as the case may be.
 - (3) The appointment of the Inspector or such other person nominated by the Central Bank under subsection (2) as Liquidator, Receiver or Manager does not in any way absolve any director, controller, manager or other officer of the licensee from liability arising from wilful neglect, fraudulent transactions, abuse of depositors' funds and from breach of the provisions of this Act.
- 34.** (1) The procedure governing applications made to the Court under section 33 and for the enforcing of orders made thereunder and for all matters incidental thereto shall be such as is provided for by the Companies Ordinance.
- (2) Notwithstanding subsection (1) an application by the Inspector referred to in section 33 may be heard *ex parte*.
- 35.** (1) The Inspector, or any person acting in his place, or any assistant to the Inspector shall not disclose any information regarding the operation of a licensee or a customer of a licensee to any person other than the Governor or such other person as may be designated by him.
- (2) Where information is provided to a third party, the person on whom information is given must be advised of the fact that such information was disclosed and of the person to whom it was disclosed, except in the case of a criminal charge or in matters involving national security.
 - (3) A person who contravenes any of the provisions of this section shall be guilty of an offence



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and liable on summary conviction to a



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fine of thirty thousand dollars or imprisonment for twelve months or to both.

- (4) Notwithstanding the provisions of sections 31, 32, 33 and 34, where it appears desirable to do so, the Central Bank may appoint one or more competent persons to investigate and report to it on the state and conduct of the business of any licensee, or on any particular aspect of that business.

36. (1) Except as provided in section 35:-

- (a) no person who under or for the purposes of this Act receives information relating to the business or other affairs of any person; and
- (b) no person who obtains any such information directly or indirectly from a person who has received it as aforesaid, shall disclose the information without the consent of the person to whom it relates and, (if different) the person from whom it was received as aforesaid.

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

(3) Any person who discloses information in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine of thirty thousand dollars or imprisonment for twelve months.

PART VII REGULATION OF LICENSEES

37. (1) The Central Bank shall have the powers and Powers and duties conferred on it by this Act together with the powers conferred on it by the Central Bank Act, and in the exercise of those powers, the duty generally to supervise licensees.

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- (2) It shall be the duty of the Central Bank to keep under review the operation of this Act and the operations of licensees so far as may be relevant to the exercise of its powers and the discharge of its duties.
 - (3) The Governor shall keep the Minister informed of all developments and activities which affect the business of banking and the business of a financial nature in Trinidad and Tobago.
- 38.**
- (1) The Minister after receiving the recommendations Power to make of the Central Bank may make Regulations with respect to prudential criteria with which licensees shall comply.
 - (2) Regulations made under subsection (1) shall be subject to affirmative resolution of
 - (e) treatment of interest;
 - (f) related party transactions;
 - (g) risks related to self dealing;
 - (h) profiting from insider information;
 - (i) risks related to foreign exchange transactions, sectoral and business risks, off balance sheet transactions;

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- (j) reporting requirements for large or potentially large exposures and large deposits;
 - (k) other reporting requirements;
 - (l) information required in published financial statements;
 - (m) new financial instruments;
 - (n) relationship with parent subsidiary and affiliate as it affects the capital position of the licensee.
- (4) The Minister on the recommendations of the Central Bank, by Order may amend such criteria from time to time and may exempt a licensee from complying with any of the criteria, where it is satisfied that the licensee is otherwise operating prudently and is in a sound financial condition.
- (5) A person who contravenes any requirement imposed under this section is liable on summary conviction to a fine of one hundred thousand dollars and in the case of a continuing offence to a fine of ten thousand dollars for each day during which the offence continues.
- 39.** (1) Notwithstanding any other law a person or a person on whose behalf shares are held either in trust or by a nominee shall not become a controlling shareholder of a licensee without a permit being first obtained from the Central Bank.
- (2) Where a person becomes beneficially entitled to shares, under a will or by intestacy such as to make him a controlling shareholder, he shall apply for a permit within one month of this fact coming to his knowledge.
- (3) The Central Bank may by notice in writing require any shareholder of a licensee to transmit to it information:-
- (a) as to whether that shareholder holds any voting shares in the licensee as beneficial owner or as trustee; and



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- (b) if he holds them as trustee, the person for whom he holds them, either by name or by such other particulars sufficient



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to enable those persons to be identified, and the nature of their interest, and the shareholder shall comply with the requirement within such time as may be specified in the notice.

- (4) Any person who holds twenty five per cent or more of the issued shares of a licensee on the coming into force of this Act is deemed to hold a permit under this Act for such shares.
- (5) In determining whether or not a permit should be granted, the Central Bank shall take into account whether the proposed shareholder is a fit and proper person in accordance with the criteria in the Second Schedule or may be such as to prejudice the interests of the depositors of the licensee and whether ownership by a controlling shareholder who is:-
 - (a) part of a group of relatives each of whom is substantially dependent upon the same source of income; or
 - (b) in the case of a company, an affiliate of another company, would be likely to prejudice the interests of depositors of the licensee.
- (6) Where a controlling shareholder is no longer a fit and proper person in accordance with the criteria in the Second Schedule, or where a person under subsection (2) is not granted a permit, he shall be notified by the Central Bank of this fact and he shall be required to take such steps as may be specified by the Central Bank to dispose of such shares as are in excess of twenty-five per cent of the issued shares of a licensee or another company of which the licensee is a subsidiary.

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- (7) Any person who:-
 - (a) fails to comply with a requirement under subsection (3); or
 - (b) in response to such requirement, knowingly or wilfully supplies false information to the Central Bank; or

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- (c) contravenes any other provision of this section, is liable on summary conviction to a fine of one hundred thousand dollars or imprisonment for a term not exceeding five years and in the case of a continuing offence to a fine of ten thousand dollars for each day during which the offence continues.
- (8) Shares required to be held under a permit and not so held shall be subject to forfeiture without prejudice to any other penalty which may be incurred by any party pursuant to this Act.
- (9) Where the circumstances so warrant, the Attorney General may apply to the High Court for a declaration that any right, title, or interest in the shares referred to in subsection (7) be forfeited to the State.
- (10) A share that has been declared to be forfeited shall be sold or otherwise dealt with for the benefit of the State as the President may direct.
- (11) A declaration by a Court that shares have been forfeited under this Act shall operate to vest in the President the right to transfer them and to recover and receive dividends or income thereon from the time that the forfeiture took effect.

PART VIII

ACCOUNTS, AUDITORS AND INFORMATION

- 40.** (1) Every licensee shall deliver to the Central Bank such period as may be specified, and in such form as the Central Bank may from time to time approve, statements of its:-
- (a) assets and liabilities;
 - (b) loans and advances;
 - (c) earnings and expenses; and



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- (d) such other financial data as the Central Bank may require.



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- (2) No statement or return shall in any case be required in respect of the affairs of any particular customer of a licensee.
 - (3) Every licensee shall submit to the Central Bank at the end of every quarter a list of shareholders on its register who hold share holdings of five per cent or more of its issued share capital.
 - (4) Failure on the part of any licence to comply with subsection (1) shall be an offence and the licensee is liable on summary conviction to a fine of one hundred thousand dollars and in the case of a continuing offence a fine of ten thousand dollars for each day that the offence continues.
- 41.**
- (1) Every licensee shall within sixty days after the end of its financial year publish in the *Gazette* and a daily newspaper a statement showing all accounts payable by the licensee in respect of which during a period of fourteen years or any longer period, no transaction has taken place and no statement of account has been requested or acknowledged by the creditor.
 - (2) Every statement published under subsection (1) shall require the person to whom the account is payable or his legal personal representative to submit a claim to the licensee within three months from the date of publication in the *Gazette* or a daily newspaper which ever is published later.
 - (3) Where any sum included in the statement published under subsection (1) remains unclaimed for a period of three months after the date of publication of the statement in the *Gazette* or daily newspaper whichever is published later, such sum, after deduction therefrom of the cost of publication, shall be paid into the Central Bank and credited to the Consolidated Fund and thereafter interest shall cease to accrue to such sum.
 - (4) Nothing contained in this section shall be deemed to affect the rights of any depositor to recover a debt due to him by the licensee.
 - (5) Every licensee publishing the statement referred to in subsection (1) and thereafter paying any sums to the Central Bank under the provisions of this section



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shall be indemnified by the Government for any loss which it may incur as a result of any such payment.



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- (6) Any licensee which fails to comply with the provisions of subsection (1) is liable on summary conviction to a penalty of thirty thousand dollars.

42. (1) Every licensee shall within three months after the close of its financial year publish in a daily newspaper and exhibit in a conspicuous place in each of its offices, a consolidated balance sheet of all its operations both locally and abroad as the case may be, duly audited by a certified auditor and shall submit a copy thereof to the Central Bank in the form prescribed by the Central Bank.

- (2) Every licensee shall submit on the request of the Central Bank in respect of an affiliate an audited balance sheet and profit and loss account signed by two directors.

(3) If in the opinion of the Central Bank, the information contained in the consolidated accounts or in the accounts of an affiliate of the licensee, indicates the likelihood of insolvency of the affiliate, the Central Bank may, after consultation with the licensee and its affiliate, require the licensee to take such measures as the Central Bank may consider necessary to prevent the financial condition of the affiliate from affecting the licensee and, in particular, may require:-

- (a) the paid-up share capital of the affiliate to be increased; or
- (b) that the affiliate or part of its business be sold, transferred or otherwise disposed of;
or
- (c) that the licensee cease to make any advances or grant any credit facilities to the affiliate; or
- (d) that the licensee make special provision for any potential losses which in the opinion of the Central Bank, the affiliate is likely to incur where such affiliate has credit facilities with the licensee.

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(4) Any licensee which fails to comply with subsections (1) and (2) shall be liable to a penalty of ten thousand dollars per day for each day that the offence continues.

43. (1) The Central Bank may require, a licensee to furnish within such time and in such form as the Central Bank may determine such information as it may consider necessary to ensure that the provisions of this Act are being or have been complied with or such other information as the Central Bank may reasonably require for the performance of its functions under this Act or the Central Bank Act.

(2) The Central Bank may, require, the licensee to provide it with a report by an accountant or other person with relevant professional skill, nominated or approved by the Central Bank, on any aspect of any matter about which the Central Bank has required or could require the licensee to provide information under subsection (1).

(3) The Central Bank may, require a licensee or any director, controller, manager, servant or agent of a licensee to produce within such time and at such place as may be specified in the notice such document of such description as may be specified.

(4) The Central Bank may, require the controller, manager, or any person in charge of a licensee to supply, within such time as may be specified, any information relating to the licensee or any connected person or any person over which the licensee, its director, or manager has control.

(5) Any request for information under subsections (1), (2), (3) and (4) shall be by notice in writing.

(6) If it appears to the Central Bank to be desirable in the interests of the depositors or potential depositors of a licensee to do so, it may also exercise the powers conferred by subsections (1) and (3) in relation to, and it may call on, any affiliate of a licensee to provide within such time as may be specified, information relating to any transaction, investment and share holding between the licensee and the affiliate and the Central Bank may require such information to be certified by the auditor of the affiliate.

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- (7) The Central Bank may exercise the powers under subsections (1) and (3) in relation to any person who is or is to be a director, controller or manager to determine whether he is a fit and proper person to hold the particular position which he holds or is to hold.
- (8) A person whom the licensee proposes to appoint as a director, controller or manager shall be entitled to refuse to supply the documents requested by the Central Bank pursuant to subsection (6) if he no longer intends to take up the appointment and has so advised the Central Bank.
- (9) Subject to subsection (7) any person who fails to supply information or produce the documents required under this section within the time specified in such request is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for a term not exceeding one year.
- (10) Any person who provides false or misleading information under this section is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for a term not exceeding two years.
- 44.** (1) A licensee shall at each of its offices at which it holds itself out as accepting deposits:-
- (a) keep a copy of its most recent audited accounts; and
- (b) during normal business hours make that copy available for inspection by any person on request.
- (2) A licensee which fails to comply with sub section (1)(a) or with any request made in accordance with subsection (1)(b) is liable on summary conviction to a fine of fifty thousand dollars.
- 45.** (1) A licensee shall give written notice to the Central Bank:-
- (a) if the licensee proposes to give special notice to its shareholders of a resolution



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removing an auditor before the expiration of his term of office;



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- (b) if the licensee gives notice to its shareholders of a resolution replacing an auditor at the expiration of his term of office with a different auditor; or
 - (c) if a person ceases to be an auditor of the licensee otherwise than in consequence of such a resolution.
- (2) An auditor of a licensee shall forthwith give written notice to the Central Bank if he:-
- (a) resigns before the expiration of his term of office; or
 - (b) does not seek to be re-appointed.
- (3) A licensee or auditor who fails to comply with the provisions of this section is liable on summary conviction to a fine not exceeding fifty thousand dollars.
- 46.** (1) No duty to which an auditor or former auditor of a licensee may be subject shall be regarded as contravened by reason of his communication in good faith to the Central Bank or to the Inspector, whether or not in response to a request made by either of them, of any information or opinion on a matter to which this section applies and which is relevant to any function of the Central Bank and the Inspector under this Act or the Central Bank Act.
- (2) In relation to an auditor of a licensee this section applies to any matter of which he becomes aware in his capacity as auditor and which relates to the business or affairs of the licensee or any of its affiliates or any director, controller, manager or relative of such persons in relation to which the information is given.
- (3) Subsection (1) applies to such other person required to give information under this Act and section 44D of the Central Bank Act in respect of any matter of which he becomes aware in his capacity as the person giving the information and which relates to the business or affairs of the licensee, its affiliate or any director, controller, manager or relative of such persons in relation to which the information is given.

- (4) This section applies to the auditor of a former licensee as it applies to the auditor of a licensee.

PART IX

CEASE AND DESIST ORDERS

47. (1) If, in the opinion of the Central Bank or the Inspector, any licensee or any director, controller, manager, officer, employee, agent or other person participating in the conduct of the business of such licensee, is or has engaged in or is about to engage in any unsafe or unsound practice or is about to violate any of the provisions of this Act or regulations made thereunder, the Central Bank or the Inspector may serve a notice upon the licensee and such director, controller, manager, employee, agent or other person participating in the conduct of the business of the licensee.
- (2) The notice referred to in subsection (1) shall specify the facts constituting the alleged violation or unsafe or unsound practice and shall set a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should be issued against the licensee and the director, controller, manager, employee, agent or other person participating in the business of the licensee.
- (3) If, at the hearing, the party served is not in attendance, the hearing may proceed in his absence and where it is determined at the hearing that any violation or unsafe or unsound practice specified in the notice has been established or is about to be established, the Central Bank or the Inspector may issue and serve upon the licensee or director, controller, manager, employee, agent, or other person as the case may be, an order to cease and desist from any such violation or practice.
- (4) A cease and desist order shall be effective from the date specified therein, and shall remain in force unless stayed, modified, terminated or set aside by the Appeal Board at the instance of the licensee or other person affected thereby.
- (5) Failure of a person to comply with a cease and desist order shall constitute an offence



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punishable on summary connection by a fine



of one hundred thousand dollars and, in the case of a continuing offence, a fine of ten thousand dollars for each day that the offence continues.

PART X

FACILITATION OF TRANSFERS OF UNDERTAKINGS

48. In this Part:-

"the appointed day" mean such day as is appointed by a Vesting Order for the coming into force of that Order;

"customer" includes any person having a banking account or other dealing, transaction or arrangement with the transferee or transfer or bank, as the case may be, in the course of business;

"existing" means existing or in force, as the case may require, immediately before the appointed day;

"security" includes a mortgage or charge, whether legal or equitable, debenture, guarantee, lien, pledge whether actual or constructive, hypothecation, indemnity, undertaking or other means of securing payment or discharge of a debt or liability or obligation whether present or future, actual or contingent;

"undertaking" means the business of banking and business of a financial nature carried on by a licensee or any part of the business so carried on;

"will" includes a codicil and any other testamentary writing.

- 49.** (1) Where an agreement has been entered into for Vesting Order the acquisition by a person hereinafter referred to as the "transferee", of the undertaking of a licensee hereinafter referred to as the "transferor" the transferee may, for the purpose of effecting the transfer to, and the vesting in, the transferee of the undertaking, make a written application to the



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Ministers notice of which shall be published in *the Gazette*, in any case where the Minister so directs.



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- (2) Upon the making of such an application, the Minister may, if he thinks fit, make an order, in this Part called "Vesting Order", transferring to and vesting in the transferee the undertaking, as from the appointed day, and thereupon all such existing property, rights, liabilities and obligations as are intended by the agreement to be transferred and vested shall, by virtue of this Act, and without further assurance be transferred to, and shall vest in, the transferee to the intent that the transferee shall succeed to the whole or such part of the undertaking of the transferor as is contemplated by the agreement.

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- (3) For the avoidance of doubt a Vesting Order shall take effect on the appointed day specified in the Order whether or not the Vesting Order is published in the *Gazette* after the appointed day.
- (4) No transfer or vesting effected by a Vesting:-
- (a) operate as a breach of covenant or condition against alienation;
 - (b) give rise to any forfeiture;
 - (c) invalidate or discharge any contract or security.
- (5) A Vesting Order may in the discretion of the Minister provide, notwithstanding any other law, for the carrying forward by the transferee and setting off for corporation tax purposes of such of the losses of the transferor as may be specified, as if the undertaking of the transferor had not permanently discontinued on the appointed day and a new undertaking had been set up and commenced by the transferee.

- 50.** (1) Without prejudice to the generality of section 49, the effect of a Vesting Order as regards the undertaking thereby transferred shall be that on and from the appointed day:-

- (a) every existing contract to which the transferor was a party, whether in writing or not, shall be construed and have effect as if:-

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- (i) the transferee had been a party thereto instead of the transferor;
- (ii) for any reference, however worded and whether express or implied, to the transferor there were substituted, as respects anything falling to be done on or after the appointed day, a reference to the transferee; and
- (iii) any reference however worded and whether express or implied, to the directors or to any director, controller, manager, officer, clerk or servant of the transferor were, as respects anything falling to be done on or after the appointed day, a reference as the *case may* require to the directors of the transferee or to such director, controller, manager, officer, clerk or servant of the transferee as the transferee may appoint or, in default of appointment, to the director, manager, officer, clerk or servant of the transferee who corresponds as nearly as possible to the first mentioned director, controller, manager, officer, clerk or servant;
- (b) any account between the transferor and customer shall become an account between the transferee and that customer;
- (c) any existing instruction, direction, mandate, power of attorney or consent given to the transferor shall have effect as if given to the transferee;
- (d) any negotiable instrument or order for payment of money which is expressed to be drawn on, or given to or accepted or endorsed by the transferor, or payable at any of its places of business, shall have effect as if it had been drawn on, or given to or accepted or endorsed by the transferee, or payable at the same place of business of the transferee;
- (e) any security transferred to the transferee by a Vesting Order that immediately before the appointed day was held by the transferor as security for the payment or discharge of

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any debt or liability or obligation, whether present or future, actual or contingent, shall be held by, and be available to, the transferee as security for the payment or discharge of such debt or liability or obligation; and any such security which extends to future advances or liabilities shall, on and from the appointed day, be held by, and be available to, the transferee as security for future advances by and future liabilities to the transferee in-the same manner and in all respects as future advances by or liabilities to, the transferor were secured thereby immediately before the appointed day;

(f) any judgment or award obtained by or against the transferor and not fully satisfied before the appointed day shall be enforceable by or against the transferee;

(g) unless the agreement provides to the contrary, any controller, manager, officer, clerk or servant employed by the transferor immediately before the appointed day shall become a controller, manager, officer, clerk or servant, as the case may be, of the transferee on terms and conditions not less favourable than those on which he was so employed immediately before the appointed day, and such employment with the transferor and transferee respectively shall be deemed for all purposes to be a single continuing employment, except that no director, controller, manager, secretary or auditor of the transferor shall by virtue only of a Vesting Order become a director, controller, secretary or auditor, as the case may be, of the transferee.

(2) The provisions of subsection (1)(a)(ii) and (iii) shall apply to any statutory provision, to any provision of any existing contract to which the transferor was not a party and to any provision of any other existing document, not being a contract but including in particular a will, as they apply in relation to a contract to which subsection (1)(n) applies.

(3) Any property or rights transferred to, and vested in, the transferee which immediately before the appointed day were held by the transferor, whether alone or jointly with any other person:-

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- (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, on and from the appointed held by the transferee, 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.

- 51.** (1) Where an agreement has been entered into for the of payment to a transferee or other licensee of the amount by which any credit facilities granted by the transferee or licensee exceeds the limits in section 22(2)(h) the transferee or licensee may apply to the Minister to be exempted from 311 or any of the provisions of section 22(2)(h) and the Minister may, by Order, on the recommendation of the Central Bank exempt the transferee or other licensee from complying with those provisions subject to such terms and conditions as may be specified in the Order.
- (2) An Order made under subsection (1) may, in any case where the Minister thinks fit to do so, exempt the instrument of guarantee from the payment of stamp duty imposed under the Stamp Duty Act.
- (3) Where an agreement has been entered into for the guarantee of payment to a transferee of the amount by which any unsecured credit facilities granted to any one person by the transferee exceeds in the aggregate ten per cent of its paid-up capital and reserve fund and the Minister has by Order under section 27 (3) of the Banking Act exempted the transferee from the prohibition in section 11.(1)(e)(iv) of the 13 Linking Act such Order shall, if in force at the commencement of this Act, continue in force subject to subsection (4).

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- (4) An Order which continues in force under subsection (3), shall from the date of commencement of this Act, take effect as though exempting the Bank which is the beneficiary of such Order from the prohibition in section 22(2)(h) instead of the prohibition in section 14(1)(e)(iv) of the Banking Act in respect of existing arrangements made for the provision of credit facilities in existence at the date of commencement of this Act if the guarantee which is a condition of, or set out as a Schedule to, any such Order is varied to the satisfaction of the Minister within three months of the date of commencement of this Act so as to become effective to guarantee the payment to such Bank of the amount by which the unsecured credit facilities granted to any one person or borrower group under such arrangements exceeds in the aggregate five per cent of such Bank's capital base.
- (5) Where the Minister has made an Order under section 27(3) of the Banking Act or under this section, he may, on the recommendation of the Central Bank after it has consulted with the licensee, terminate or vary the Order.
52. (1) The transfer of, and vesting in, the transferee of an undertaking by a Vesting Order shall, unless exempted, either generally or in some particular case, by the Order, be subject to the provisions of the Stamp Duty Act, as if the Order was, in each of the cases in which the duty is imposed on the several instruments specified in the Schedule to that Act, an instrument between party and party within the contemplation of the Act.
- (2) Subject to subsection (3), a depositor of an institution which is affected by a Vesting Order being made under this Part, shall continue to enjoy deposit insurance coverage under S.44N(2) of the Central Bank Act for a period of two years from the date of the Vesting Order as if the transfer had not taken place.
- (3) The Minister may by Order, on the advice of the Governor, extend the period of two years referred to subsection (2).

PART XI APPEALS

53. (1) The Tax Appeal Board constituted in accordance with the Tax Appeal Board Act shall have jurisdiction to hear and determine appeals in respect of the matters set out in subsection (2).
- (2) Any person who is aggrieved by a decision of the Central Bank:-
- (a) to refuse an application for a licence;
 - (b) to revoke a licence otherwise than in a case in which revocation is mandatory under section 10(10);
 - (c) to restrict a licence in any particular manner or to vary any restrictions of a licence;
 - (d) which in the opinion of a licensee, might be contrary to any provision of this Act, or adversely affects its operations;
 - (e) made under section 47;
 - (f) to give any directions under section 11(1);
 - (g) to disqualify any person under section 20(2) from being a director, controller or manager on the ground that he is not a fit and proper person may appeal against the decision to the Appeal Board.
- (3) During the pendency of an appeal, orders made and decisions and directions given by the Central Bank remain in force pending the outcome of the appeal unless on an inter parte application or an *ex partes* application where notice has been given to the Central Bank the Court is of the view that exceptional circumstances exist that warrant the grant of a stay of any further action by the Central Bank.
- (4) Where:-

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- (a) the ground for a decision within subsection (2)(a) or (c) is that the criterion in paragraph A of the Second Schedule is not or has not been fulfilled; or
 - (b) the effect of a decision within subsection (2)(c), (d) or (f) is to require the removal of a person as director, controller or manager of a licensee, the person to whom the ground relates or whose removal is required may appeal to the Appeal Board against the finding that there is such a ground for the decision or, as the case may be, against the decision to require his removal.
- 54.** Subject to this Part the procedure for determining Board appeals shall, be in accordance with the Rules governing appeals under the Tax Appeal Board Act with such modifications as may be necessary.
- 55.** (1) On an appeal the Appeal Board may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except that:-
- (a) where the decision was to revoke a licence the Appeal Board may direct the Central Bank to restrict it instead;
 - (b) where the decision was to impose or vary any restrictions the appeal Board may direct the Central Bank to impose different restrictions or to vary them in a different way; or
 - (c) where the decision was to give or vary a direction the Appeal Board may direct the Central Bank to give a different direction or to vary it in a different way.
- (2) In determining an appeal, the appeal Board shall take into account the interests of depositors or potential depositors of the licensee and how its decision will affect such depositors.
 - (3) Where the Appeal Board gives a direction to the Central Bank under subsection (1) it shall be for the Central Bank to decide what restrictions should be imposed or how they should be varied or, as

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the case may be, what direction should be given or how a direction should be varied and:-

- (a) the Central Bank shall by notice in writing the licensee concerned impose the restrictions, give the direction or make the variation on which it has decided;
 - (b) the licenses may appeal to the Appeal Board against the Central Bank's decision, and on any such appeal the Appeal Board may confirm the decision or give a further direction under subsection (1)(b).or (c) and, if it gives such a further direction, this subsection shall continue to apply until the Central Bank's decision is confirmed by the appeal Board or accepted **by the licensee.**
 - (4) Where the Appeal Board reverses a decision of the Central Bank to refuse an application for a licence it shall direct the Central Bank to grant it.
 - (5) Notice of the Appeal Board's determination, together with a statement of its reasons, shall be served on the appellant, the Central Bank and where the licensee is not an appellant, on the licensee and unless the Appeal Board otherwise directs, the determination shall come into operation when the notice is served on the appellant, the Central Bank or the licensee.
- 56.**
- (1) The Appeal Board may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal
 - (2) On an appeal under section 53(1) the licensee concerned shall be entitled to be heard.
 - (3) A further appeal by a person affected may be made to the Court of Appeal, which if it is of the opinion that the decision was erroneous on a point of law, shall remit the matter to the Appeal Board for rehearing and determination by it.

PART XII SUPPLEMENTARY

57. (1) The following Acts are repealed:-
- (a) the Banking Act; and
 - (b) the Financial Institutions Act.
- (2) Notwithstanding subsection (1), any Order, regulation, notice or other subsidiary legislation made pursuant to the Acts specified in that subsection, shall, if in force at the commencement of this Act, continue in force until replaced by other subsidiary legislation made under this Act.
58. (1) Any person who, in purported compliance with and any requirement under this Act or regulations made thereunder, furnishes any information, provides any explanation or makes any statement which he knows or has reasonable cause to believe to be false or misleading in a material particular is guilty of an offence.
- F.I. ~
- (2) Any person who fails to comply with any provision of this Act or regulations or bye-laws made thereunder for which no penalty is expressly provided, is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for two years.
- (3) In and proceedings for an offence under this Act it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by any person under his control.
- (4) In any proceedings for an offence under this Act or regulations made thereunder where it is proved that the person charged intended to deceive, defraud or profit significantly from the

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offence the penalty shall be a fine ten times the amount stipulated in subsection (2) or imprisonment for twenty years and this penalty shall be in addition to any other penalty under this Act.

- (5) Where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

59. (1) Anyone who perpetrates a fraud on depositors' is guilty of an offence.

(2) Any director, controller, manager or officer of a licensee who:-

- (a) falsifies the accounts of the licensee which leads to a loss of depositors' funds;
- (b) uses depositors' funds for his own benefit or for the benefit of his relatives and persons connected with him which leads to a loss of depositors' funds;
- (c) provides to the Central Bank false or mis-leading financial data or other relevant information with the intent to conceal the true financial position of a licensee;
- (d) does anything which is in contravention of this Act, regulations or bye-laws made thereunder and which leads to a loss to depositors, commits a fraud on depositors.

(3) Any person found guilty of an offence under this section is liable to a fine of one hundred thousand dollars and imprisonment for five years.

60. (1) Summary proceedings for any offence under this Act may, without prejudice to any jurisdiction limitation exercisable apart from this subsection, be taken against a licensee, including an unincorporated body, in any place at which it has a place of

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business, and against an individual in any place at which he is for the time being.

- (2) Notwithstanding anything in any other law to the contrary any complaint relating to an offence under this Act which is triable by a Magistrates court in Trinidad and Tobago may be so tried if it is laid at any time within three years after the commission of the offence or within eighteen months after the relevant date.
- (3) In this section, the relevant date means the date on which evidence sufficient in the opinion of the Central Bank to justify proceedings comes to its knowledge.
- (4) For the purpose of subsection (3), a certificate as to the date on which such evidence as is there mentioned came to the knowledge of the Central Bank shall be conclusive evidence of that fact.

61. In any proceedings, a certificate signed by the Evidence Governor and certifying:-

- (a) that a particular person is or is not a licensee or was or was not licensed at a particular time;
- (b) that the date on which a particular licensee became or ceased to be licensed;
- (c) whether or not a particular licensee's licence is or was restricted; or
- (d) the date on which a restricted licence expires or expired, shall be admissible in evidence and, shall be sufficient evidence of the facts stated in the certificate.

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- 62.** (1) Subject to section 65, the Financial institutions listed in the Third Schedule are exempt from the provisions of this Act.
- (2) The provisions of the Money Lenders Act do not apply to licensees.

- 63.** (1) The Minister, may after receiving the recommendations of the Central Bank, from time to time amend the First and Second Schedules by Order published in the *Gazette* subject to negative resolution of Parliament.
- (2) The Minister, may after receiving the recommendations of the Central Bank, from time to time amend the third Schedule by Order published In the *Gazette* subject to negative resolution of Parliament.

PART XIII MISCELLANEOUS

- 64.** (1) The Minister, may after receiving the recommendations of the Central Bank, may make regulations subject to negative resolution of Parliament for:-
- (a) any matter required to be prescribed under this Act;
 - (b) the transfer of funds by electronic means; and
 - (c) generally for giving effect to the provisions of this Act.
- 65.** Notwithstanding section 62, the Central Bank may, require information at the request of the Minister, require information from, enquire into, and examine the affairs of any financial institution mentioned in the Third Schedule.
- 66.** A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with this Act or any regulations thereunder, or which he is liable to be so required to produce, is liable on summary conviction to a fine of one hundred thousand dollars, and to imprisonment for two years.

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67. The Central Bank may exercise any of its powers and duties under this Act through any of its officers authorised in that behalf.
68. In the exercise of its functions under this act the Board may delegate all or any of its functions to a committee function appointed by the Board comprising a minimum of three members of the Board.
69. Notwithstanding that it may constitute an offence no transaction shall be invalid and the rights of any party to the transaction shall not be affected by reason only of a contravention of the provisions of this Act.
70. Section 23(2)(b) shall come into force on a day commencement to be appointed by the President by Order published in the *Gazette*.

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FIRST SCHEDULE

(Section 5)

Business of a financial nature includes the following types of business

Class	Activities
Confirming House or Acceptance House	Confirming, accepting or financing import and export bills
Finance House or Finance Company	Hire Purchase and instalment Credit Accounts receivable Trade and inventory financing Factoring Block discounting
Leasing Corporation	Lease financing
Merchant Bank	Floating and underwriting stocks, shares and bonds Loans syndication Dealing in gold Providing consultancy and investment management services and corporate advisory services Acceptance credit Project Development Lease financing Foreign exchange dealing Inter-bank financing

FIRST SCHEDULE—Continued

Class	Activities
Mortgage Institutions	Mortgage lending
Trust Company	Managing Trust Funds Performing duties of trustees, Executor or administrator and attorney Administration of Pension Funds Mortgage lending
Unit Trust	Providing facilities for the participation by persons as beneficiaries under a trust or other scheme, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatever.
Credit card business	Issuing payment, credit or charge cards and, in co-operation with others including other financial institutions, operating a payment, credit or charge card plan.
Financial Services	Providing financial services relating to future and contingent liabilities in relation to foreign exchange and commodities.

SECOND SCHEDULE

[Sections 10(1),12(4), 20(1)(f), 23(6) aml (13), 39(6) aml (7), 53(4)(a)]

MINIMUM CRITERIA FOR LICENSING

A. Directors controlling shareholders, controllers and managers to be fit and proper persons

- (1) Every person who is, or is to be, a director, controlling share holder, controller, or manager of the licensee must be a fit and proper person to hold the particular position which he holds or is to hold.
- (2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgment for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfill those responsibilities and to whether the interests of depositors or potential depositors of the licensee are, or are likely to be, in any way threatened by his holding that position.
- (3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has:-
 - (a) committed an offence involving fraud or other dishonesty or violence;
 - (b) contravened any provision made by or under an enactment appearing to the Central Bank to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;

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- (c) engaged in any business practices appearing to the Central Bank to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business;
- (d) an employment record which leads the Central Bank to believe that the person carried out an act of impropriety in the handling of his employer's business;
- (e) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.

B. Business to be directed by at least two individuals

At least two individuals with sufficient experience and knowledge of the business to direct effectively the business of the licensee.

C. Composition of board directors

In the case of a licensee incorporated in Trinidad and Tobago the directors include such number (if any) of directors without executive responsibility for the management of its business as the Central Bank considers appropriate having regard to the circumstances of the licensee and the nature and scale of its operations.

D. Business to be conducted in prudent manner

- (1) The licensee must conduct, or, in the case of a company which is not yet carrying on the business of banking or business of a financial nature, will conduct its business in a prudent manner.

SECOND SCHEDULE—Continued

- (2) A licensee shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain net assets which, together with other financial resources available to the licensee of such nature and amount as are considered appropriate by the Central Bank, are:-
- (a) of an amount which is commensurate with the nature and scale of the licensee's operations; and
 - (b) the types and classes of business operation in which the licensee is involved in; and
 - (c) of an amount and nature sufficient to safeguard the interests of its depositors and potential depositors, having regard to the particular factors mentioned in subparagraph (3) and any other factors appearing to the Central Bank to be relevant.
- (3) The particular factors referred to in subparagraph (9)(C) are:-
- (a) the nature and scale of the licensee's operations; and
 - (b) the type and class of business in which the licensee is involved; and
 - (c) the risks inherent in those operations and in the operation of any affiliate so far as is capable of affecting the licensee.
- (4) A licensee shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate liquidity, having regard to the relationship between its liquid assets and its actual and contingent liabilities, to the times at which those liabilities will or may fall due and when its assets mature, to the factors mentioned in subparagraph (3) and to any other factors appearing to the Central Bank to be relevant.

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- (5) For the purposes of subparagraph (4) the Central Bank may, to such extent as it thinks appropriate, take into account as liquid assets, assets of the licensee and facilities available to it which are capable of providing liquidity within a reasonable period.
- (6) A licensee shall not be regarded as conducting its business in a prudent manner unless it makes or, as the case may be, will make adequate provision for depreciation or diminution in the value of its assets (including provision for bad or doubtful debts), for liabilities which will or may fail to be discharged by it and for losses which it will or may incur.
- (7) A licensee will not be considered as having, made adequate provision in respect of bad or doubtful debts where it does not establish an appropriate reserve (loss reserve) in respect of all such bad or doubtful debts.
- (8) Where payment of principal or interest which is due and payable on any credit facility made or advanced by a licensee has not been made or effected for a period of three months, such credit facility shall be considered non-performing unless it is fully secured and is in the process of collection.
- (9) A licensee shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate accounting and other records of its business and adequate systems of control of its business and records.
- (10) Records and systems shall not be regarded as adequate unless they are such as to enable the business of the licensee to be prudently managed and the licensee to comply with the duties imposed on it by or under this Act; and in determining whether those systems are adequate, the Central Bank shall have regard to the functions and responsibilities in respect of them of any such directors of the licensee as are mentioned in paragraph C.

SECOND SCHEDULE—Continued

- (11) Subparagraphs (2) to (10) are without prejudice to the generality of subparagraph (1).

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- (12) For the purposes of this paragraph "net assets", in relation to a body corporate, means paid-up capital and reserves.

E. Integrity and Skill

The business of the licensee is or, in the case of an institution which has applied for a license, will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.

F. Minimum net assets

- (1) The institution will at any time when a licence is granted to it have net assets amounting to not less than fifteen million dollars (or an amount of equivalent value denominated wholly or partly in a currency acceptable to the Central Bank other than Trinidad and Tobago currency).
- (2) In this paragraph ."net assets", means paid-up capital.
- (3) The Central Bank may, after consultation with the Minister, by Order vary the sum specified in subparagraph (1).

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THIRD SCHEDULE

(Sections 62 and 65)

EXEMPTED INSTITUTIONS

- | | | |
|---------------|----|---|
| Chap. 79:04 | 1. | The Trinidad and Tobago Post Office Savings Bank established under the Post Office Savings Bank Act. |
| Chap. 79:07 | 2. | The Agricultural Development Bank of Trinidad and Tobago established under the Agricultural Development Bank Act. |
| Chap 33 No. 1 | 3. | Any Society registered under the Building Societies Chap 33:04 Act. |
| Chap. 32:50 | 4. | Any Society registered under the Friendly Societies Ordinance. |
| Chap 81:03 | 5. | Any undertaking registered under the Co-operative Societies Act. |
| Chap. 32:01 | 6. | The Board of management incorporated under the National Insurance Act. |
- Passed in the House of Representatives this 14th day of May, 1993.
- N. COX Acting Clerk of the House
- Passed in the Senate this 14th day of June, 1993.
- R. CUMBERBATCH Acting Clerk of the Senate
- Senate amendments agreed to by the House of Representatives this 9th day of July, 1993.
- N. COX Acting Clerk of the House
- House of Representatives amendments agreed to by the Senate this 20th day of July, 1993.
- R. CUMBERBATCH Acting Clerk of the Senate