

CHAPTER 325

INTERNATIONAL FINANCIAL SERVICES

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CHAPTER 325

INTERNATIONAL FINANCIAL SERVICES

An Act to repeal the Off-shore Banking Act; to make new provision in relation to international financial services; and to provide for related matters.

2002-5.
2004-7.
2004-24.
2005-15.
2007-7.

[10th June, 2002]

Commence-
ment.
2002/57.

Preliminary

1. This Act may be cited as the *International Financial Services Act*.

Short title.

2. (1) In this Act,

Interpreta-
tion.

"advertisement" means any form of advertising, whether notified or published

- (a) in a newspaper, magazine, journal or other periodical publication;
- (b) by the display of posters or notices;
- (c) by means of circulars, brochures, pamphlets or handbills;
- (d) by an exhibition of photographs or cinematograph films;
- (e) by way of sound broadcasting or television; or
- (f) by way of any other media;

"approved entity" means any entity approved by the Minister that is organised or formed under an enactment;

"articles" means, in the case of a company, its articles of incorporation and, in the case of a society with restricted liability, its articles of organisation;

s.2

"auditor" means an auditor described in section 50 and includes a partnership of auditors;

"business", in relation to a licensee, means the international financial services business of the licensee;

"capital" includes the quota of a society with restricted liability;

"Central Bank" means the Central Bank of Barbados;

"common trust fund" has the meaning given to that expression in section 24;

2005-15. "Community" means the Caribbean Community established by Article 2 of the Treaty;

"company" includes a society with restricted liability and an approved entity;

"director" means a director within the meaning of section 39;

"eligible company" has the meaning given to that expression in section 5(8);

"foreign bank" means a bank incorporated outside Barbados;

"group" means,

(a) in relation to a company, that company and

(i) any other company which is its holding company or subsidiary;

(ii) any other company which is a subsidiary of its holding company;

(iii) any company which directly or indirectly controls or is controlled by any company referred to in sub-paragraph (i) or (ii);

(iv) any company which is controlled by a person who directly or indirectly controls a company referred to in sub-paragraph (i), (ii) or (iii);

- (v) any company in which a group of relatives has a controlling interest;
- (b) in relation to a person other than a company,
 - (i) a group of relatives where each member of the group is substantially dependent upon the same income source;
 - (ii) a group of persons in which one member has power directly or indirectly to control the other members;
 - (iii) any other group of persons that may be prescribed by the Central Bank;

"international financial service" has the meaning given to that expression in section 4;

"licensee" means a person licensed under the provisions of this Act, and "licence" shall be construed accordingly;

"Member State" means a Member State of the Community, excluding an Associate Member within the meaning of Article 231 of the Treaty; ^{2005-15.}

"prescribed" means prescribed by regulations;

"prescribed person" means a company or an organisation that is licensed or organised under any of the enactments set out in the *Schedule*;

Schedule.

"qualified foreign bank" has the meaning given to that expression in section 5(9);

"relative", in respect of any person, means the spouse, parent, brother, sister, child or step-child of that person;

"resident of Barbados" has the meaning given to that expression in section 92;

s.2

"senior officer", in relation to a company, means the chief executive officer and the chief finance officer of the company, by whatever name called;

"share" includes the quota of a society with restricted liability, and "shareholder" shall be construed accordingly;

Cap. 318B. "society with restricted liability" means an organisation that is organised under the *Societies With Restricted Liability Act*;

2005-15. "Treaty" means the Revised Treaty of Chaguaramas establishing the Caribbean Community, including the CARICOM Single Market and Economy, that was signed in the Bahamas on 5th July, 2001.

(2) For the purposes of this Act, "associate" means, when used to indicate a relationship with any person,

(a) a company in which that person beneficially owns or controls, directly or indirectly, shares or securities convertible into shares carrying more than 20 per cent of the voting rights under all circumstances or by reason of the occurrence of an event that has occurred and is continuing, or a currently exercisable option or right to purchase those shares or convertible securities;

(b) a partner of that person acting on behalf of the partnership of which they are partners;

(c) a trust or estate in which that person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity; or

(d) a relative of that person or a relative of the spouse of that person if the relative has the same residence as that person.

(3) For the purposes of this Act,

(a) a company is affiliated with another company if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person;

(b) if two companies are affiliated with a third company at the same time, they are affiliated with each other at that time.

(4) For the purposes of this Act,

- (a) a company is the holding company of another if that other company is its subsidiary;
- (b) a company is a subsidiary of another company if it is controlled by that other company.

(5) For the purposes of this Act, a licensee is controlled by another company or by an individual, trust or government if at the relevant time it is effectively controlled directly or indirectly by that other company, individual, trust or government

- (a) through being an associate of that other company, individual, trust or government;
- (b) through being an affiliate of that other company;
- (c) through the holding of shares of an incorporated or unincorporated body, but subject to subsection (6);
- (d) through the holding of membership in an unincorporated body;
- (e) through voting trusts or other agreements relating to the voting of shares;
- (f) through the holding by an unincorporated body of a substantial portion of the licensee's borrowings;
- (g) through management control of an unincorporated body; or
- (h) through any other means.

(6) For the purposes of this Act, a company is controlled by a person if shares of the company that carry voting rights sufficient to elect a majority of the directors of the company are held directly or indirectly, other than by way of security only, by or on behalf of that person.

3. The Minister may by order amend the *Schedule*.

Amendment
of Schedule.

PART I

INTERNATIONAL FINANCIAL SERVICES

Licensing Requirements

International
financial
services.
2004-7.

4. (1) For the purposes of this Act, "international financial service" means

- (a) international banking business as described in subsection (2);
or
- (b) any other financial service, related to or ancillary to an activity described in subsection (2), which the Central Bank may by regulations declare to be an international financial service for the purposes of this Act.

(2) For the purposes of subsection (1), "international banking business" means

- (a) the business of receiving foreign funds through
 - (i) the acceptance of foreign money deposits payable upon demand or after a fixed period or after notice;
 - (ii) the sale or placement of foreign bonds, foreign certificates, foreign notes or other foreign debt obligations or other foreign securities; or
 - (iii) any other similar activity involving foreign money or foreign securities;
- (b) the business of using the foreign funds so acquired, either in whole or in part, for
 - (i) loans, advances and investments;
 - (ii) the activities of the licensee for the account of or at the risk of the licensee;

- (iii) the purchase or placement of foreign bonds, foreign certificates, notes or other foreign debt obligations or other foreign securities; or
 - (iv) any other similar activity involving foreign money or foreign securities; or
- (c) the business of accepting in trust from persons resident outside Barbados or from prescribed persons
- (i) amounts of money in foreign currencies or in foreign securities or both;
 - (ii) foreign personal property or foreign movable property; or
 - (iii) foreign real property or foreign immovable property.

5. (1) Subject to subsection (5),

Licensees.

- (a) no person shall carry on any international financial service in or from within Barbados at any time when that person is not a licensee;
- (b) no licence may be issued under this Act to any person other than an eligible company or a qualified foreign bank.

(2) Any person who contravenes subsection (1)(a) is guilty of an offence and is liable on conviction on indictment to a fine of \$100 000.

(3) Where there is reasonable cause to believe that any company has contravened subsection (1), the Central Bank may cause an examination to be made of that company; and the provisions of this Act shall apply *mutatis mutandis* for the purposes of the examination as if the company was a licensee.

(4) A person who holds any funds obtained from carrying on any international financial service from within Barbados during any period in which he did not hold a licence under this Act shall repay those funds in accordance with the direction of the Minister.

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- (5) This Act does not apply to any international financial service
- Cap. 324A. (a) being carried on immediately before 10th June, 2002 with the approval of the Exchange Control Authority by a bank licensed under the *Financial Institutions Act*;
- Cap. 324A. (b) carried on after 10th June, 2002, with the approval of the Exchange Control Authority by a bank licensed under the *Financial Institutions Act*;
- and any such international financial service may, notwithstanding this Act, be carried on until otherwise directed by the Exchange Control Authority.
- 2004-7. (6) Notwithstanding subsection (1), a company is not required to be licensed under this Act where that company receives foreign funds, from affiliates or associates in the manner described in section 4(2)(a), which are used for
- 2004-7. (a) the purposes of loans or advances to, or investments in, affiliates or associates of that company; or
- (b) the purposes specified in section 4(2)(b).
- (7) Where a licence is issued to a company described in subsection (6), section 12 shall apply and the licence shall be subject to such conditions and restrictions as may be specified in the licence by the Minister.
- 2004-24.
Cap. 308. (8) For the purposes of this Act, "eligible company" means a company which is incorporated or registered under the *Companies Act*, a society with restricted liability or an approved entity
- 2005-15. (a) whose objects or business activities are restricted to the carrying on of any international financial service from within Barbados;
- (b) which has at least one director who is a citizen of a Member State and who is resident in Barbados;

- (c) whose articles and bye-laws are acceptable to the Central Bank;
and
- (d) whose stated capital accords with the requirements of section 19.

(8A) For the purposes of this Act, an eligible company that is licensed under this Act to carry on

- (a) international banking business under section 4(1)(a); or
- (b) any other financial service related or ancillary to international banking business under section 4(1)(b)

shall be regarded as an international bank and shall be regulated by the Central Bank in accordance with this Act.

(9) For the purposes of this Act, "qualified foreign bank" means

- (a) a company that at 10th June, 2002 is a foreign bank that is licensed under the *Financial Institutions Act*; or Cap.324A.
- (b) a company that is a foreign bank with the capitalisation and assets specified in section 19 and that is not licensed under the *Financial Institutions Act* at 10th June, 2002; or Cap.324A.
- (c) a company approved by the Central Bank that is directly or indirectly a wholly-owned subsidiary of a foreign bank.

6. (1) A licence shall not be granted under this Act unless the company Licensee to have place of business.

- (a) has a place of business in Barbados approved by the Central Bank which will be its registered office;
- (b) has, if the Central Bank so directs, appointed a person in Barbados who is approved by the Central Bank to be its agent; and

s.7

(c) has appointed a person in Barbados who is approved by the Central Bank to be its agent in the absence or inability to act of the person referred to under paragraph (b).

(2) A licensee shall not

(a) cease to have a place of business in Barbados;

(b) change its place of business without the written approval of the Central Bank;

(c) cease to have an authorised agent if required under subsection (1);

(d) change its authorised agent without the written approval of the Central Bank.

(3) For a period of 9 months no action shall be taken against a company to which section 114 applies if the company does not comply with subsection (1) or (2).

Contents of
application.

7. (1) An applicant for a licence under this Act to carry on an international financial service from within Barbados must

(a) show that it is an eligible company or a qualified foreign bank;

(b) give the names and addresses of its directors;

(c) give particulars of the international financial service it proposes to carry on from within Barbados;

(d) give the names and addresses of the shareholders and the number of shares directly or indirectly held by them; and

(e) provide such other information of a financial or other nature as the Minister may require in any general or particular case.

(2) An application for a licence by an eligible company must be accompanied by

- (a) a copy of the articles and bye-laws of the applicant, certified by the Registrar of Corporate Affairs and Intellectual Property Office; and
- (b) such other documents as may be prescribed.

(3) An application for a licence by a qualified foreign bank must be accompanied by the prescribed documents.

(4) An application for a licence shall be signed by not less than 2 directors of the applicant.

8. Where a company has appointed a citizen of a Member State who is a resident of Barbados to its board of directors in order to become an eligible company, that director need not subscribe for nor acquire any shares of the company, either by way of qualification or otherwise, notwithstanding anything to the contrary in the articles of the company.

Director's qualification.
2005-15.

9. (1) On receipt of an application for a licence, the Minister may cause an investigation to be made of the applicant, its financial circumstances and any associates or affiliates of the applicant, as the Minister considers necessary in the public interest.

Examination of applicants.

(2) In particular, in respect of the applicant, the Minister may require an examination to be made of

- (a) the financial status and history of the applicant and any of its directors, associates or affiliates;
- (b) the character and experience of the directors;
- (c) the adequacy of its capital for the purpose of the business it intends to carry on;

- (d) the needs of the public or persons it intends to serve; and
- (e) its earning prospects and its prospects as an employer.

10. (1) Subject to subsection (2), the Minister shall issue or refuse a licence within 3 months of the receipt of the application. Issue or refusal of licence.

(2) Where additional information is required by the Minister for the purposes of this section, he shall issue or refuse a licence within 14 days after the expiration of the period mentioned under subsection (1) or within 14 days of the receipt of the information, whichever is the later.

(3) Where the Minister is of the opinion that it is in the public interest to do so, he may issue a licence to the applicant upon payment of the prescribed fee.

11. (1) Where the Minister refuses a licence under this Act, he shall inform the applicant of the grounds for his refusal. Grounds for refusal of licence.

(2) Where the Minister states that the refusal is in the public interest, he need not state any other ground.

12. (1) A licence issued under this Act must show the kind of international financial service to be carried on from within Barbados by the licensee. Licence and conditions.

(2) A licence is subject to such conditions as the Minister may specify in respect of the kind of international financial service to be carried on by the licensee from within Barbados.

(3) A licence under this Act remains valid until revoked or suspended, but it is a condition of every licence that an annual fee be paid by the licensee in the amount and at the time prescribed.

(4) It is a condition of a licence that the licensee must obtain the written approval of the Central Bank,

- (a) before creating a branch, subsidiary company, agency or representative office; or

(b) before opening a place of business outside Barbados.

(5) Subsection (4) does not apply to a licensee that is a qualified foreign bank within the meaning of paragraph (a) or (b) of section 5(9), but the licensee shall not, without notifying the Central Bank of its intention to do so, create any branch, subsidiary company, agency or representative office.

(6) It is a condition of every licence that the licensee must notify the Central Bank in writing of any change in the directors or senior officers within 14 days of the change.

Other
special
conditions.

13. (1) It is a condition of a licence that

(a) any shares of the licensee's capital will be in registered form;

(b) the licensee will not, without the approval of the Minister,

(i) enter into a merger, amalgamation or consolidation;

(ii) transfer, otherwise than in the ordinary course of its business, the whole or any substantial part of its assets or liabilities;

(iii) change its name from that set out in its licence;

(iv) alter its articles;

(v) transfer any of its shares or alter its share structure;

(vi) take any action to reduce or impair in any respect its capital; or

(vii) repurchase its own shares or take any action which may have a similar effect;

(c) the licensee will not knowingly in the course of its business accept any deposit in trust or for the account of a beneficial owner, who is a resident of Barbados, other than a prescribed person; and

(d) the licensee will not, without the written approval of the Minister, accept or keep a resident of Barbados, other than a prescribed person, as a customer of its international financial services business.

(2) It is a condition of a licence issued to a qualified foreign bank that it will, in the manner and to the extent prescribed, separate its international financial services business from its other business in Barbados and keep separate records of its international financial services business and will permit and assist in an audit of all its undertakings in Barbados by auditors approved by the Central Bank.

(3) Before giving an approval to any matter mentioned in subsection (1)(b), the Minister may carry out such of the investigations specified in section 9 as he thinks fit.

(4) No person or group that is under the control of another person or group shall, without the approval of the Minister and subject to such conditions as he may consider necessary, acquire or hold shares of a value of more than 10 per cent of the stated capital of the licensee.

(5) Subsection (1)(b) and subsection (4) do not apply to a qualified foreign bank within the meaning of paragraph (a) or (b) of section 5(9).

(6) Where approval has been obtained to increase the shareholding in accordance with subsection (4), no person or group that is under the control of another person or group shall hold shares the value of which exceeds the amount approved by the Minister.

(7) Any person who contravenes this section is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000.

14. A licensee shall display in a conspicuous place at each place where it does business a copy of its licence under this Act. Display of licence.

15. (1) The Minister may revoke a licence if the licensee Revocation of licence.
(a) does not within 6 months after the issue of its licence commence business;

Cap. 129.

- (b) fails to comply with a condition of its licence;
- (c) is in breach of any duty or obligation imposed upon it by this Act or commits an offence under this Act or under the *Money Laundering and Financing of Terrorism (Prevention and Control) Act*;
- (d) ceases to carry on business under its licence;
- (e) in the opinion of the Minister, is carrying on business in a manner that is detrimental to the public interest or to the interest of its depositors;
- (f) provides any false or misleading information in respect of its application under this Act or fails to inform the Minister where there is a material change in respect of the information so supplied.

(2) Where the Minister intends to revoke a licence under subsection (1), he shall give the licensee written notice of his intention and a reasonable opportunity to show cause why the licence should not be revoked.

(3) The Minister must give notice in writing to the licensee of the revocation of the licence.

(4) Where it appears to the Minister that there are grounds on which his power to revoke a licence is exercisable but the circumstances are not such as to justify revocation, he may place restrictions on the licensee instead of revoking the licence.

Appeal
against
revocation
of licence.

16. (1) Any person who is aggrieved by the revocation of a licence by the Minister under section 15 may, within 30 days of the giving of the notice under section 15(3), appeal the revocation to a Judge in chambers.

(2) The Minister may, pending an appeal under subsection (1) of any person aggrieved by the revocation of a licence, suspend the revocation of the licence in relation to any existing business of the licensee, pending the determination of the appeal.

(3) Where the Minister revokes a licence and there is no appeal or where there is an appeal and the appeal is disallowed, the notice of revocation must be published in the *Official Gazette* and in a daily newspaper published and circulated in Barbados.

17. No licensee may be granted a licence under a name that so closely resembles the name of an existing bank, trust company or other company carrying on business in Barbados or elsewhere as would, in the opinion of the Central Bank, mislead or confuse the persons for whom it intends to provide any service. Misleading name.

18. Where documents relating to an action arising out of the operations of a licensee have been served on the licensee, the licensee shall notify the Central Bank of such service within 14 days of the service of the documents. Notification of actions to Central Bank.

Financial Obligations

- 19.** (1) A licence may be issued under this Act to a company Capital.
- (a) that accepts third party deposits if the stated or assigned capital of the company is at least \$4 000 000;
- (b) that does not accept third party deposits if the stated or assigned capital of the company is at least \$1 000 000.
- (2) The Minister may by order alter the sums specified in subsection (1).
- (3) No action shall be taken for a period of one year after 10th June, 2002 against a company to which section 114 applies if the company fails to increase its stated or assigned capital in accordance with subsection (1).
- (4) A licensee shall not at any time have a capital adequacy ratio of less than the prescribed percentage.
- (5) The capital adequacy ratio shall be calculated in the prescribed manner.

(6) For the purposes of this section, "assigned capital" means such portion of the capital of a company represented by such unencumbered assets as approved by the Central Bank and specifically assigned by the company to its local branch operations.

Reserves. **20.** (1) Subject to subsection (2), a licensee shall maintain a reserve fund and shall out of its net profits of each year and before any dividend is paid transfer to the fund

(a) a sum equal to not less than 25 per cent of those profits wherever the amount of the reserve fund is less than the stated capital of the licensee; or

(b) such other sum as is prescribed.

(2) Subsection (1) does not apply to a licensee for which it is shown to the satisfaction of the Central Bank that the stated capital and aggregate reserves of the licensee are adequate in relation to its business.

Dividends. **21.** A licensee shall not declare or pay a dividend if there are reasonable grounds for believing that

(a) the licensee is, or would after the payment be, unable to pay its liabilities as they become due; or

(b) the realizable value of the licensee's assets would thereby be less than the aggregate of its liabilities, stated capital and reserve accounts.

Restriction on business activities. **22.** (1) Subject to this section, a licensee

(a) shall not grant to a person or group that is under the control of another person or group, any advance or credit, or give any financial guarantee or incur any other liability on behalf of such person or group so that

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- (i) the total value of the advances, credit facilities, financial guarantees or other liabilities at any time exceed 25 per cent of the sum of the stated capital and published reserves of the licensee;
 - (ii) where a portion of the facilities referred to in sub-paragraph (i) is unsecured, that portion exceeds 10 per cent of the sum of the stated capital and published reserves of the licensee;
- (b) shall not grant unsecured advances or unsecured credit of an aggregate amount in excess of \$40 000 or of 1 per cent of the sum of stated capital and published reserves of the licensee, whichever is the greater, or give any financial guarantee in excess of such amount without security, or incur any other liability in excess of that amount without security,
- (i) to or on behalf of any of its directors whether or not such advances, credit, guarantees or other liabilities are obtained by or on account of the directors jointly or severally;
 - (ii) to or on behalf of any person in whom it or any of its directors is interested as a director, partner, manager or agent or as guarantor; or
 - (iii) to its holding company, any subsidiary or affiliate or any director thereof;
- (c) shall not grant credit facilities on terms and conditions more favourable than the terms and conditions generally applicable to borrowers to
- (i) its holding company or any subsidiary or affiliate;
 - (ii) any firm in which any director or officer or the relative of such officer or director has an interest or controls 20 per cent or more of the voting shares;
 - (iii) any person if the credit facilities are guaranteed by an officer, director, or any relative of the officer or director;

- (iv) any person who controls more than 20 per cent of the licensee's shares;
- (d) shall not grant to its officers or employees unsecured advances or unsecured credit which exceed in aggregate, for any one officer or employee, one year's emoluments of that officer or employee;
- (e) shall not, except in so far as may be necessary with respect to the interests or shareholding that a licensee may acquire in satisfaction of debts due to it,
 - (i) engage, whether on its own account or on a commission basis, in the wholesale or retail trade, including the business of import and export, or otherwise have a direct interest in any commercial, agricultural, industrial or other undertaking; or
 - (ii) acquire or hold, in an aggregate amount exceeding 25 per cent of the sum of the stated capital and published reserves of the licensee, any part of the share capital of any commercial, agricultural, industrial or other undertaking,but all such interests or shareholding, as the case may be, shall be disposed of within a period not exceeding 5 years unless permission to extend this period has been given by the Central Bank;
- (f) shall not without the approval of the Central Bank, invest in the shares of an entity so that the value of the investment at any time exceeds 10 per cent of the sum of the stated capital and published reserves of the licensee.
- (2) Subject to this section, a licensee
 - (a) shall not purchase, acquire or lease real estate unless
 - (i) such real estate is necessary for the purpose of conducting its business or providing housing or amenities for its staff, having regard to any reasonable requirements for future expansion of its business or staff; and

- (ii) the market value of the real estate does not exceed the stated capital of the licensee,

except that where the licensee exercises its legal right in respect of any property which is the security for any debt, the licensee may acquire such property, but in that case the property shall not be retained for a period in excess of 5 years without the permission of the Central Bank;

- (b) shall not acquire, deal in or underwrite its own shares or the shares of its holding company;
- (c) shall not grant any advance against the security of its own shares, or the shares of its holding company or a subsidiary of the licensee.

(3) Subsections (1) and (2) do not apply where the licensee does not accept third party deposits.

(4) Where prior to 10th June, 2002, a licensee has given to any person any advance, credit or financial guarantee or incurred any liability referred to in subsection (1) or (2), no action shall be taken under this Act against the licensee in respect of such advance, credit, guarantee or liability for a period of 2 years after 10th June, 2002.

(5) Subsection (4) does not apply where the licensee has within the period specified in that subsection increased the amount of advance, credit, guarantee or liability or where the licensee fails to comply with the conditions given by the Central Bank.

(6) For the purposes of

- (a) this section, "published reserves" means the statutory reserves of the licensee together with the retained earnings as published in the audited financial statements;
- (b) this Part, "third party deposits" means deposits from persons other than a licensee's shareholders, its holding company, its subsidiaries, its associates or its affiliates.

Trust Activities

Separation
of trust
assets.

23. (1) A licensee shall, in carrying on its business, keep all assets held in trust separate from its other assets.

(2) Subject to section 24, it is the duty of a licensee in carrying on its business to keep separate from those of its other accounts the assets of each trust account, unless they are properly identified as the property of the trust account.

Common
trust fund.

24. (1) A licensee may, in the course of its business, establish, maintain and administer one or more common trust funds and, subject to subsection (2), invest assets held in trust accounts in a common trust fund.

(2) The assets of a trust account may only be invested in a common trust fund if the instrument creating the trust expressly permits the investment, and the consent in writing of any co-trustee is obtained to the investment.

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

Declaration
of trust.

25. (1) Every common trust fund of a licensee shall be established, administered and maintained in accordance with a written declaration of trust in a form approved by the directors of the licensee.

(2) A certified copy of a declaration of trust and any amendments to it shall be deposited with the Central Bank; and any person interested in the trust fund to which the declaration relates, as beneficiary or otherwise, is entitled upon request to be supplied with a copy of the declaration at the expense of the licensee.

(3) A licensee may sell assets held by it in a trust account to another trust account held by it, if

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

26. (1) Subject to subsection (2), a licensee holding trust funds awaiting investment or distribution shall not hold those funds uninvested or undistributed any longer than is reasonable for the proper management of the account. Trust funds awaiting disposition.

(2) Unless it is contrary to the terms of the instrument establishing the trust, the trust funds described in subsection (1) may be held in the commercial or savings department of the licensee, subject to such conditions as may be prescribed.

27. A declaration of trust establishing a common trust fund must, subject to or in addition to other prescribed provisions, contain provisions relating to Contents of declaration.

- (a) the manner in which the common trust fund is to be administered;
- (b) the investment powers of the licensee with respect to the common trust fund, including the nature of investment to be made by the common trust fund;
- (c) the allocation and apportionment of income, profits and losses of the common trust fund;
- (d) the terms and conditions governing the admission or withdrawal of investments for participation in the common trust fund;
- (e) the auditing and settlement of accounts of the licensee with respect to the common trust fund;
- (f) the basis and method of valuing assets in the common trust fund;

- (g) the basis on which the common trust fund may be liquidated or interests therein may be disposed of;
- (h) the expenses to be charged for management of the common trust fund; and
- (i) such other matters as are necessary or proper to define the rights of participants in the common trust fund.

Dealing with trust assets.

28. Subject to the terms of the instrument creating the trust, the assets comprising the funds of the trust may be sold, converted, re-invested, exchanged, transferred or otherwise changed or disposed of at any time by the licensee administering the trust.

Interest in common trust fund.

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

(2) An interest in a common trust fund is not negotiable or assignable, but an interest in the fund may be disposed of in the manner provided by the declaration of trust or as may be prescribed in the absence of any provision relating thereto in the declaration of trust establishing the fund.

Status of licensee as trustee.

30. The licensee in the carrying out of its trust business has all the powers, rights, duties and obligations applicable to trustees but subject to any requirements under this Act.

Application of *Mutual Funds Act*.
Cap. 320B.

31. Sections 24 to 30 shall apply subject to the provisions of the *Mutual Funds Act*.

Abandoned Property

Abandoned property.

32. (1) Property of the following kinds held or owing in the course of its business by a licensee in respect of which no activity has been evidenced for a period of 10 years is abandoned property:

-
- (a) any general deposit, that is, a demand, saving or matured time deposit, made with the licensee, together with any interest or dividends but exclusive of legal charges;
 - (b) funds that were paid towards the purchase of shares or other interests in a licensee;
 - (c) any sum payable on cheques or other instruments for which the licensee is liable;
 - (d) intangible personal property or movable property and any income or increment thereon held in trust; and
 - (e) the contents of a safe deposit box upon which the lease or rental period has expired and in respect of which the licensee has given notice, by registered mail sent to the last known address of the lessee, of its intention to deliver the contents into the custody of the Central Bank.
- (2) Activity is evidenced in respect of the property described in subsection (1) if the owner has
- (a) within 10 years of the date of deposit increased or decreased the amount of the deposits, or presented a document for the crediting of interest in respect of the deposit;
 - (b) within 10 years of paying funds for the purchase of shares or other interests mentioned in subsection (1)(b), increased or decreased the amount of the funds or presented a document for the crediting of dividends in respect thereof or acknowledged the receipt of a statement that no dividends were paid, as the case may be;
 - (c) within 10 years of establishing a trust or within any 10-year period thereafter, increased or decreased the principal, or accepted payment of income in respect of any funds held in a fiduciary capacity; or

- (d) within 10 years of making the last deposit, inquiry or communication concerning any item mentioned in subsection (1), corresponded with the licensee concerning the item, or otherwise indicated an interest in the item as evidenced by a memorandum in respect of the item by the licensee.

Disposal of
abandoned
property.

33. (1) Where there is abandoned property, a licensee shall within 60 days of the end of each financial year,

- (a) report to the Central Bank all its holdings of abandoned property within the meaning of this Act;
- (b) publish in the *Official Gazette* and in a daily newspaper which is published and circulated in Barbados, a notice containing
- (i) the name of the owner;
 - (ii) the particulars concerning any abandoned property; and
 - (iii) a statement requiring the beneficial owner of the property to submit a claim to that licensee within 90 days of the publication of the notice; and
- (c) mail a copy of the notice referred to in paragraph (b) to the beneficial owner of the property at his last-known address.

(2) A licensee shall convey to the Central Bank, in the prescribed manner, any abandoned property which remains unclaimed after the expiration of 90 days of the publication of the notice under subsection (1)(b).

(3) The licensee shall be reimbursed by the Central Bank for the cost of the publication and mailing of the notices under subsection (1).

(4) After a licensee has complied with subsections (1) and (2), interest shall cease to accrue on any property which has been abandoned; and the licensee is relieved from any liability to the beneficial owners of the property to the extent of the value of the property deposited or conveyed to the Central Bank.

34. (1) The Central Bank may by public auction sell any property that has been conveyed to it under section 33, after the expiration of 30 days after the date of receipt of the property and at any time before the expiration of the period specified in section 35. Sale of abandoned property.

(2) The public auction under subsection (1) may be held after such reasonable advertising of the sale as the Central Bank considers suitable.

35. The Central Bank shall after a period of 6 years pay into the Consolidated Fund all monies received by it as abandoned property and the proceeds of the public auction of any abandoned property less, in each case, Payment into Consolidated Fund.

(a) an amount deducted by the Central Bank for reasonable expenses incurred by it in connection with the sale of abandoned property; and

(b) an amount deducted by the Central Bank for payment to the licensee of the cost of the publication and mailing of the notices under section 33(3).

36. (1) A person who claims a beneficial interest in any abandoned property deposited with or conveyed to the Central Bank, may make a claim for the value thereof within 6 years of the publication of the notice under section 33(1) and in the prescribed manner. Claims against property.

(2) Where the Central Bank is satisfied that a claimant is entitled to the abandoned property, the Central Bank shall deliver up the property or make payment for the value thereof, as the case requires.

(3) The Central Bank shall be reimbursed from the Consolidated Fund for any amounts paid in respect of claims made under this section.

37. (1) Where the Central Bank admits or refuses a claim under section 36, it shall forthwith notify the claimant of its decision. Refusal to pay claims.

(2) A person aggrieved by a refusal of his claim for abandoned property by the Central Bank may, within 21 days of receiving notice of the refusal, appeal the decision to a Judge in chambers, who may make such order thereon as he considers equitable.

Offence re:
abandoned
property.

38. A licensee that fails to report to the Central Bank any abandoned property in its possession or that fails to deposit with or convey to the Central Bank any abandoned property as required by this Act is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000.

PART II

ADMINISTRATION OF LICENSEES

Directors and Officers

Meaning of
"director".

39. For the purposes of this Act,

- (a) "director" means an individual occupying that position and performing the functions of a director however his position is designated;
- (b) "director" includes the manager of a society with restricted liability;
- (c) a reference to "directors" refers to the board of directors or the body directing the affairs of a company or firm.

Cessation of
office by
director and
senior
officer.

40. (1) A director or a senior officer of a licensee shall cease to hold that office

- (a) if he becomes bankrupt or suspends payment to his creditors;
- (b) if he is convicted in Barbados of an offence triable on indictment;
- (c) if he is convicted outside Barbados of an offence that would be triable on indictment had it been committed in Barbados;

- (d) if he makes an arrangement with his creditors; or
- (e) if he becomes the auditor of the licensee.

(2) Where a person ceases to hold office under subsection (1), that person may not be appointed to any other office of the licensee without the consent of the Central Bank.

(3) Where subsection (1) or (2) is contravened, the director or the senior officer, as the case may be, and the licensee are guilty of an offence and are liable on conviction on indictment to a fine of \$25 000 or to imprisonment for 12 months, or to both.

41. (1) A person who has been a director or a senior officer of a company whose licence is revoked under this Act shall not be appointed to the office of director, the office of senior officer or to any other office of any licensee without the approval of the Central Bank. Disqualification of director etc.

(2) Where subsection (1) is contravened, the director, senior officer or officer, as the case may be, and the licensee are guilty of an offence and are liable on conviction on indictment to a fine of \$25 000 or to imprisonment for 12 months, or to both.

42. (1) A director of a licensee who is interested, directly or indirectly, in an advance or loan from the licensee shall, as soon as possible, declare the nature of his interest to its directors at a meeting thereof. Disclosure of interest.

(2) Subsection (1) does not apply when the interest of a director in an advance or a loan consists only of being a creditor of, or having an interest in, a firm that is interested in an advance or a loan from the licensee if, in either case, the interest of the director is not a substantial interest.

(3) A declaration by a director of a licensee that he is interested in any advance or loan that may, after the date of the declaration, be made by the licensee, is a sufficient declaration of interest in relation to any advance or loan made after the declaration, if

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

Cap. 308. (4) Notwithstanding sections 88, 89 and 90 of the *Companies Act*, a director or an officer of a licensee shall not be present at or in any way participate in a meeting of the Board of Directors or a committee of the Board of Directors of that licensee when a loan, an advance or any other credit facility is being considered for

- (a) the director, officer or any of his relatives; or
- (b) a company in which the director, officer or a relative owns more than 25 per cent of the stated share capital.

Declaration of interest.

43. (1) A director of a licensee who holds any office or has any interest in any property whereby, directly or indirectly, his functions under this Act are likely to be in conflict with his personal interest shall declare the nature, character and extent of that office or interest to the directors at a meeting thereof.

- (2) A declaration required under this section shall be made
 - (a) at the first meeting of the directors that is held after the acquisition by the declarant of that relevant office or interest; or
 - (b) if the declarant was not at that time a director, after he becomes a director.

Recording of declaration.

44. A director of a licensee who has declared any interest referred to in section 42 or 43 shall

- (a) cause the declaration made by him thereunder to be brought up and read at the next meeting of the directors after it was given; and

- (b) cause the declaration to be recorded in the minutes of the meeting at which it was made or read, or both.

45. A director of a licensee who contravenes section 42, 43 or 44 Offence. is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000 or to imprisonment for 12 months, or to both.

46. (1) A person who has acquired confidential information Insider information. concerning a licensee

- (a) as a director, officer, employee, or auditor of the licensee;
- (b) as a custodian of the licensee; or
- (c) as an employee of the Central Bank,

shall not disclose that information to any person except as permitted under subsection (2), or use that information for any personal benefit not related to the duties through which the information was acquired.

(2) Subsection (1) does not apply to the giving of confidential information

- (a) where the information is a general credit rating of a person that is supplied by a director, officer or employee of the licensee following a *bona fide* business request;
- (b) where the information is given with the written authorization of the beneficiary or his legal representative;
- (c) where the information is lawfully required to be disclosed by an order of the High Court; or
- (d) where the information is lawfully required to be disclosed pursuant to any other enactment.

(3) In this section "confidential information" means information concerning the identity of a depositor, settlor or beneficiary of a trust, or concerning the assets, liabilities, transactions or other information in respect of a depositor, settlor or beneficiary of a trust.

(4) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000 or to imprisonment for 12 months, or to both.

Audit and Inspection

Financial
statements.

47. (1) A licensee shall in respect of its business submit to the Central Bank in the prescribed form,

(a) not later than 21 days after the end of each 3-month period, a quarterly statement of its assets and liabilities; and

(b) within such time as the Central Bank may determine, such other returns as the Central Bank requires.

(2) The Central Bank may require a licensee to submit

(a) such further information as it considers necessary for the proper understanding of any statement or return furnished by the licensee pursuant to subsection (1);

(b) any information it considers necessary in respect of any holding company, subsidiary or affiliate of the licensee;

and the information shall be submitted within such time and in such manner as the Central Bank requires.

(3) The Central Bank may require the licensee to appoint an auditor to examine and report to the Central Bank, in such manner as the Central Bank may determine, on returns submitted by the licensee.

(4) The Central Bank may cause to be prepared and published in the *Official Gazette* consolidated statements aggregating all the figures in the quarterly returns of licensees.

(5) A licensee which contravenes subsection (1) is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000.

48. (1) Subject to section 47(4) and subsection (2) of this section, no statement, returns or information furnished or submitted by a licensee in respect of its business shall be communicated or disclosed. Confidentiality.

(2) The Central Bank may, without the consent of a licensee, disclose information received to

- (a) any supervisory or regulatory authority of financial institutions in Barbados; and
- (b) the appropriate supervisory or regulatory authority of financial institutions of another country, at the request of that authority, where there is a branch, holding company or affiliate of the licensee operating in that country.

(3) A person who discloses confidential information contrary to subsection (1) is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000 or to imprisonment for a term of 12 months, or to both.

49. (1) Not later than 4 months after the close of its financial year or such longer period as the Central Bank may allow, a licensee shall forward to the Central Bank such number of copies of its balance sheet and profit and loss account as may be prescribed and the full and correct names of the directors of the licensee. Filing of accounts.

(2) The balance sheet and the profit and loss account must bear the certificate of an auditor on its face.

(3) Where a licensee is a qualified foreign bank, this section applies in respect only of the international financial services carried on by the licensee in Barbados.

(4) A licensee which contravenes this section is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000 and, in addition, to a further fine of \$25 000 for each month during which the offence continues after a conviction is obtained.

Qualified
auditor.

50. For the purposes of this Act, an auditor is a person

- (a) who is in good standing as a member of an association of chartered or public accountants or other similar body;
- (b) who is authorized to practise in Barbados; and
- (c) who is approved by the Central Bank.

Annual
auditing.

51. (1) The annual balance sheets and profit and loss account of a licensee shall be audited at least once in every financial year by an auditor within the meaning of section 50.

(2) It is the duty of the auditor to submit a report to the shareholders and to the directors of the licensee.

(3) The auditor shall note in his report any instances where the operations of the licensee might not in the opinion of the auditor be in compliance with the requirements of this Act, the regulations, the conditions of the licensee's licence or the licensee's articles or bye-laws.

(4) The report of the auditor shall be read with the report of the directors at the annual meeting of the shareholders of the licensee.

(5) A copy of the report of the auditor shall be displayed by the licensee in a conspicuous place at its offices in Barbados and shall be published by the licensee in the *Official Gazette*.

(6) If the Central Bank has reasonable grounds for being dissatisfied with the annual report of an auditor appointed by a licensee, the Central Bank may appoint another auditor to make an independent report.

(7) A licensee shall give notice in writing to the Central Bank

- (a) if it fails to appoint or if it terminates the appointment of an auditor within 90 days of the issue of its licence; or
- (b) if it fails to appoint or if it terminates the appointment of an auditor within 90 days of the annual general meeting;

and the notice shall state the reasons for its failure to appoint an auditor or the reasons for the termination of the appointment, as the case may be.

(8) Where a licensee fails to appoint an auditor pursuant to this section, the Central Bank may appoint an auditor who

- (a) shall have all the powers of an auditor appointed by the licensee to carry out an audit;
- (b) shall report to the Central Bank; and
- (c) shall comply with the requirements of subsection (3).

(9) The remuneration of an auditor shall be paid by the licensee to which he is appointed, and if the auditor is appointed under subsection (8), his remuneration shall be such amount as the Central Bank determines.

(10) In the case of a licensee that is a qualified foreign bank, this section applies only in respect of the international financial services carried on by the licensee, subject to the conditions of its licence.

(11) 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 re-appointment.

(12) For the purposes of this section, unless the context otherwise indicates, "auditor" means a person appointed under subsection (1).

52. (1) No person may be appointed an auditor of a licensee

- (a) if he has any proprietary interest in the licensee;
- (b) if he is a director, or agent of the licensee or of an affiliate of the licensee; or
- (c) if he is an officer or employee of the Central Bank.

Persons who
may not be
auditors.

(2) A former director or a former senior officer shall not be eligible for appointment as an auditor of the licensee within a period of 2 years after the termination of that person's term of office.

Examination
by Central
Bank.

53. (1) The Central Bank may, if it considers necessary, cause an examination to be made by any of its officers or any person authorized by it of the affairs of a licensee, to determine whether the provisions of this Act or the regulations made hereunder are being complied with or whether the licensee is in a sound financial condition.

(2) Where necessary, the Central Bank may in respect of any holding company, parent company or any other company that holds shares in a licensee

(a) inspect the books of the company; or

(b) request any information from the appropriate authorities in any country where the company is located.

Powers of
examiners.

54. An auditor, officer or employee of a licensee shall produce for an examiner appointed by the Central Bank under section 53, at such time as the examiner fixes, all books, minutes, cash, securities, vouchers and other documents and records relating to its assets, liabilities and business generally, and shall give the examiner such information concerning its affairs and business as he may request.

Disclosure
by auditor
etc.

55. An auditor, officer or employee of a licensee who is required under this Part to make any disclosure to the Central Bank or to a person authorized by the Central Bank shall not by reason of making that disclosure be regarded as being in breach of his duty to the licensee.

Offence and
penalty.

56. If any of the matters referred to in section 54 are not produced, or the information relating thereto is not given to the examiner, the auditor, officer or employee of the licensee is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000 and, in addition, to a further fine of \$2 500 for each day during which the offence continues.

57. (1) Where the Central Bank is of the opinion that an examination of a licensee indicates that the licensee is carrying on its business in an unlawful manner or is in an unsound financial condition, the Central Bank, after service of notice in writing, Remedial action.

- (a) may require that the licensee immediately take such remedial measures as the Central Bank considers necessary; and
- (b) may, with the approval of the Minister,
 - (i) appoint a person who in the opinion of the Central Bank has had training and experience in the business of the licensee concerned to advise the licensee on the action to be taken to remedy the situation; or
 - (ii) suspend the licence of the licensee for a period not exceeding 3 months.

(2) A person appointed under subsection (1)(b)(i) shall be paid by the Central Bank such remuneration as the Central Bank may determine, and the remuneration shall be charged to the licensee concerned.

(3) A licensee that is required to take remedial measures or whose licence is suspended under this section may within 21 days of the service of the notice under subsection (1) make representations in writing to the Central Bank as to why the Central Bank should not take the action intended.

(4) Where a licensee is aggrieved by the decision of the Central Bank under subsection (3), the licensee may within 30 days after it is notified of the Central Bank's decision appeal to the Minister.

(5) Where the Central Bank is of the opinion that the operations of a foreign office of a licensee present a threat to the licensee's financial soundness, the Bank may require the licensee to make such changes in the operations of the office as are considered necessary; or the Bank may require the licensee to close the office.

Revocation
of licence.

58. (1) The Minister may by notice in writing revoke a licence granted under this Act where

- (a) the licensee fails to take remedial measures within the period specified; or
- (b) the licensee fails within the period of suspension to desist from the behaviour which resulted in the suspension, or fails to take any action required by the Central Bank.

(2) A licensee that is aggrieved by the revocation of its licence under subsection (1) may, within 30 days of the receipt of the notification, apply to the High Court for an order requiring the Minister to revoke the cancellation of its licence; and the Court may make such order as it thinks fit in the circumstances.

Seizure of
management
and control
of licensee
by Central
Bank.

59. (1) Upon giving prior notice to the Minister, the Central Bank may seize the management and control of a licensee in any of the following circumstances, namely:

- (a) when the realizable value of the licensee's assets is less than the aggregate of its liabilities and capital accounts, or the licensee's financial condition suggests that it will shortly be in that circumstance;
- (b) when its business is being conducted in an imprudent manner or is not being conducted in accordance with this Act;
- (c) when the licensee refuses to submit to the inspection of its records or operations by an auditor appointed under section 51 or an examiner appointed under section 53; or
- (d) when its licence has been revoked or suspended.

(2) A seizure of the management and control of a licensee under this section is effected by placing a notice to that effect on the premises of the licensee and by putting officers of the Central Bank into the offices of the licensee, or by designating officers of the licensee to be officers of the Central Bank, or by both such measures.

(3) A licensee aggrieved by a seizure under this section may institute proceedings in the High Court for recovery of its administration and control; and the High Court may make such order in respect thereto as seems just and consistent with the purposes of this Act.

Offences

60. (1) A licensee that engages in advertising practices that are likely to mislead concerning Misleading advertising.

- (a) the relationship of the licensee with the Government of Barbados, the Central Bank or any department or office thereof;
- (b) the true interest rate paid on deposits or charged on credit;
- (c) the true returns on the management of investments;
- (d) the insured or guaranteed status of deposits or of other liabilities or of investments managed by it; or
- (e) the financial condition of the designated institution,

is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000 or imprisonment for 5 years, or to both.

(2) A licensee shall in respect of its business furnish the Central Bank with copies of all its advertisements,

- (a) 6 months after the first issue of its licence under this Act, and
- (b) thereafter at 6-monthly intervals.

(3) Any licensee which contravenes subsection (2) is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000.

61. A director, officer, employee or agent of a licensee, who, with intent to deceive False statements and obstruction.

- (a) makes any false or misleading statement or entry in a book, account, record, report or statement of the licensee, or omits a statement or entry that should be made therein; or

- (b) obstructs the carrying out by an auditor of his proper function under this Act; or
- (c) obstructs the examination of a licensee as required pursuant to this Act,

is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000 or imprisonment for 5 years, or to both.

PART III

WINDING UP OF LICENSEES

Voluntary winding up. **62.** (1) Except with the written approval of the Central Bank, no licensee may be wound up voluntarily.

(2) Approval for a voluntary winding up of a licensee may be given by the Central Bank only if it is satisfied that

- (a) the licensee is solvent and has sufficient assets to repay its depositors and other creditors without delay; and
- (b) subject to subsection (3), the winding up has been approved by the holders of at least two-thirds of the outstanding voting shares of the licensee.

(3) Where the Central Bank finds in respect of a licensee that there is imminent danger of its insolvency, and certifies to the Minister the existence of an emergency, the Minister may waive the requirement for shareholder approval of the winding up of the licensee voluntarily, if

- (a) the winding up is to be effected in whole or in part through the sale of any of the assets of the licensee to another licensee; and
- (b) the deposit liabilities of the licensee to be wound up are to be assumed by that other licensee.

Voluntary winding up: duty of licensee. **63.** Where a licensee receives the approval of the Central Bank to its voluntary winding up, the licensee shall

- (a) cease to do business immediately and retain only such staff as is necessary for an orderly winding up;
- (b) repay its depositors and other creditors; and
- (c) wind up all operations undertaken before the receipt of the approval to wind up.

64. (1) Within 30 days of the receipt of the approval of the Central Bank to the winding up of a licensee, a notice of voluntary winding up shall be sent by the licensee in the prescribed manner or by personal service to the depositors and creditors of the licensee and to other persons having any interest in its funds or other property. Notice of winding up.

(2) The notice described in subsection (1) shall also be published in the *Official Gazette* and placed in a conspicuous place on the premises of each office or branch of the licensee to be wound up.

65. (1) The approval of the Central Bank to the voluntary winding up of a licensee does not adversely affect the rights of a depositor or other creditor of the licensee to settlement in full of his claim or the rights of any person having an interest in the funds or property of the licensee to settlement of that interest. Settlement of claims.

(2) All claims made by persons described in subsection (1) shall be settled by the licensee concerned within such time as the Central Bank may determine.

66. (1) The assets of a licensee being voluntarily wound up that remain after settlement of the claims described in section 65 are to be distributed among the shareholders of the licensee in proportion to their respective rights. Distribution of remaining assets.

(2) Notwithstanding subsection (1), no distribution of the remaining assets of a licensee may be made

- (a) before all claims of depositors and other creditors have been settled or, in the case of a disputed claim, before the licensee has deposited with the Central Bank sufficient funds to meet any liability that could arise under that claim;

- (b) before any funds that are payable to a depositor or other creditor who has not made his claim have been deposited with the Central Bank; or
- (c) before any funds or property held by the licensee that could not be returned in accordance with section 65 to the persons who have an interest therein have been deposited with or transferred to the Central Bank, together with the relevant records.

Interruption
of winding
up.

67. (1) If the Central Bank determines that the assets of a licensee that is being voluntarily wound up are not sufficient for the full discharge of the obligations of the licensee, or that the completion of such a winding up is being unduly delayed, the Central Bank may seize the management and control of the licensee after posting a notice to that effect on the premises of the licensee and by putting officers of the Central Bank into the offices of the licensee.

(2) Where the Central Bank seizes the management and control of a licensee under subsection (1), it shall immediately begin proceedings for the compulsory winding up of the licensee or for its reorganisation in accordance with this Act.

Duty of
Central
Bank.

68. The Central Bank shall begin proceedings in the High Court

- (a) for the compulsory winding up of the licensee; or
- (b) for the reorganisation of the licensee;

within 30 days after the Central Bank has seized the administration and control of a licensee under this Act.

Powers of
High Court.

69. Proceedings under section 68 in respect of a licensee, may be made by way of application to the High Court and the Court may there-upon order

- (a) the compulsory winding up of the licensee;
- (b) the reorganisation of the licensee subject to such terms and conditions as the court may determine; or

- (c) the return of the management and control of the licensee to its shareholders, directors and officers, subject to such safeguards or conditions, if any, as the court may consider necessary for the purposes of this Act.

70. The Central Bank shall give notice of the application

Notice of application.

(a) to the directors and shareholders of the licensee; and

(b) to the depositors and other creditors of the licensee,

forthwith after it makes an application to the High Court under section 69 in relation to a licensee.

71. (1) If the High Court orders the compulsory winding up or reorganisation of a licensee pursuant to an application under section 69, the High Court shall appoint a custodian to be responsible to the Court and to supervise the winding up or reorganisation of the licensee.

Appoint-
ment of
custodian.

(2) The Central Bank or other suitable person may be appointed as the custodian under subsection (1).

(3) If the Central Bank is not appointed custodian, it may contribute to the fees payable to the custodian appointed under this section as remuneration for the custodian's services.

72. (1) The custodian has the exclusive power and duty to manage and control the affairs of the licensee for which he has been appointed.

Functions
of custodian.

(2) Without limiting the powers or duties of the custodian under subsection (1), the custodian may, in respect of the licensee for which the custodian has been appointed,

- (a) continue or discontinue its operations;
- (b) stop or limit the payment of its obligations;
- (c) employ staff;

- (d) execute any instrument in its name;
- (e) initiate, defend and conduct in its name any action or proceeding to which the licensee is or might be a party;
- (f) end the seizure of the licensee by restoring it to its directors and shareholders; and
- (g) reorganize or wind up the licensee in accordance with this Act.

Inventory
of assets.

73. (1) The custodian shall make an inventory of its assets and forward a copy of the inventory to the Registrar of the Supreme Court forthwith after assuming the management and control of a licensee.

(2) The copy of the inventory forwarded to the Registrar under subsection (1) shall be kept available for the inspection of interested persons at all reasonable times.

Effect of
seizure.

74. Where the administration and control of a licensee is seized under this Act

- (a) any statutory, contractual, or other term or condition on the expiration of which a claim or right of the licensee would expire or be extinguished shall be extended by 6 months from the date of the seizure;
- (b) an attachment or lien, other than a lien that was in existence during the 6 months immediately preceding the seizure, shall be vacated and no attachment or lien, other than a lien created by a custodian in the application of this Act, attaches to any of the assets of the licensee during the period the seizure continues; and
- (c) a transfer of any assets of the licensee that is made after or in contemplation of its insolvency or seizure, with intent to effect a preference, is void.

75. No execution may be returned against the assets of a licensee whose administration or control has been seized under this Act except such as the High Court may order in respect of an execution effected, pursuant to a judgment that was rendered before the seizure, for an amount not exceeding \$5 000.

Execution
against
assets.

76. (1) Where the reorganisation of a licensee has been ordered by the High Court, the custodian shall develop a plan of reorganisation and deliver a copy thereof to each of the depositors and other creditors of the licensee who under the plan would not receive full restitution or payment of their claims.

Reorganisa-
tion.

(2) A copy of the reorganisation plan must be accompanied by a notice requiring that objections to the plan be delivered to the custodian not later than 30 days after the last copy has been delivered under subsection (1).

(3) If within the time limited therefor by subsection (2) the custodian does not receive objections in writing to the reorganisation from persons who in the aggregate hold at least one-third of the total amount of deposits and other liabilities of the licensee, the custodian may carry out the reorganisation plan referred to in subsection (1).

(4) Where an objection to the reorganisation plan is received from one-third or more of the persons described in subsection (3),

- (a) the custodian shall submit further reorganisation plans in like manner until such time as fewer than one-third of the persons described in subsection (3) object within the time limited therefor; or
- (b) he may refer the matter back, at any time, to the High Court for further directions.

(5) The High Court may extend the time limited by subsection (2) and, upon cause shown, may exempt the custodian from delivering the plan to some or all of the persons mentioned in subsection (1).

- Contents of plan. **77.** A reorganisation plan developed by the custodian of a licensee must, so far as is practicable,
- (a) be equitable to all classes of depositors;
 - (b) provide for bringing in new funds to establish adequate ratios between
 - (i) capital and deposits; and
 - (ii) liquid assets and deposits; and
 - (c) provide for the removal of any director or any officer or employee responsible for the circumstances that led to the seizure of the licensee.
- Modifica-tion of plan. **78.** Where, in the course of the reorganisation of a licensee, it appears to the custodian that circumstances render the plan or its execution undesirable, he may apply to the High Court for an order
- (a) to modify the plan; or
 - (b) to wind up the licensee compulsorily.
- Compulsory winding up. **79.** (1) Where the High Court under section 69 or 78 orders the compulsory winding up of a licensee, the custodian appointed therefor by the Court may, subject to subsection (2), perform the functions of the licensee.
- (2) The custodian of a licensee described in subsection (1) may not, without an order of the High Court to do so,
- (a) sell any assets or transfer any property of the licensee that has a value exceeding \$100 000;
 - (b) create a security interest in any asset or property of the licensee in favour of a creditor who extends new credit to the licensee;
 - (c) compromise or release any claim, the amount of which exceeds \$100 000; or

- (d) pay any claim, other than one in respect of an obligation incurred by the custodian in the exercise of his winding up functions, before the schedule referred to in section 85(c) has been approved by the High Court.

80. Subject to any law of Barbados governing conditions of employment, the custodian of a licensee that has been ordered by the High Court to be compulsorily wound up shall terminate, not later than 9 months after the making of the order of the High Court

Termination
of employ-
ment.

- (a) any employment contract of the licensee;
- (b) any contract for services to which the licensee is a party; and
- (c) any obligations of the licensee as a lessee of property.

81. A lessor of any property referred to in section 80

Right of
lessor.

- (a) must be given notice of a period not less than 90 days of the intended termination of the obligations of a licensee thereunder;
- (b) has no claim for rent thereunder other than rent accrued on the date of the termination of the obligation of the licensee; and
- (c) has no right to damages by reason only of any termination of the obligations of the licensee, notwithstanding any term of the lease to the contrary.

82. A custodian of a licensee that has been ordered to be wound up shall take such action as is necessary to terminate all the trust functions of the licensee and to settle its trust accounts.

Settlement
of trust
accounts.

83. (1) Within 60 days after the granting of an order for the compulsory winding up of a licensee, the custodian shall deliver a statement of account to any depositors and other creditors, any lessees of safe-deposit boxes and any bailors of property held by the licensee.

Statement of
accounts.

(2) A notice specifying that any objection to the statement of account is to be made on a date specified in the notice, not being later than 60 days after the delivery of the notice, must accompany the statement of account, and invite the lessees of safe-deposit boxes and bailors of property to withdraw their property from the licensee in person.

(3) The High Court on application of the custodian for cause shown may exempt the custodian from delivering a statement of account to any person mentioned in subsection (1).

(4) For the purposes of this section, a "statement of account" is a statement of the nature and amount for which a claim of a person described in subsection (1) is shown on the books of the licensee.

Contents of
boxes.

84. (1) A safe-deposit box maintained by a licensee that is being compulsorily wound up may be opened in the manner specified by the custodian of the licensee if the contents of the safe-deposit box have not been withdrawn before the expiration of the period specified in a notice under section 83.

(2) The contents of a safe-deposit box opened under subsection (1), and any unclaimed property held by the licensee as trustee, together with any inventories pertaining thereto, shall be turned over to the Central Bank and held by it for 10 years unless sooner claimed by a person entitled thereto.

(3) On the expiration of 10 years from the day any property was turned over to the Central Bank under subsection (2), the property becomes abandoned property.

Claims.

85. Not later than 90 days after the last day specified in the notice for filing claims against a licensee being compulsorily wound up, the custodian shall

- (a) reject any claim of which he doubts the validity;
- (b) determine the amount, if any, owing to each known depositor or other creditor, and the priority of his claim under this Act;

- (c) prepare for filing with the High Court a schedule of the actions proposed to be given for the purpose of the compulsory winding up of the licensee;
- (d) notify each person whose claim is allowed in full; and
- (e) publish, once a week for 3 consecutive weeks in the *Official Gazette*,
 - (i) a notice of the date and place where the schedule referred to in paragraph (c) will be available for inspection; and
 - (ii) the date, not being earlier than 30 days from the date of the publication, on which the custodian will file that schedule with the High Court.

86. (1) Within 20 days of the filing of a schedule under section 85(c), a depositor or other creditor, a shareholder of the licensee concerned or any other interested person may file with the High Court any objection he has to any action proposed in that schedule. Objections.

(2) After notice is served on the custodian and such interested parties as the High Court may require, the High Court shall hear the objection and make such order as it considers just in the circumstances.

(3) Where the High Court allows an objection, the order must set out the manner in which the schedule referred to in section 85(c) is to be modified.

87. (1) Where a schedule has been filed under section 85(c) in respect of a licensee, the custodian may make a partial distribution to the claimants against the licensee whose claims are undisputed or allowed by the High Court, if the custodian establishes an adequate reserve for the payment of disputed claims against the licensee. Distribution of assets.

(2) As soon as practicable after all objections against the distribution proposed by the custodian have been heard and determined, final distribution of the assets of the licensee concerned shall be made by the custodian.

Priority of
claims.

88. (1) The following claims have priority against the general assets of a licensee being compulsorily wound up under this Act:

- (a) first, the necessary and reasonable expenses incurred by the custodian in carrying out his functions under this Act;
- (b) secondly, the wages and salaries of the officers and employees of the licensee that accrued during the 3 months immediately preceding the seizure of the licensee under this Act;
- (c) thirdly, any moneys owing to the Government of Barbados;
- (d) fourthly, the fees and assessments owing to the Central Bank;
- (e) fifthly, the savings and time deposits in amounts not exceeding \$5 000 respectively; and
- (f) sixthly, deposits other than those mentioned in paragraphs (a) to (e).

(2) After payment with interest at such rate as the High Court determines of all claims against the licensee, all remaining claims against the licensee that were not filed within the time limited therefor under this Act may then be paid.

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

Left-over
assets.

89. The assets of a licensee being compulsorily wound up that remain after the final distribution to claimants pursuant to section 87 shall be distributed by the custodian among the shareholders of the licensee in proportion to their respective rights.

Abandoned
funds.

90. (1) Any funds of a licensee being compulsorily wound up under this Act that remain unclaimed after the final distribution under section 87, and not subject to distribution under any other provision of this Act, shall be deposited with the Central Bank by the custodian of the licensee.

(2) Funds deposited with the Central Bank under subsection (1) must be held by the Bank for 10 years unless earlier claimed by a person entitled thereto.

(3) On the expiration of the 10 years referred to in subsection (2) in respect of any funds, those remaining unclaimed become abandoned property.

91. (1) Where all the assets of a licensee being wound up have been distributed or dealt with as required by this Act, the custodian shall render an audited statement to the High Court. Completion of winding up.

(2) If the High Court is satisfied with the audited statement rendered by the custodian in respect of a licensee being wound up, it may by order direct the Registrar of Companies to strike the name of the licensee from the register of companies under the *Companies Act* and publish notice thereof in the *Official Gazette*. Cap. 308.

(3) Where its name is struck off the register of companies, the licensee is thereupon dissolved and its licence under this Act is revoked.

PART IV

SPECIAL TAXING PROVISIONS

92. (1) For the purposes of this Act, the following are residents of Barbados: Definitions: "resident of Barbados" and "beneficial interest".

- (a) an individual ordinarily resident in Barbados;
- (b) a citizen of Barbados who is not ordinarily resident in Barbados but owns a dwelling in Barbados;
- (c) any incorporated or other body, formed or organised in Barbados, the majority of the shares or other ownership of which is not beneficially held by persons resident outside Barbados;

- (d) any incorporated or other body, wherever incorporated, formed or organised, that is controlled by a person described in paragraph (a) or (b) or by the Government of Barbados;
- (e) the Crown in right of Barbados and any agency thereof;
- (f) a trust
 - (i) established by a resident as defined in any of paragraphs (a) to (e), other than a trust for the administration of pension or like funds for the benefit of individuals a prescribed majority of whom are persons who are resident outside Barbados; or
 - (ii) in which residents as defined in any of paragraphs (a) to (e) have more than a prescribed percentage of the beneficial interest; or
- (g) any incorporated or unincorporated body that is controlled, directly or indirectly, by a trust defined in this section as a resident of Barbados.

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

Tax Exemptions

Exemption
from tax.

93. (1) Except as provided by this Part, no income tax, capital gains tax or other direct tax or impost shall be levied in Barbados upon the profits or gains of a licensee in respect of the international financial services it carries on from within Barbados.

(2) Except as provided by this Part, no income tax, capital gains tax or other direct tax or impost shall be levied in Barbados in respect of any dividends or earnings attributable to the shares or securities of a licensee that are beneficially owned by another licensee or by a person who is not a resident of Barbados.

(3) Except as provided by this Part, no tax, duty or impost shall be levied upon the increment in value of the property or other assets in Barbados of a licensee, other than upon such of them as are distributed to residents of Barbados.

94. (1) Except as provided by this Part, no tax, duty or other impost shall be levied upon a licensee, its shareholder or transferees in respect of the transfer of all or any part of its securities or other assets to another licensee or to a person who is not a resident of Barbados. Transfer of assets: exemption.

(2) Where a person who is not a resident of Barbados or a licensee transfers shares of a licensee that are held by that person or licensee to another person who is not a resident of Barbados or to another licensee, the transfer is exempt from the payment of any tax, duty or impost thereon.

- (3) Except as provided by this Part,
- (a) no income tax or capital gains tax; and
 - (b) no other direct tax or impost,

shall be levied or collected in Barbados in respect of any dividends, interests or other returns from any shares, securities, deposits or other borrowings of a licensee or any assets managed by a licensee, if the dividends, interest or other returns are in respect of shares, securities, deposits or other borrowings or assets beneficially owned by a person who is not a resident of Barbados; but the onus of establishing ownership lies upon the licensee.

95. (1) Notwithstanding any provision of the *Income Tax Act*, but subject to subsection (2), no licensee need withhold any portion of Withholding tax and report concerning dividends etc. Cap. 73.

- (a) any dividend, interest or other returns payable to any person in respect of any borrowings of the licensee or in respect of that person holding shares or securities of the licensee; or
- (b) any fee payable to any person.

(2) All dividends, interests or other returns attributable to the shares or securities of, or the management of assets by, a licensee and all fees that are payable to a resident of Barbados and known as such by the licensee, shall be reported to the Commissioner of Inland Revenue.

Trust
property
exemptions.

96. Where a trust is established by a settlor who is not a resident of Barbados in favour of another person who is not a resident of Barbados, the trust is exempt from any tax, duty or impost in Barbados if the funds of the trust consist solely of foreign currency or foreign securities and the trust is under the management of a licensee.

Tax on
profits.
Cap. 73.

97. (1) By way of income tax but *in lieu* of income tax at the rates specified in the *Income Tax Act* there shall be levied and paid to the Commissioner of Inland Revenue, upon the profits and gains of a licensee in respect of the international financial services carried on by it from within Barbados, tax at the following rates:

- (a) 2½ per cent on all profits and gains up to \$10 000 000;
- (b) 2 per cent on all profits and gains in amounts exceeding \$10 000 000 but not exceeding \$20 000 000;
- (c) 1½ per cent on all profits and gains in amounts exceeding \$20 000 000 but not exceeding \$30 000 000; and
- (d) 1 per cent on all profits and gains exceeding \$30 000 000.

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

(3) Except in so far as this Act operates to exempt a licensee from liability to income tax under the *Income Tax Act*, the provisions of that Act shall apply *mutatis mutandis* to a licensee.

Guarantees
etc.

98. (1) Where in the opinion of the Minister it is in the public interest to do so, the Minister may by agreement give such assurance or guarantee regarding the future taxing of a licensee as it may require

before commencing to carry on international financial services from within Barbados.

(2) An assurance or guarantee referred to in subsection (1) is subject to affirmative resolution of the House of Assembly.

99. (1) Where a tax levied in Barbados is in the nature of a service charge or utility charge for a service provided by the Government of Barbados, a licensee is not exempt from that charge under this Part. Service fees etc.

(2) A service or utility charge includes a charge or fee levied or imposed for the issue of any incorporation, registration or licence required in Barbados.

100. The Minister may by order exempt a licensee, in respect of its business, from all or so much of any duty payable under the *Customs Act* as the Minister deems expedient in respect of any goods imported by the licensee, if the licensee satisfies the Minister that the goods concerned Customs duty. Cap. 66.

- (a) are not being made or manufactured in Barbados;
- (b) are essential as equipment or fixtures for doing business from within Barbados; and
- (c) are not merely goods that will be used up or expended in the ordinary course of business.

101. (1) Where the Minister is satisfied that a licensee must use the services of specially qualified persons in order to do its business effectively from within Barbados and that Employee benefits.

- (a) it is unable to acquire those services within the Caribbean Community; and
- (b) it is unable to retain or hire those services from outside the Caribbean Community without special tax benefits being made available,

the Minister may authorize an international financial service benefit for the employment of those specially qualified persons who are not residents of the Caribbean Community.

(2) For the purposes of this section,

- Cap. 15. (a) "Caribbean Community" means the Caribbean Community within the meaning of the *Caribbean Community Act*;
- Cap. 73.
Cap. 71.
2007-7. (b) an "international financial service benefit" is a benefit whereby, notwithstanding any provision of the *Income Tax Act* or the *Exchange Control Act*, a prescribed percentage of an employee's or contractor's salary, fees and any other emoluments from a licensee
- (i) is exempt from income tax or other tax in Barbados;
- (ii) may be paid in a foreign currency in a trust account without being liable to income tax or other tax in Barbados as to the amount paid or any earnings thereon; or
- (iii) may be paid in some other prescribed manner in another currency or otherwise without being liable to income tax or other tax in Barbados.

Exchange control.
Cap. 71. **102.** (1) The dividends, royalties, interest, foreign securities, funds, gains and assets generated or managed by a licensee in the course of its business are exempt from the provisions of the *Exchange Control Act*.

(2) Section 11(2) of the *Exchange Control Act* does not apply to a person who proposes to incorporate an eligible company.

(3) Except section 11(2), Part IV of the *Exchange Control Act*, does not apply to a licensee in respect of its international financial services business.

PART V

MISCELLANEOUS AND TRANSITIONAL

103. Upon the written request of a licensee, the Central Bank may extend the time within which any document or information required from the licensee must be sent to the Central Bank. Extending time.

104. (1) Subject to subsection (2), the Central Bank may publish any information furnished to it under this Act. Publication of information.

(2) No information concerning the business of a licensee shall be published by the Central Bank that might disclose the individual affairs of the directors or staff of a licensee or its customers without the prior written consent of all persons whose interests might be disclosed by the publication.

105. (1) Subject to subsection (2), no person other than a licensee may, without the approval of the Central Bank, use the word Use of "bank" in names.

(a) "bank" or any of its derivatives in any language; or

(b) any other word indicating the carrying on of international banking business from within Barbados,

in the name, description or title under which that person carries on business or intends to carry on business in Barbados, or make any representation to that effect in any bill-head, letter paper, notice or advertisement.

(2) Subsection (1) does not apply

(a) to a bank licensed under the *Financial Institutions Act*; or Cap. 324A.

(b) to such person as the Central Bank may exempt from the provisions of subsection (1).

(3) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000.

- Immunity. **106.** Neither the Governor of the Central Bank nor any officer of the Bank shall be liable in damages for anything done or omitted in the discharge or purported discharge of his respective functions under this Act, unless it is shown that the act or omission was in bad faith.
- Delegation of functions. **107.** The Minister may delegate to the Central Bank any of his functions under this Act other than the function of issuing or revoking a licence.
- Representative offices. **108.** Where an international bank that is licensed in another jurisdiction intends to establish a representative office in Barbados, it must seek the approval of the Minister before doing so; and where the Minister gives his approval, he may specify such conditions as he deems fit.
- Regulations. **109.** (1) The Central Bank may make regulations
- (a) respecting the operation of common trust funds;
 - (b) respecting the information to be recorded in relation to trust accounts of a licensee;
 - (c) approving the manner of using, investing or managing any property or funds outside or within Barbados by a licensee;
 - (d) in respect of loans and other assets;
 - (e) in respect of the treatment of interest;
 - (f) in respect of loan concentrations;
 - (g) in respect of major acquisitions or investments by licensees;
 - (h) in respect of related party transactions;
 - (i) in respect of matters relating to self-dealing;
 - (j) in respect of foreign exchange risks and market risks;
 - (k) regarding the issue of advertisements by licensees;

- (l) in respect of such matters as may affect the safety and soundness of licensees;
- (m) in respect of such acts, matters or things as are required by this Act to be prescribed;
- (n) generally for giving effect to this Act.
- (2) All regulations made under this Act
 - (a) shall be made with the approval of the Minister; and
 - (b) are subject to negative resolution.

110. (1) Part IV of the *Companies Act* relating to the winding up of a company does not apply to a licensee. Application of Cap. 308.

(2) Division B of Part V of the *Companies Act* does not apply to a licensee.

111. The *Bankruptcy and Insolvency Act*, does not apply to a licensee. Exemption from Cap. 303.

112. The *Financial Institutions Act* does not apply to a licensee in respect of its international financial services business. Exemption from Cap. 324A.

113. All regulations, orders and notices made under the *Off-shore Banking Act* shall, except in so far as they are inconsistent with this Act, continue to have effect as though made or issued under this Act. Savings. Cap. 325.

114. A company licensed at 10th June, 2002 under the *Off-shore Banking Act* shall, from that date, be deemed to be licensed under this Act and the provisions of this Act shall apply accordingly. Transitional. Cap. 325.

115. The *Off-shore Banking Act* is repealed. Repeal of Cap. 325.

SCHEDULE

(Section 2(1))

ENACTMENTS RELATING TO PRESCRIBED PERSONS

Cap. 59C.	Barbados Foreign Sales Corporation Act.
Cap. 308A.	Exempt Insurance Act.
Cap. 77.	International Business Companies Act.
Cap. 245.	International Trusts Act.
Cap. 318B.	Societies With Restricted Liability Act.