

**ST. VINCENT AND THE GRENADINES
INTERNATIONAL BANKS ACT, 2004
ARRANGEMENT OF SECTIONS**

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SCHEDULE



SAINT VINCENT AND THE GRENADINES

ACT NO. 40 OF 2004

I ASSENT

DR. FREDRICK BALLANTYNE
Governor-General
24th December, 2004

AN ACT to repeal and replace the International Banks Act, 1996; to provide for better licensing procedures and regulation of international banking business in accordance with the generally accepted principles of banking; to provide incentives for international banking business carried on from within the State, and relate matters.

[28th December, 2004]

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same as follows:

PRELIMINARY

1. This Act may be cited as the International Banks Act, 2004.

Short title

2. (1) In this Act

Interpretation

“affiliate” includes an affiliated corporation and for the purposes of this Act

(a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person or group of persons; and

(b) if two bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other;

“auditor” means a person who is licensed and in good standing as a member of an approved accounting body listed in Schedule 2.

“Authority” means the Saint Vincent and the Grenadines International Financial Services Authority created pursuant to the Saint Vincent and the Grenadines International Financial Services Authority Act;

No. 16 of 1996.

“bank” means any financial institution whose operations include the acceptance of

deposits subject to transfer by the depositor by cheque or other means of payment transfer;

- (a) the business of receiving funds through
- (i) the acceptance of monetary deposits that are repayable on demand or after notice or any similar operation; and
 - (ii) the sale or placement of bonds, certificates, notes or other securities and the use of them, either in whole or in part, for loans or investment for the risk of the customer; and
- (b) any other activity recognized by the Central Bank or the Authority as customary banking practice and which a financial institution may additionally be authorized to do;

“Central Bank” means the Eastern Caribbean Central Bank established under Article 3 of the Agreement set out in the Schedule to the Eastern Caribbean Central Bank Act;

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

“controller” is a person who effectively controls or directs the activities of the bank other than by virtue of being a shareholder or director;

“Court” means the High Court

“eligible company” means

- (a) a body corporate
- (i) having at least one director who is a resident,
 - (ii) that is incorporated, subsisting, continued or registered as an external company under the Companies Act; or *No. 8 of 19.*
 - (iii) that is incorporated, subsisting or continued under the International Business Companies Act, does not issue bearer shares and all the shares are registered shares and the names of all the shareholders and the beneficial owners are lodged with Authority; and *No. 18 of 19*
 - (iv) whose objects or business activities are restricted to international banking business;

“Executive Director” means the Executive Director of the Saint Vincent and the Grenadines International Financial Services Authority appointed pursuant to the International Financial Services Authority Act; *No. 16 of 19*

“financial year” means, in relation to a licensee under this Act, a period not exceeding fifty-two weeks;

“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 subparagraph (i) or (ii);
- (iv) any company in which connected persons have 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) any other group of person in which one member has power directly or indirectly to control the other members;
- (iii) any other group of person that may be prescribed by the Authority;

“international banking business” means banking business that does not involve

(a) conducting banking business with residents;

(b) investing in any asset that represents a claim on any resident, except a claim resulting from

- (i) a loan to an international business company or any international trust;
- (ii) a loan by way of mortgage to a member of the licensee’s staff for the purchase or construction of a residence in the State to be owner occupied; or
- (iii) a transaction with another licensee under this Act;

(c) the purchase of bonds or other securities issued by the State, a statutory corporation or a company where the Government is the sole or majority beneficial owner; or

(d) acting as trustee of trust assets,

for persons not resident, where trust assets are to be administered, managed, or invested or otherwise dealt with for the benefit of persons not Resident, and includes any incidental or ancillary related activities;

No. 18 of 1996 “international business company” means a company incorporated or subsisting under the International Business Companies Act;

“internationally established bank” means a banking institution incorporated overseas that is subject to consolidated supervision and deemed by the Authority to be reputable banking institution;

“licensee” means a body corporate that holds a subsisting valid licence under this Act to carry on international banking business from within the State;

“Minister” means the Minister of Finance;

“prescribed” means prescribed by this Act or Regulations made under this Act;

No. 15 of 1996 “registered agent” means a person licensed to carry on the business of international representation under the Registered Agent and Trustee Licensing Act;

“regulatory capital” means paid up capital as set out in section 10 together with retained earnings;

“resident” means, for the purpose of this Act,

(a) a natural person who is ordinarily resident and subject to income tax in the State under general principles of State income taxation;

(b) a trust company, partnership, limited partnership or other body under the laws of the State, the majority of shares or other ownership of which is legally or beneficially owned, directly or indirectly, by persons who are resident under the provisions of paragraph (a) or (c), or by the State; and

(c) any other trust, corporation, partnership, limited partnership, or other entity who or which is a resident of, or ordinarily resident or domiciled in, the State under general principles of State income taxation,

provided that for these purpose the term “resident” shall not include

(i) an international trust registered under the International Trusts Act;

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(ii) an international business company incorporated under the International Business Companies Act;

No. 18 of 19

- (iii) an international insurance company licensed under the International Insurance (Amendment and Consolidation) Act;
- (iv) mutual funds licensed under the Mutual Funds Act;
or
- (v) a bank which is licensed under this Act;

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so long as and to the extent that the registration, incorporation or compliance continues under the provisions of the applicable Act;

“subsidiary” means a body corporate that is controlled by another body corporate; and

“State” means the State of Saint Vincent and the Grenadines.

(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 twenty 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 a trustee or in a similar capacity.

(3) 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.

(4) 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 incorporated or unincorporated body, but subject to subsection (5);
- (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 or control of an unincorporated body; or
- (h) through any other means.

(5) For the purpose 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.

(6) In this Act any reference to "dollar" or "\$" shall unless otherwise stated, be to the lawful currency of the United States of America.

PART I

LICENCES

3. (1) No international banking business may be transacted from within the State, in whole or in part, including banking business transacted outside the State except by an eligible company in possession of a licence granted under this Act to carry on international banking business. Requirement for licence
- (2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years or to both, and in the case of a continuing offence to a fine not exceeding ten thousand dollars for each day that the offence continues.
4. (1) An eligible company desirous of carrying on international banking business from within the State must apply to the Authority for the grant of a licence. Application for licence Schedule 1
- (2) An application under subsection (1) must
- (a) be filed with the Executive Director;
 - (b) contain the particulars set out in Schedule 1; and

(c) be accompanied by the fee prescribed in the Regulations.

(3) The Executive Director shall

(a) review the application to ensure that it contains the required information and is accompanied by the proper fee;

(b) submit the application to the Central Bank for its review;

(c) in conjunction with the Central Bank, conduct any inquiries that may be considered necessary, and in particular to ascertain

(i) the authenticity of the documents submitted;

(ii) the financial condition and history of the applicant and, where the applicant is a newly formed entity, the viability of its business plan;

(iii) the nature of the proposed business of the applicant;

(iv) whether the proposed directors, shareholders, controllers, officers and senior managers are fit and proper persons to carry on the business of international banking;

(v) the sources of initial capital and the adequacy of its capital structure;

(vi) the suitability of the significant shareholders;

(vii) the transparency of the ownership structure, and

(viii) whether the proposed legal and managerial structures will allow for effective supervision of the financial institution.

(d) communicate with any persons, bodies or authorities as required; and

(e) forward completed applications to the Authority.

(4) If the Authority is satisfied that an application to carry on international banking business is complete and that the applicant is an eligible company qualified to carry on international banking business, it may, with the written approval of the Minister, grant the application and issue to the applicant a licence subject to the terms and conditions it finds necessary.

(5) A decision to issue or to refuse to issue a licence under this Act to an applicant shall be made within a reasonable time of the receipt of the completed application.

- (6) A decision to refuse to grant a licence, other than with respect to a renewal or continuation of an existing licence, is final and is not subject to any appeal, and no reason for the refusal need be given.
- (7) The Authority shall cause notice of the grant of a licence and all subsequent annual renewals under this Act to be published in the Gazette.
- (8) A licence issued under this Act shall be prominently displayed on each premises where the international banking business is carried on.
- (9) The Minister acting on the advice of the Authority may amend Schedule 1.
5. (1) An internationally established bank or a subsidiary thereof desirous of opening a branch for carrying on international banking business from within the State must apply in writing to the Authority for the grant of international banking licence. Licensing
branches
- (2) An application under subsection (1) shall be filed with the Executive Director in terms set out in section 4 and include consent, in writing, from the home country supervisor to establish the branch.
- (3) If the Authority is satisfied that an application in this section is complete and the applicant is an eligible company qualified to carry on international banking through the establishment of a branch, it may, with the approval of the Minister, issue the applicant with a licence subject to the following conditions:
- (a) confirmation by way of evidence satisfactory to the Authority that it is subject to comprehensive supervision on a consolidated basis by the appropriate authorities in its home country; and
 - (b) an undertaking by the applicant to submit audited financial statements of the parent bank in addition to and accompanying its returns under section 13 and upon request by the Authority or any person authorized by the Authority.
6. (1) A licence issued under this Act is valid until the 31st day of December of the year it is issued and is renewable for the following year upon payment of the fee prescribed in the Regulations on or before the 15th day of January of the following year. Duration and
renewal of
licence and
information
- (2) A licensee who fails to pay the prescribed renewal fee by that date may have its licence revoked by the Authority, but in any event shall pay a surcharge not exceeding one-twelfth of that fee for every month or part of a month that the annual fee is not paid.
- (3) Subject to subsection (5) a licensee shall at any time within fifteen working days of a written request issued by the Executive Director provide the following information:
- (a) a list of the current shareholders, directors and officers of the licensee

presented in the form of an affidavit sworn by each shareholder and director and where the shareholder or director is a company by an officer of the company

- (i) detailing the actual beneficial ownership of the shares of the company; and
- (ii) identifying the relevant natural persons involved with details of their current and former names, dates and places of birth, nationally and current residential addresses;

(b) the most recent audit report of the company prepared by an auditor;

(c) current statement of assets and liabilities;

(d) analysis of total loans classified by size and maturity;

(e) report of large loans;

(f) analysis of total loans classified by country and currency;

(g) analysis of total deposits classified by size and maturity;

(h) analysis of total deposits classified by country and currency;

(i) report of large deposits;

(j) analysis of total investments classified by type and currency;

(k) reports on unsatisfactory assets;

(l) current income statement; or

(m) any other information the Executive Director may require.

(4) The licensee shall provide, on the request of the Executive Director, any of the returns required under section 13 (4) (5) and (6).

(5) Where a licensee is publicly traded on a stock exchange, an authorized officer of the licensee, together with the Secretary, shall swear affidavits detailing the identity of persons owning in excess of ten per cent of the issued share capital of the licensee.

7. Where a material change occurs in the particulars of a licensee as set out in the application for the licence or in the records filed with the Authority or any material adverse development, the licensee shall, as soon as possible and in any event not later than seven days after such change, inform the Authority in writing of the nature and circumstances of the change or material adverse development.

Notification
change of
particulars of
licensee

8. (1) A licensee shall have a physical presence in the State which shall include the following:
- (a) a physical place of business in the State where all books and records are kept;
 - (b) a minimum of two employees, one of whom shall be of senior management level;
 - (c) a designed registered agent, that the Authority has received notification of and who is not an officer of the licensee.
- (2) A licensee that does not have a physical presence in the State at the commencement of this Act must within six months of this Act coming into force or any further period the Authority may in writing allow, establish a physical presence.
- (3) It shall be a condition of every licence granted under this Act that the licensee shall immediately notify the Authority, in writing of any change in the location of its office in the State and of any change of its registered agent.
- (4) Where the Authority has approved a person under subsection (1) as a registered agent, it may in writing revoke the approval if the person ceases to hold a licence to act as a registered agent.
- (5) If the Authority revokes its approval of a registered agent or if a registered agent resigns, the licensee shall ensure that a new registered agent is appointed within fifteen days.
- (6) By accepting a licence granted under this Act, the licensee appoints its registered agent as its agent for the acceptance of service of documents in any action arising out of the operations of the licensee.
9. (1) A licence granted under this Act shall be in the following categories:
- (a) a Class A International Banking Licence for the purpose of carrying on international banking business generally;
 - (b) a Class B International Banking Licence for the purpose of carrying on international banking business subject to the restriction that the licensee shall not offer or provide its international banking business services, or otherwise receive or solicit funds by way of trade or business, except for non-resident persons specifically named and described in an undertaking accompanying the application for the licence and the undertaking shall, without further notice, constitute a condition to the Class B licence, if and when the licence is granted.
- (2) No Class B licensee shall do business with persons other than those described in the undertaking accompanying the application for the license except with the prior written approval of the Authority.

Principal off
And register
agent

Categories o
licences

- Capital Requirement 10. (1) No Class A International Banking Licence shall be granted to or maintained by a company unless it remains an eligible company and
- (a) has and maintains a fully paid-up capital of not less than one million dollars or its equivalent in another currency, or any greater sum the Authority may reasonably determine; and
 - (b) has deposited or invested the sum of five hundred thousand dollars or its equivalent in another in currency, in a manner the Authority may reasonably prescribe; and
 - (c) maintains the ratios and deposits that the Authority may from time to time prescribe in consultation with the Central Bank using a risk weighted approach to enable the Authority to determine the additional capital that a bank is required to maintain.
- (2) No Class B International Banking Licence shall be granted to or maintained by a company unless it remains an eligible company and
- (a) has and maintains a fully paid-up capital of not less than five hundred thousand dollars or its equivalent in another currency, or any greater sum the Authority may reasonably determine; and
 - (b) has deposited or invested the sum of one hundred thousand dollars or its equivalent in another currency in a manner the Authority may reasonably prescribe.
- (3) A branch of an internationally established bank subject to consolidated supervision shall be granted a Class A or a Class B International Banking Licence but will not be subject to the requirements of the statutory deposit or capital requirements under subsections (1) and (2)
- (4) The Authority may require a licensee to increase its fully paid-up capital to any greater amount it may determine to be reasonable for the nature of the international banking being, or sought to be, undertaken.
- (5) A licensee must comply with an order from the Authority to increase its paid up capital under subsection (4) or comply with the capital requirements of this section within the time frame set by the Authority.
- (6) When the Authority makes an appraisal of an asset held by a licensee or its subsidiary and the value varies materially from the value placed on it by the licensee or its subsidiary, the Authority shall send to the licensee and the auditor written notice of the appropriate value of the asset as determined by the Authority.
11. (1) A licensee that has ceased to carry on the business in respect of which its licence was granted may apply to the Authority to surrender its licence if the licensee

(a) produces evidence that it has repaid all deposits held or administered by it; or

(b) is being wound up voluntarily and produces evidence that it is solvent and is able on demand to repay all its depositors and all other creditors,

the Authority may then approve the surrender of the licence and publish a notice of the surrender in the official Gazette or any other publication it finds necessary.

(2) When a licence is surrendered, the licence or previous licensee shall appoint a liquidator that meets the approval of the Authority.

(3) In the case of an application under subsection (1) (b), where the Authority considers that the winding up is not being conducted in the best interests of the depositors or other creditors it may, request the Attorney General apply to the Court for an order that the licensee be wound up, either by the Court or subject to the supervision of the Court, and where the Court so orders the provisions of the International Business Companies Act or the Companies Act relating to the winding up of the company by or subject to the supervision of the Court shall apply *mutatis mutandis*.

(4) Where the holder of a Class A licence seeks to surrender that licence, the Class A licensee may apply for a Class B licence, provided that the Class A licensee meets the requirements of a Class B licence.

Certain approvals Required 12. A licensee shall not, without the prior written approval of the Authority,

(a) change its name; or

(b) acquire, open or operate outside the State any subsidiary, agency, representative office or branch.

PART II**ACCOUNTS**

- Accounts Schedule 2 13. (1) A licensee shall appoint an audit recognized by the Authority as listed in Schedule 2 who shall audit the accounts of the licensee annually or at any other periods the Authority may require.
- (2) The audited accounts shall be filed with the Authority within three months from the end of the financial year of the licensee, unless prior written approval for an extension has been granted by the Authority.
- (3) A licensee who fails to file annual accounts, as they become due shall pay a fine of five hundred dollars for each day the licensee is in default.
- (4) A licensee must file quarterly returns with the Authority in the format provided by the Authority within fifteen days of the end of a quarter and must contain the following:
- (a) current statement of assets and liabilities;
 - (b) analysis of total loans classified by size and maturity;
 - (c) report of large loans;
 - (d) analysis of total loans classified by country and currency;
 - (e) analysis of total deposits classified by size and maturity;
 - (f) analysis of total deposits classified by country and currency;
 - (g) report of large deposits;
 - (h) analysis of total investments classified by type and currency; and
 - (i) reports on unsatisfactory assets;
 - (j) report on past due loans;
 - (k) current income statement;
 - (l) schedule of different income sources; and
 - (m) any other information the Executive Director may require.
- (5) A licensee who fails to file the quarterly returns within the stipulated time shall pay a fine of two hundred and fifty dollars a day until the returns are filed.
- (6) If a licensee changes its auditor, the licensee shall, when required by the Authority, authorized the former auditor to disclose the circumstances that gave rise to the change, and when so authorized, the auditor must disclose the circumstances.

(7) The Authority may appoint an auditor at the expense of the licensee to conduct an independent audit of the licensee and to report their findings to the Authority.

(8) Where the licensee fails to appoint an auditor satisfactory to the Authority, the Authority may appoint an auditor for the licensee, the remuneration of the auditor so appointed shall be determined by the Authority in accordance with going market rate and paid by the licensee.

(9) If in the course of the performance of an auditor's duties an auditor is satisfied that

(a) there has been a serious breach of or non-compliance with the provisions of this Act or any, regulations, notice, order, guidelines or directions issued under the Act;

(b) there is evidence that a criminal offence involving fraud, money laundering or other dishonesty may have been committed;

(c) losses have been incurred that reduce the regulatory capital, to a level below that which is required;

(d) serious irregularities have occurred, including those that affect the interest of depositors;

(e) the claims of depositors cannot be confirmed; or

(f) the assets of depositors cannot be confirmed,

the auditor must report the matter immediately to the licensee and the Authority.

(10) No liability shall attach to the auditor, the members or employees of the auditor, for breach of confidentiality for an act done in good faith and in the proper discharge of their official duties under the functions described in this Act.

PART III

RESTRICTIONS ON BUSINESS

Number and
approval of directors

14. (1) A licensee shall at no time have fewer than two directors who shall each be a natural person and one of whom shall be a Resident.

(2) A licensee shall, prior to the appointment of a director, general manager or other senior officer, apply to the Authority for its written approval of the appointment.

(3) The directors of a bank shall manage or supervise the management of the business and affairs of the bank, and in particular establish

(a) investment and lending policies;

- (b) anti-money laundering policies; and
 - (c) internal controls and procedures.
- (4) The directors of a bank must disclose any interests in transactions, loans or other arrangements of the licensee that may arise during his term in office as a director.
- (5) A director and officer of a bank in exercising any of the powers of a director or an officer shall
 - (a) act honestly and in good faith with a view to the best interests of the bank; and
 - (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
- (6) A director, officer and employee of a bank shall comply with this Act, its Regulations, the bank's incorporating instrument and the by-laws of the bank.
- (7) No provision in any contract, in any resolution or in the by-laws of a bank relieves a director, officer or employee of the bank from the duty to act in accordance with this Act and its Regulations or relieves a director, officer or employee from liability for breach of duty.
- 15. (1) No person or entity, other than a licensee shall
 - (a) use or continue to use the words "bank", "financial institution", "deposit" or any of their derivatives, whether in English or in any other language, in the name, description or title under which that person or entity is carrying on international banking business from within the State, whether or not the international banking business is carried on within or outside the State; or
 - (b) make or continue to make a representation in any advertisement, billhead, circular, letter, letterhead, notice, paper or in any other manner that the person or entity is carrying on international banking business.
- (2) A person or entity who contravenes subsection (1) except with the written approval of the Authority on the advice of the Minister, or under the authority of another law of the State, commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to a term of imprisonment for two years or both, and in the case of a continuing offence to a fine of ten thousand dollars for each day the offence continues.
- (3) Except where provided elsewhere in the laws of the State, the Minister may refuse to grant a licence to a company or, if the company is already in possession of a licence, it may revoke the licence if, in its opinion, the company is carrying on or intends to carry on international banking business under a name that is
 - (a) identical with that of another person or entity, whether within or outside the State, or that so nearly resembles that name as to be likely to deceive or mislead;

Use of the word "bank etc".

(b) likely to falsely suggest the patronage of or connection with some person or entity, whether within or outside the State; or

(c) likely to falsely suggest that the person or entity

- (i) has special status in relation to or derived from the Government;
- (ii) has the official approval of or acts on behalf of the Government or of any department, branch, agency or organization of Government, or any office of Government; or
- (iii) is recognized in the State as a national or central bank.

(4) Whenever the Minister revokes a license under subsection (3), it shall cause notice of the revocation to be published in the Gazette, and may cause notice to be published, whether within the State or elsewhere, in a newspaper or other publication it may think fit in the circumstances.

(5) Where a licensee is or intends to carry on business under a name that contravenes subsection (1) the Minister may direct the company to change its name.

Shares not to be
Issued or
Transferred
Without
Approval

16. (1) No shares or other interests, whether legal or equitable, in a licensee shall be issued, transferred or otherwise disposed of without the prior written approval of the Authority and the application may be treated in the same manner as a first time application for a licence under section 4 of this Act.

(2) Notwithstanding subsection (1) a licensee may dispose of his shares by will without prior written approval of the Authority.

(3) The Authority may exempt from the provisions of subsection (1) a licensee whose shares are publicly traded on a stock exchange recognized by the Authority, and any exemption shall be subject to

(a) a condition that the licensee shall as soon as reasonably practicable notify the Authority of

- (i) any change in control of the licensee;
- (ii) the acquisition by any person or group of shares representing more than ten per cent of the licensee's issued share capital or total voting rights; or
- (iii) the acquisition by any person or group of shares representing more than ten per cent of the issued share capital or total voting rights of the licensee's parent company;

(b) a condition that the licensee shall, as soon as reasonably practicable, provide information to the Authority and within a period of time the Authority may require for the purpose of enabling an assessment as to whether persons acquiring control or ownership of the licensee in the circumstances set out in paragraph (a) are fit and proper persons to have control or ownership; and

(c) any other terms and conditions the Authority may deem necessary.

(4) In subsection (1) the reference to legal or equitable shares or other interests being transferred or disposed of includes ownership through one or more trustees, legal representatives, agents, companies or other intermediaries.

17. (1) The holder of a Class A licence shall not

Restrictions on
Business activities

(a) grant to the shareholders and the directors of the bank any loan or advance that exceeds in aggregate five per cent of paid up capital;

(b) grant unsecured advances or unsecured credit of an aggregate amount in excess of two thousand five hundred dollars or of one per cent of the paid up capital of the licensee whichever is the greater or give any financial guarantee in excess of the amount without security, or incur any other liability in excess of that amount without security,

(i) to or on behalf of its directors whether or not the 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, a subsidiary or affiliate or a director of the company, subsidiary or affiliate;

(c) grant credit facilities on terms and conditions more favourable than the terms and conditions generally applicable to borrowers to

(i) its holding company or a subsidiary or affiliate;

(ii) a firm in which a director or officer or the relative of the officer or director has an interest or controls twenty per cent or more of the voting shares;

(iii) a person, if the credit facilities are guaranteed by an officer, director, or any relative of the officer or director;

(iv) a person who controls more than twenty per cent of the licensee's shares;

(d) grant to its officers or employees unsecured advances or unsecured credit that exceed in aggregate for any one officer or employee, one year's emoluments of that officer or employee;

(d) except in so far as may be necessary with respect to the interests or shareholding that a licensee may require 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 twenty-five per cent of the paid up capital of the licensee, any part of the share capital of any commercial, agricultural, industrial or other undertaking.

but all the interests or shareholding, as the case may be, shall be disposed of within a period not exceeding five years unless permission to extend this period has been given by the Authority;

(f) without the approval of the Authority, invest in the shares of an entity so that the value of the investment at any time exceeds ten per cent of the paid up capital and published reserves of the licensee.

(2) The holder of a Class A licence shall not

(a) purchase, acquire or lease real estate unless

(i) the 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 purchase prices of the real estate does not exceed the paid up 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 the property, but in that case the property shall not be retained for a period in excess of five years without the permission of the Authority;

(b) acquire, deal in or underwrite its own shares or the shares of its holding company;

(c) grant an advance against the security of its own shares, or the shares of its holding company or a subsidiary of the licensee.

(3) Where prior to the commencement of this Act, a licensee has given to any person an 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 advance, credit, guarantee or liability for a period of one year after the commencement of this Act.

(4) Subsection (3) 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 Authority.

18. A licensee shall not, or allow its subsidiaries to,

(a) purchase or otherwise acquire any participating shares of a body corporate or any ownership interests in an unincorporated entity that the licensee has, or by virtue of the acquisition would have, a substantial investment, or

Limits on
equity
acquisition

(b) acquire control of a body corporate that holds shares or ownership interests referred to in paragraph (a),
if the aggregate value of all participating shares and all ownership interests in unincorporated entities beneficially owned by the licensee and its subsidiaries exceeds, or the purchase or acquisition would cause the aggregate value to exceed, seventy per cent of the paid up capital of the licensee.

PART IV

ADMINISTRATION

19. (1) The Authority, under the supervision of the Minister, shall be responsible for ensuring the proper administration of this Act.

Functions of
the Authority
and the
Executive
Director

(2) The functions of the Authority in administering this Act include but are not limited to the following:

(a) to examine by way of the receipt of regular return, on site inspections or in any other manner it thinks fit the affairs or business of a licensee carrying on business within or outside the State for the purpose of determining that the licensee is in a sound financial position and is carrying on its business in a satisfactory manner;

(b) in respect of a holding company, parent company or any other company that holds shares in a licensee

(i) to inspect the books of the company;

(ii) to request any information from the appropriate authorities in any country where the company is located;

(c) to assist in the investigation of any contravention of the laws of the State or the laws of another state which has requested assistance on the basis that it has reasonable grounds to believe that an offence has or may have been committed by a licensee or by any of the licensee's directors or officers;

(d) to examine accounts, audited annual accounts and quarterly returns forwarded to it under section 13; and

(e) to examine and approve or deny the applications for licences under this Act.

Subsection
Licence

(3) The Authority may, in the exercise of its powers under subsection (2), call upon an auditor, director, officer or employee of a licensee

(a) to produce all books, minutes, cash, securities, vouchers and other documents and records relating to its assets, liabilities and business generally at a time fixed by the Authority or the Executive Director; and

(b) to give the Authority or the Executive Director any information concerning its affairs and business as may be requested.

(4) An auditor director, officer, or employee of a licensee who is required under this Part to make any disclosure to the Authority shall not by reason of making the disclosure be regarded as being in breach of his duty to the licensee.

(5) In the performance of its functions under this Act and subject to the confidentiality provisions in this Act and elsewhere under the laws of the State, the Authority shall at all reasonable times

(a) have access to the books, records, vouchers, documents, cash and securities of any licensee;

(b) request any information, matter or thing from any person who the Authority has reasonable grounds to believe is carrying on international banking business without a licence;

(c) examine or cause an examination to be made of a licensee's affiliates abroad to the same extent that an examination may be made of the licensee,

for the purpose of enabling the Authority to perform its functions under the Act.

(6) The Executive Director or the Authority or any person or entity acting under or with either of them may remove, communicate, send or in any manner transmit any of the information, document or related material to another State in accordance with the Mutual Assistance in Criminal Matters Act and any other enactment.

(7) The Executive Director or the Authority or any person or entity acting under or with either of them may remove, communicate, send or in any manner transmit any of the information, document or related material to an approval agency of the government as listed in Schedule 3.

(8) For the purposes of subsection (5) the Executive Director shall have access to the name or title of an account of a customer and any other confidential information about the customer that is in the possession of a licensee and any account established by a licensee on behalf of a customer shall state the name and address of the customer and or the beneficiary of the account.

(9) The Authority may, if it appears that there are reasonable grounds for suspecting that there is a contravention of this Act or that a contravention is likely, petition the court for an order authorizing it to take any action it considers necessary in the interest of the depositors or other creditors and to preserve any assets of the bank that is the subject of the order.

(10) The Authority shall examine or cause to be examined the affairs of each licensee or previous licensee from time to time or whenever in its judgment an examination is necessary or expedient in order to determine that the licensee or previous licensee is in a sound financial condition and that the requirements of this Act have been complied with in the conduct of its business.

(11) For the purposes of determining the condition of a licensee or previous licensee and its compliance with this Act, the Authority may at any time examine or cause to be examined any of its affiliates to the same extent that an examination may be made of the licensee or previous licensee.

Remedial
Measures 20.

If the Authority is satisfied that the licensee is engaging in unsafe or unsound practices in conducting the business of the licensee or is violating the laws, regulations or guidelines issued by the Authority, the Authority may take one or more of the following actions:

- (a) issue a written warning as is deemed necessary;
- (b) make a written agreement with the licensee providing for a programme of remedial action;
- (c) issue a cease or desist order that requires the licensee, director or officer to cease or desist from the practice or violations specified in the order; or
- (d) issue any directions it deems necessary to the licensee.

Powers of the
Authority 21.

(1) If the Authority is satisfied that a licensee

- (a) has ceased to carry on international banking business or fails to commence international banking business within one year of the grant of the licence without the written approval of the Authority;

- (b) has gone into liquidation, is wound up or is in the process of being wound up, or is otherwise dissolved;
- (c) has made any arrangement or composition with its creditors that is prejudicial to the safety and soundness of the bank;
- (d) is unable or appears likely to become unable to meet its obligations as they fall due;
- (e) is carrying on business in a manner detrimental to the public interest, the interests of its depositors, or the interests of other creditors;
- (f) has knowingly provided false information to the Authority upon application for license or as a licensee;
- (g) has contravened any provision of this Act;
- (h) has failed to comply with a condition of its licence;
- (i) or a person holding a position as director, manager or officer of a licensee is not a fit and proper person to hold the respective position; or
- (j) has not conducted the direction and management of the business in a fit and proper manner,

it may, with the advice of the Minister, take one or more of the actions set out in subsection (2).

(2) The actions that the Authority may take in pursuance of subsection (1) are as follows:

- (a) revocation of the licence;
- (b) imposition of new or additional conditions upon the licensee;
- (c) the substitution of any director or officer of the licensee;
- (d) the appointment, at the expense of the licensee, of a person to advise the licensee on the proper conduct of its affairs and to report to the Authority within three months of the appointment ;
- (e) the appointment, at the expense of the licensee, of a person to assume control of the licensee's affairs who shall *mutatis mutandis* have all the powers of a person appointed as a receiver or manager of a business appointed under the Companies Act and any other power conferred by the Authority;
- (f) to require the licensee to take any other action the Authority considers necessary;

(g) the appointment, where a licence has been revoked, at the expense of the previous licensee, of a person to assume control of the previous licensee's affairs who shall have all the powers of a person appointed as a receiver or manager of a business appointed under the Company Act.

No. 8 of 1994

(3) Before ordering any of the actions authorized in subsection (2), the Authority shall give the opportunity to the licensee to show cause against the action, whether in person or by representative, except where the Authority determines that it is in the public interest that it shall not give the licensee the opportunity to show cause and a licensee may pursuant to section 28 appeal to the court against any action ordered under subsection (2).

(4) A person appointed under subsection (2) (d), (e) or (g) or whose appointment has been extended under subsection (5) (b) shall from time to time and in any case within three months from the date of his appointment or of the extension of his appointment, as the case may be, prepare and furnish a report to the Authority of the affairs of the licensee and may make recommendations.

(5) The Authority, acting on the device of the Minister, may, on receipt of a report under subsection (4),

(a) revoke the appointment of the person appointed under subsection (2) (d), (e) or (g);

(b) extend to period of appointment of the person appointed under subsection (2) (d), (e) or (g);

(c) subject to any conditions that the Authority may impose, allow the licensee to reorganize its affairs in a manner approved by the Authority; or

(d) revoke the licence and request the Attorney General to apply to the court for an order that the licensee be forthwith wound up by the Court pursuant to the provisions of the International Business Companies Act or the Companies Act.

. 16 of 1996
. 8 of 1994

(6) Whenever the Authority revokes a licence under subsection (2) (a) or subsection (5) (d), it shall cause notice of the revocation to be published in the Gazette and may also cause notice to be published, whether within the State or elsewhere, in the newspaper or other publication as it may think fit in the circumstances.

. 8 of 1994

(7) Whenever a licence has been revoked, the licensee or previous licensee must appoint a liquidator that meets the approval of the Authority to ensure that the company is properly liquidated in keeping with the procedure outlined in the Companies Act.

(8) The Authority may use any funds deposited pursuant to section 10 to secure the liquidation of the company or any other expenses.

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22. Where a current or former licensee is being wound up voluntarily, the Attorney General may, upon request of the Authority, apply to the Court for leave to intervene on behalf of any interested party if he considers that the winding up is not being conducted in the best interests of its depositors or other creditors, and the Court may make such order as it considers appropriate.
23. The Authority shall be responsible for monitoring compliance, by a licensee, with the requirements of section 46 of the Proceeds of Crime and Money Laundering (Prevention) Act. Authority responsible for monitoring compliance No. 39 of 200
24. Subject to section 19 (6) neither the Minister nor the Authority nor any person or entity acting under the authority of either including the Executive Director, shall disclose, or in any way remove from or transmit out of the State any information relating to the identity or affairs of a customer of a licensee, that the Minister, the Authority or any person or entity acting on behalf of the Minister or the Authority has acquired in the course of their duties or the exercise of their functions under this Act. Preservation of confidentiality

PART V

EXEMPTION FROM TAXATION AND DUTIES

25. (1) No income tax, capital gains tax or other direct tax shall be levied by the State upon the profits, gains or earnings of a licensee in respect of its international banking business. Exemption from taxation duties and certificate
- (2) No income tax, capital gains tax or other direct tax shall be levied by the State in respect of any dividends or earnings attributable to the shares, debt or securities of a licensee that are beneficially owned by another licensee or by a person who is not a resident.
- (3) No estate, inheritance, succession or similar duties or impost shall be levied by the State in respect of any shares, securities or assets of a licensee that are beneficially owned by a person who is not a resident, and the transfer of those shares, securities or assets shall likewise be exempt from the tax if the transferee is a licensee or otherwise not a resident.
- (4) No income tax, capital gains tax or other direct tax or impost shall be levied, withheld or collected in or by the State in respect of any dividends, interest or other returns from any shares, securities, deposits or other borrowings of a licensee or any assets managed by the 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; but the burden of establishing the ownership lies on the licensee.
- (5) Notwithstanding any provision of the Stamp Act to the contrary

- (a) all instruments relating to transfers of any property to or by a company licensed under this Act;
- (b) all instruments relating to transactions in respect of the shares, debt obligations or other securities of a company licensed under this Act; and
- (c) all instruments relating in any way to the assets or activities of a company licensed under this Act,

are exempt from the payment of stamp duty.

(6) The exemption from taxes and duties conferred by this section may be evidenced by a certificate issued by the Authority on behalf of the State confirming that the licensee shall be exempt from the taxes described in this section for a minimum period of twenty-five years from the date a license is first granted under this Act to the licensee; provided that the provisions of this Part shall not be constructed or applied so as to provide any guarantee or assurance that the license will be renewed or so as to exempt a licensee under this Act from increases in fees charged under or pursuant to this Act or to exempt any resident from the provisions of any law of the State imposing any tax.

(7) The Minister may by order exempt a licensee from all or so much of any duty payable under the Customs (Control and Management) Act in respect of goods imported by the licensee as the Minister considers expedient, if the licensee satisfies the Minister that:

- (a) the goods are not being made or manufactured in the State;
- (b) the goods are essential as equipment or fixtures for conducting international banking business in the State and
- (c) the goods will exclusively used for international banking business in the State;

and the licensee shall notify the Minister prior to the sale, transfer or disposal of the goods either in or out of the State following the importation of the goods into the State.

PART VI

MISCELLANEOUS

26. (1) The Authority may require a licensee to effect a policy of insurance with a reputable insurance company against
- (a) losses arising out of claims of negligence or breach of duty by the licensee or any of its directors or employees;
 - (b) the dishonesty of employees of the licensee;

(c) loss of documents; and

(d) any other risks as the Authority may from time to time stipulate,

in an amount and of a nature as the Authority may determine to be fit and proper having regard for the nature and type of business carried on by the licensee; and in the event that the insurance is withdrawn, cancelled or not renewed, the licensee shall immediately notify that Authority and shall cease to carry on its business until the insurance has been reinstated or replaced.

(2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for two years or both.

(3) The penalty imposed under subsection (2) shall not preclude the Authority from taking any remedial action under this Act.

27. (1) A licensee or applicant for a licence under this Act or any director, shareholder or officer of a licensee or applicant who knowingly or willfully supplies false or misleading information to the Authority commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for two years or both.

Offences

(2) A licensee who advertises inviting either directly or indirectly other parties to commit breaches of the laws of the country where the advertisement appears or where the advertisement is directed commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for two years or both.

(3) If a licensee is convicted of an offence pursuant to subsection (2), every director and every officer concerned with the management of the company is liable to be convicted for that offence unless he satisfies the Court that the offence was committed without his knowledge or consent or if the director or officer had knowledge of the offence, that he took all reasonable steps to prevent the commission of the offence.

(4) A person who

(a) fails to comply with a request made to him by the Authority;

(b) assaults or willfully obstructs an officer of the Authority in the performance of his duties under this Act;

(c) by the offer of any gratuity, bribe or any other inducement prevents or attempts to prevent the Authority, the Minister or the Executive Director from performing their duties under this Act; or

(d) contravenes any provision of this Act or its Regulations where no punishment is specifically provided,

commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for two years or both.

peals

28. (1) An appeal from a decision of the Authority

- (a) not to renew or continue a licence under section 6;
- (b) to revoke a licence under section 6 (2) or section 21 (2) (a) or (5) (d); or
- (c) to withdraw an approval,

lies directly to the Court.

(2) An appeal against the decision of the Authority must be started by fixed date claim form in accordance with Form 2 of the Eastern Caribbean Supreme Court Civil Procedure Rules with annexed grounds of appeal within twenty-eight days of receiving the decision by the Authority.

(3) The appellant must serve the claim form and grounds of appeal on the Authority and the Attorney General.

(4) In accordance with Part 60 of the Eastern Caribbean Supreme Court Civil Procedure Rules the date for the first hearing shall not be less than twenty-eight days nor more than fifty-six days after the issue of the claim form.

(5) At the hearing of the appeal the appellant shall be governed by the rules set down in Part 60 of the Eastern Caribbean Supreme Court Civil Procedure Rules.

(6) The Court may, upon the hearing of the appeal confirm, reverse, vary or modify the decision of the Authority or remit the matter with the opinion of the Court to the Authority.

(7) An appeal against a decision of the Authority shall not operate as a suspension of the decision of the Authority.

munity

29. No liability attaches to the Minister, the Authority, the members or employees of the Authority, the Executive Director or any other person acting on behalf of the Authority for an act done in good faith.

30. (1) The Minister, acting on the advice and recommendation of the Authority, may make Regulations generally for the purpose of carrying out or giving effect to the provisions of this Act.

Regulatio

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1) the Minister may make Regulations in respect of

- (a) capital adequacy;

- (b) risks and large exposures;
- (c) major acquisitions or investments by licensees;
- (d) classification and concentrations of loans and other assets;
- (e) the treatment of interest;
- (f) the extent and control of advertising by licensees;
- (g) records to be kept at the principal office;
- (h) the forms to be used for the purposes of this Act;
- (i) fees applicable under this Act;
- (j) any other matters required by this Act to be prescribed.

31. Without limiting or affecting section 30 the Authority may from time to time issue guidelines for the purpose of carrying out and giving effect to the provisions of this Act. Guidelines
32. (1) Except as expressly provided in this Act, the Banking Act shall not apply to any company carrying on an international banking business and this Act shall have no application to companies licensed to carry on banking business under the Banking act. Non-applicati
Of Banking A
Exchange
Control Act
and Interest
Act
Cap. 63
- (2) Neither a company licensed under this Act, nor the dividends, royalties, interest, foreign securities, funds, gains or assets generated or managed by a licensee in the course of its international banking business shall be subject to the provisions of the Exchange Control Act or any order or regulation made under that Act, or to any other exchange or currency control legislation or regulations of the State. Cap. 332
- (3) Neither the Interest Act nor any other law of the State regulating the charging of interest on loans by financial institutions or banks shall apply to a licensee or its international banking business. Cap. 20
33. Nothing in this Act shall apply to the Caribbean Development Bank.
34. (1) The International Bank Act 1996 is repealed.
- (2) Notwithstanding any other provision of this Act to the contrary a former Act licence which is in force at the commencement of this Act shall remain in force and have effect as from the commencement of this Act for the remaining period of the current licence.
- (3) The licence referred to in subsection (2) may, at the first applicable renewable date, be renewed subject to such conditions as the Authority may impose for the renewal and grant of a licence under this Act.
- (4) For the purpose of this section, “former Act licence”, means a licence granted under the International Banks Act, 1996.

SCHEDULE 1**[section 4]****PARTICULARS TO BE SPECIFIED IN APPLICATIONS**

A company applying for a licence under this Act shall furnish in writing to the Authority the following particulars, which shall accompany and form part of the form of application prescribed by the Authority for use under this Act:

- (1) Name of applicant.
- (2) Address in the State of its place of business and the name and address of the registered agent in the State.
- (3) The names, addresses, citizenship and residency of all directors, shareholders, officers, managers and in the case of a publicly traded company only the names and addresses of shareholders owing ten per cent of the issued share capital or more.
- (4) Names and addresses of solicitors, if any, to the applicant together with a letter from the solicitors confirming that they act for the applicant.
- (5) Names and addresses of auditors of the applicant, together with a letter from the auditors confirming that they consent to act for the applicant.
- (6) Evidence of a proper application for incorporation of the company in the State and that the company is an “eligible company”.
- (7) Evidence in writing that the applicant itself or some person directly or indirectly connected with the applicant is possessed of solid and practical experience in banking business.
- (8) An undertaking in writing to provide and set apart a fully paid-up capital fund before or at the time it commences business, that the Authority may in its determination require, based upon the class of licence for which the application is being made.
- (9) Police record certifying no criminal convictions or alternatively a police record approved by the Authority.
- (10) Annual accounts of its holding company, if any, for the proceedings three years and subsequently annually duly audited and certified by an independent auditor.
- (11) Names of all subsidiary companies of the applicant with addresses of their registered offices.
- (12) A copy of the articles of incorporation and by-laws of the applicant company verified by an affidavit sworn by the Resident director of the applicant.

- (13) One character reference and two bank references.
- (14) Statement of assets and liabilities, and certified statement of net worth of the applicant shareholder; where the applicant is an existing company, basic financial statements and where the applicant is a group of companies, the audited financial statements from all the members of the group.
- (15) Statement of capital of any company held directly or through a subsidiary as an asset of the applicant.
- (16) If application is being made for a Class B licence the list and description of the proposed customers of the licensee.
- (17) The applicant must provide a business plan containing the following:
- (a) a description of the objectives of the company;
 - (b) proposed customer base;
 - (c) opening balance sheet and three year projections as certified by an auditor;
 - (d) management structure;
 - (e) anti money laundering policies and provision
 - (f) a feasibility study;
 - (g) the economic need that the company intend to meet;
 - (h) the nature and source of capital financing;
 - (i) proof of applicants ability to meet statutory requirements for minimum paid up capital and statutory deposits;
 - (j) a description of internal systems and controls; and
 - (k) copy of the ownership structure including group member and affiliated companies
- (18) All directors, managers, senior office and shareholders must complete a fit and proper questionnaire.

SCHEDULE 2**(section 2 and 13 (1))****LIST OF APPROVED ACCOUNTING BODIES****United Kingdom**

The Institute of Chartered Accountants in England and Wales
The Institute of Chartered Accountants in Ireland
The Institute of Chartered Accountants of Scotland
The Association of Chartered Certified Accountants
The Chartered Institute of Management Accountants

United States

The American Institute of Certified Public Accountants

Canada

The Canadian Institute of Chartered Accountants
The Certified General Accountants Association of Canada
The Certified Management Accountants of Canada

Caribbean

Institute of Chartered Accountants of the Eastern Caribbean
Institute of Chartered Accountants of Trinidad and Tobago
Institute of Chartered Accountants of Barbados
Institute of Chartered Accountants of Jamaica
Institute of Chartered Accountants of Guyana
Institute of Chartered Accountants of Belize
The Bahamas Institute of Chartered Accountants

Or any other such body of accountants as may from time to time be approved by the Institute of Chartered Accountants of the Eastern Caribbean.

SCHEDULE 3**(section 19 97))****LIST OF APPROVED GOVERNMENT AGENCIES**

1. The Royal Saint Vincent and the Grenadines Police Force.
2. The Office of the Director of Public Prosecutions.
3. The Financial Intelligence Unit.
4. The Office of the Attorney General.
5. The Customs and Excise Department.
6. The Ministry of Foreign Affairs.
7. Any other body the Authority may in its own discretion approve.

Passed in the House of Assembly this 16th of November, 2004.

Clerk of the House of Assembly

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