

**BANKING (AMENDMENT) ORDINANCE 2002**

**(Ordinance 4 of 2002)**

**Arrangement of Sections**

Section

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**TURKS AND CAICOS ISLANDS**  
**BANKING (AMENDMENT) ORDINANCE 2002**  
**(Ordinance 4 of 2002)**

*Assent*..... *March 20, 2002*  
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*Commencement* ..... *April 19, 2002*

**AN ORDINANCE TO AMEND THE BANKING ORDINANCE: AND FOR CONNECTED PURPOSES.**

**ENACTED** by the Legislature of the Turks and Caicos Islands.

Citation and commencement

1. This Ordinance may be cited as the Banking (Amendment) Ordinance 2001 and shall come into operation on such day as the Governor may appoint by notice published in the Gazette.

Amendment of Banking Ordinance cap 38

2. The Banking Ordinance shall be amended as set out in the Schedule.

Savings and transitional provisions

3. The Governor may by rules make such provision including amending any legislation, as he considers necessary, convenient or expedient for savings, transitory or transitional purposes in connection with the coming into operation of any provision of this Ordinance.

**SCHEDULE**

*(Section 2)*

**AMENDMENT OF BANKING ORDINANCE**

1. The Banking Ordinance shall be amended as set out below and references to numbered sections are to those sections as numbered in that Ordinance.

2. At the appropriate places in section 2 there shall be inserted-  
 ““assigned capital” means the assets of a licensed financial institution -

(a) which are derived from the funds of a financial institution incorporated outside the Islands;

(b) which the institution incorporated outside the Islands is required to make available to the licensed financial institution in the Islands during the period of that financial institution's licence in the Islands; and

(c) which are not subject to any security;”;

““licensing committee” means the licensing committee established under section 14 of the Financial Services Commission Ordinance 2001;”.

6 of 2001

““risk weighted assets” are the assets and off-balance sheet exposure of a licensed financial institution weighted for risk in such manner as may be prescribed;”.

3. In section 6 -

(a) in subsection (3) for the words from “accept” to the end there shall be substituted –

“be licensed under the Company Management (Licensing) Ordinance 1999 and who shall have the functions set out in section 6A.” ; and

1 of 1999

(b) in subsection (8) –

(i) the words “an application for” shall be repealed;

(ii) the word “or” where it occurs for the second time in paragraph (f) shall be repealed; and

(iii) at the end of paragraph (g) there shall be added, “or (h) the directors, secretary, beneficial owners, managers or shareholders of a company have ceased to be fit and proper persons to hold a licence.”.

4. At the end of section 6 there shall be added –

“6A. Authorised agents designated under section 6(3) shall have the following functions –

Functions of authorised agents

(a) they shall accept on behalf of the licensed financial institution service of process and notices required to be served on it;

(b) they shall keep books and records of the licensed financial institution;

(c) they shall inform the Superintendent if they know or have reason to believe that the licensed financial institution is likely to become unable to meet its obligations as they fall due or is carrying on business in a manner which is or is likely to be prejudicial to its depositors or creditors; and

(d) they shall ensure that the licensed financial institution meets its obligations under sections 20 and 21.”.

5. For subsection (3) of section 7 there shall be substituted -

“(3) Where a licensed financial institution –

- (a) proposes a reconstruction;
- (b) wishes to transfer or dispose of part of its share capital;
- (c) wishes to sell or dispose of its business by amalgamation or otherwise; or
- (d) wishes to purchase or acquire the business of another financial institution,

it shall, before doing so, obtain the approval of the licensing committee.”.

6. At the end of section 8 there shall be added –

Retention of paid up share capital

“8A. (1) A licensed financial institution which is incorporated in the Islands and accepts deposits from the general public shall retain paid up share capital of not less than such amount as may be prescribed.

(2) A licensed financial institution which does not have at the date of the coming into force of this section paid up share capital of not less than the amount prescribed under subsection (1), shall increase its paid up share capital to not less than that amount not later than the end of the period of three years beginning with the day after the date of the coming into force of this section.

Maintenance of guarantee.

8B. A licensed financial institution which-

- (a) is incorporated in the Islands;
- (b) accepts deposits from the general public;
- (c) is a subsidiary of a holding or parent company incorporated outside the Islands; and
- (d) has a guarantee from the holding or parent company under paragraph 1(f)(ii) of the First Schedule,

shall maintain its guarantee of not less than such amount as may be prescribed.

Maintenance of assigned capital.

8C. A licensed financial institution which accepts deposits from the general public and is a branch of a financial institution incorporated outside the Islands shall

maintain assigned capital of not less than such amount as may be prescribed.

8D. (1) A licensed financial institution referred to in section 8A shall maintain a ratio of capital to risk weighted assets of not less than such amount as may be prescribed to which there shall be added three per cent.

Capital adequacy ratio

(2) For the purposes of this section a licensed financial institution's capital shall comprise -

- (a) its issued and fully paid up share capital, its perpetual non-cumulative preference shares and its disclosed reserves as may be prescribed; and
- (b) its reserves other than its disclosed reserves which shall comprise such elements as may be prescribed or as may be provided for under the prescribed regulations including hybrid debt and capital instruments and subordinated debt.

(3) For the purpose of this section the amount of a licensed financial institution's capital shall be the sum of -

- (a) the institution's capital under subsection (2)(a) calculated as may be prescribed less its goodwill; and
- (b) the institution's reserves under subsection (2)(b) -
  - (i) which shall be calculated as may be prescribed; and
  - (ii) which shall not exceed in total the amount of capital calculated under paragraph (a),

from which sum there shall be deducted the institution's investments in its subsidiary companies which carry on banking and financial activities and whose assets are not consolidated in the institution's consolidated financial statements.

8E. A licensed financial institution referred to in section 8B shall maintain a ratio of its guarantee to risk weighted assets of not less than such amount as may be prescribed.

Guarantee ratio

8F. A licensed financial institution referred to in section 8C shall maintain a ratio of assigned capital to risk weighted assets of not less than such amount as may be prescribed.

Assigned capital ratio

8G. A licensed financial institution which accepts deposits from the general public -

Maintenance of reserve fund

- (a) shall maintain a reserve fund; and

(b) shall transfer out of its net profits as determined by the licensing committee not less than twenty five per cent of these profits into the reserve fund when the reserve fund is less than –

- (i) for a financial institution referred to in section 8A, the amount of the paid up share capital prescribed under section 8A(1);
- (ii) for a financial institution referred to in section 8B the amount of the guarantee; or
- (iii) for a financial institution referred to in section 8C the amount of the assigned capital.”.

7. At the end of section 10 there shall be added –

Director or  
officer no longer  
fit and proper  
person

“10A. Where the licensing committee is of the opinion that a director or officer of a licensed financial institution is no longer a fit and proper person to be a director or officer of the licensed financial institution the licensing committee may request the financial institution to replace the director or officer with a person approved by the Governor or the licensing committee as a fit and proper person.”.

8. In section 12 -

(a) for subsection (1) there shall be substituted -

“(1) A licensed financial institution shall not grant a financial concession to a person or related persons except as may be prescribed or as may be agreed with the licensing committee.”;

(b) in subsection (2)(a) -

- (i) for the words “a group of” there shall be substituted “related persons”; and
- (ii) for the words “that group” wherever they occur there shall be substituted “these related persons”;

(c) for subsection 2(b) there shall be substituted –

“(2A) For the purposes of this section -

- (a) “person” includes a firm or other unincorporated body; and
- (b) “related persons” means a person and -
  - (i) a firm or other unincorporated body of which the person is the proprietor or beneficial owner;

- (ii) a firm or other unincorporated body of which the person is a partner, director or manager or in which the person has a beneficial interest; or
- (iii) a body corporate –
  - (A) where the person or a trustee or nominee on his behalf holds twenty per cent or more of the issued share capital of the body corporate;
  - (B) where the person or a trustee or nominee on his behalf, if the body corporate has no share capital, would be entitled to twenty per cent or more of the assets of the body corporate available for distribution among its members in the event of its winding up;
  - (C) where the person or a trustee or nominee on his behalf holds twenty per cent or more of the shares in the body corporate which carry voting rights at meetings of its members;
  - (D) where the person or a trustee or nominee on his behalf, if there are no shares in the body corporate which carry such voting rights, however determined; or
  - (E) where the person or a nominee on his behalf is a director of the body corporate.”.

9. In section 15 -

(a) for subsection (1) there shall be substituted -

“(1) A licensed financial institution shall not grant a financial concession to a connected counterparty or permit a financial concession to be outstanding to a connected counterparty except as may be prescribed or as may be agreed with the licensing committee.”.

(b) in subsection (2)(a) in the chapeau, subparagraphs (ii) to (iv) and the full out after paragraph (iv) –

- (i) for the words “an unsecured” wherever they occur there shall be substituted “a” ; and
- (ii) for the words “related person” there shall be substituted “connected counterparty”;
- (c) in subsection 2(a)(i) the word “unsecured” shall be repealed and for the words “related person” there shall be substituted “connected counterparty” ;
- (d) in subsection 2(b) -
  - (i) in the chapeau for the words “an unsecured” there shall be substituted “a” and the word “unsecured” where it occurs for the second time shall be repealed; and
  - (ii) for the words “related person” wherever they occur there shall be substituted “connected counterparty” and for the words “related persons” there shall be substituted “connected counterparties”;
- (e) paragraph (c) of subsection 2 shall be repealed; and
- (f) in subsection (3) for the words ““related person”” there shall be substituted ““connected counterparty””.

10. In section 19(1)(a) for the word “10” there shall be substituted “12”.

11. In section 22(1) for the word “his” there shall be substituted “its”.

12. At the end of section 25(7) there shall be added -

“(8) The approved auditor shall report to the licensing committee –

- (a) breaches of this Ordinance; and
- (b) failure by the licensed financial institution to conduct its business in accordance with its business plan or its internal controls.”.

13. At the end of section 25 there shall be added -

#### “PART VIA

#### REGULATION

Definition

25A. For the purposes of this Part –

- (a) “documents” includes information recorded in any form; and
- (c) the power to require the production of information or documents includes power to

require the production of the information or documents in legible form.

25B. (1) The licensing committee may –

Inspection,  
investigation and  
complaints

- (a) inspect the affairs or business of a licensed financial institution for the purpose of ensuring that the licensed financial institution is or has been acting in accordance with this Ordinance and with the terms and conditions of its licence;
- (b) investigate the affairs or business of a licensed financial institution; and
- (c) investigate the affairs or business of a person that it has reasonable grounds to believe, has committed or is committing an offence under section 4.

(2) The licensing committee shall receive and examine complaints against licensed financial institutions.

25C. (1) The licensing committee in exercise of the powers conferred by section 25B(1)(b) and (c) may authorise a person as an investigator to investigate –

Powers of the  
licensing  
committee to  
appoint  
investigator

- (a) the affairs or business of a person specified in the authorisation; or
- (b) a subject matter specified in the authorisation,

being a person who or subject matter which, is the subject of the investigation.

(2) A person shall not be obliged to comply with a requirement imposed by an investigator exercising powers under this section unless the investigator produces if requested evidence of his authority.

(3) The person referred to in subsection (1)(a) –

- (a) shall be given written notice by the licensing committee of the appointment of an investigator unless the licensing committee believes that the notice would be likely to result in the investigation being frustrated; and
- (b) shall not be obliged to comply with a requirement imposed by an investigator exercising powers under this section unless the investigator produces if requested –

(i) evidence of his authority, and

(ii) directions under subsections (7) to (9).

(4) An authorisation under subsection (1) shall –

- (a) specify the provisions under which the investigator was appointed; and
- (b) state the reason for his appointment.

(5) An investigator –

- (a) may require a person to attend before the investigator at a specified time and place to answer questions;
- (b) may require a person to provide such documents and information as the investigator may require for the purposes of the inquiry; and
- (c) may examine a person on oath and may administer an oath accordingly.

(6) A person who is to be examined on oath under this section may be represented by an attorney.

(7) The licensing committee shall direct an investigator as to –

- (a) the scope of the investigation;
- (b) the period during which the investigation is to be conducted;
- (c) the conduct of the investigation; and
- (d) the reporting of the investigation.

(8) A direction under subsection (7) may –

- (a) confine the investigation to particular matters;
- (b) extend the investigation to additional matters;
- (c) require the investigator to discontinue the investigation or to take only such steps as are specified in the direction; or
- (d) require the investigator to make such interim reports as are specified.

(9) If there is a change in the scope or conduct of the investigation and, in the opinion of the licensing committee the person subject to investigation is likely to be significantly prejudiced by not being made aware of it, that person shall be given written notice of the change.

(10) An investigator shall make a report of his investigation to the licensing committee.

25D. (1) An investigator may direct a person –

Powers of  
investigator to  
require  
information

- (a) to attend before the investigator at a specified time and place to answer questions;
- (b) to produce documents relevant to the investigation;
- (c) to furnish him with information with respect to a matter relevant to the investigation; and
- (d) to provide him with such assistance in relation to the investigation as he may specify.

(2) Where a person fails to comply with a direction issued under subsection (1) within the period of three days beginning with the date of the direction or such longer period as the investigator may permit, the investigator may apply to the court for an order requiring the person to comply with the direction.

(3) Where under a direction issued under subsection (1) the investigator considers it necessary to examine a person on oath, he may apply to the court to have the person examined by the court and the transcript of the examination sent to him.

(4) A person who is to be examined under subsection (3) may be represented by an attorney and the examination shall be held in camera.

(5) An order of the court made under subsection (3) may limit the scope and nature of the examination of a person and may provide for the payment of costs incurred by the person in connection with the examination.

(6) Where documents are produced under this section, the investigator may take copies of or extracts from them.

(7) A person shall not under this section be required to disclose information or produce a document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings, except that an attorney may be required to furnish the name and address of his client.

(8) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.

(9) The licensing committee may make a contribution to the costs of a person who complies

with a direction given under this section other than the person who or whose affairs are the subject of the investigation in respect of which the direction was issued.

Powers of entry  
and search

25E. (1) The court may issue a warrant under this section if satisfied on information on oath given by or on behalf of the licensing committee that there are reasonable grounds for believing that the conditions referred to in subsection (2) or (3) are satisfied.

(2) The conditions referred to in subsection (1) are-

- (a) that a person on whom an order of the court under section 25D has been imposed has failed wholly or in part to comply with it; and
- (b) that on the premises specified in the warrant -
  - (i) there are documents which have been required; or
  - (ii) there is information which has been required.

(3) The conditions referred to in subsection (1) are-

- (a) that there are on the premises specified in the warrant documents or information in relation to which a direction of the investigator or an order of the court under section 25D could be imposed; and
- (b) that if such a requirement were to be imposed the documents or information to which it related would be removed, tampered with or destroyed.

(4) A warrant under this section shall authorise a police officer –

- (a) to enter the premises specified in the warrant;
- (b) to search the premises and take possession of any documents or information specified in the warrant or take, in relation to any such documents or information, any other steps which appear necessary for their preservation or preventing interference with them;
- (c) to take copies of or extracts from documents or information specified in the warrant;
- (d) to require a person on the premises to provide an explanation of a document or information specified in the warrant or to state where it may be found; and
- (e) to use reasonable force.

(5) A document of which possession is taken under this section may be retained -

- (a) for a period of three months beginning with the date on which possession is taken; or
- (b) if within that period proceedings to which the document is relevant are commenced against a person for a criminal offence, until the conclusion of the proceedings.

25F. (1) A statement made by a person in compliance with this Ordinance shall be admissible in evidence in proceedings, if it complies with the requirements governing the admissibility of evidence in the proceedings.

Admissibility of answers obtained under this Ordinance

(2) In criminal proceedings in which the person referred to in subsection (1) is charged with an offence to which this subsection applies or in proceedings in relation to action to be taken against that person -

- (a) no evidence relating to the statement may be adduced; and
- (b) no question relating to it may be asked.

(3) Subsection (2) applies to an offence other than perjury.

25G. No action or proceedings for breach of confidentiality or contravention of any duty to which a person is subject shall lie against a person who furnishes information, produces documents, renders assistance or provides an explanation in relation to a direction, examination, search warrant, inspection or investigation under this Ordinance.”.

Immunity from action or proceedings

14. In section 29(2)-

- (a) at the beginning there shall be inserted “For that purpose of this section – (a)”;
- (b) for the words from “the Superintendent” where they first occur to the end there shall be substituted –

“(i) the Governor, the licensing committee, the Attorney General and the Superintendent of Banking under this Ordinance;

(ii) the Superintendent of Company Management and the licensing committee under the Company Management (Licensing) Ordinance 1999;

- (iii) the Superintendent of Insurance and the licensing committee under the Insurance Ordinance;
- (iv) the financial services commission and the licensing committee under the Investment Dealers (Licensing) Ordinance 2001;
- (v) the Superintendent of Mutual Funds and the licensing committee under the Mutual Funds Ordinance 1998;
- (vi) the Superintendent of Trustees and the licensing committee under the Trustees Licensing Ordinance; and
- (vii) regulatory functions; and
- (b) “regulatory functions” has the same meaning as in section 2 of the Overseas Regulatory Authority (Assistance) Ordinance 2001.”.