



TURKS AND CAICOS ISLANDS

CHAPTER 118

BANKING ORDINANCE and Subsidiary Legislation

Revised Edition
showing the law as at 15 May 1998

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance 1997.

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CHAPTER 118

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CHAPTER 118**BANKING ORDINANCE**

*(Ordinances 1 of 1979, 13 of 1989, 5 of 1990, 28 of 1990,
10 of 1995, Legal Notices 9 of 1990 and 39 of 1994)*

AN ORDINANCE TO MAKE PROVISION TO REGULATE THE BUSINESS
OF BANKING AND FOR PURPOSES CONNECTED THEREWITH.

[24 July 1979]

Commencement

PART I**PRELIMINARY**

1. This Ordinance may be cited as the Banking Ordinance.

Short title

2. (1) In this Ordinance, unless the context otherwise requires—

Interpretation

“auditor” means a person holding a currently valid certificate under the hand of the Permanent Secretary, Finance certifying that in his opinion such person is of good standing and qualified to undertake the audit of a financial institution;

“bank” means a person carrying on banking business;

“banking business” means the business of accepting deposits of money which may be withdrawn or repaid on demand or after a fixed period or after notice, and the employment of those deposits in whole or in part by lending or any other means for the account and at the risk of the person accepting such deposits;

“Belonger” means a person belonging to the Islands as defined by section 2(2) of the Immigration Ordinance;

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“business plan” means a plan in the prescribed form, if any, containing such information relating to the business or the proposed business of a financial institution as is for the time being prescribed;

“company” means a company incorporated in the Islands under any law for the time being in force relating thereto or any company incorporated outside the Islands which has complied with the provisions of any such law relating to

companies incorporated outside the Islands and carrying on business within the Islands;

“director” includes an individual occupying the position of director or alternate director of a company by whatever name he may be called and includes a member of a local board of a company whose head office is situated outside the Islands;

“financial institution” means a company which carries on a banking business including banking business carried on by a trust company;

“financial year” in relation to a licensee means the period not exceeding fifty-three weeks at the end of which the balance of the licensee's accounts is struck or, if no such balance is struck or if a period in excess of fifty-three weeks is employed, then a calendar year;

“Governor” means—

- (i) in relation to National Banking Licences, the Governor in Council; and
- (ii) in relation to Oversea Banking Licences, the Governor acting in his discretion;

“licence” means a licence granted under this Ordinance;

“licensed” means licensed under this Ordinance to conduct banking business;

“liquid assets” means those assets for the time being prescribed as such;

“manager” includes any person for the time being in charge of the principal office in the Islands of any financial institution;

“National Banking Licence” means a licence of the class provided for in section 4(2)(a);

“officer” includes a director, manager or secretary;

“Oversea Banking Licence” means a licence of the class provided for in section 4(2)(b).

(2) Grammatical variations and cognate expressions of any term defined in subsection (1) shall be construed accordingly.

(3) For the purpose of this Ordinance, a person shall be deemed to accept deposits of money if he advertises for or solicits such deposits from the general public, irrespective of any terms and conditions under which such deposits of money are solicited or received and whether or not certificates or other instruments are issued in respect of such deposits.

(Amended by Ords. 13 of 1989 and 10 of 1995)

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3. (1) The Governor acting in his discretion may by instrument in writing appoint a Superintendent of Banking to exercise and perform such of the powers and duties conferred or imposed on the Permanent Secretary, Finance, by this Ordinance as the Permanent Secretary, Finance, may determine, and to exercise and perform such other powers and duties as shall be conferred or imposed on the Superintendent by this Ordinance.

The
Superintendent
of Banking

(2) It shall be the duty of the Superintendent to maintain a general view of banking practice in the Islands.

(3) With the approval of the Governor acting in his discretion, the Superintendent may authorise in writing any other person to assist him in the performance of his functions.

(4) The Superintendent shall examine and make recommendations to the Governor with respect to all applications for licences.

(Inserted by Ord. 10 of 1995)

PART II

LICENSING OF FINANCIAL INSTITUTIONS

4. (1) Notwithstanding the provisions of any other Ordinance, no banking business shall be carried on in or from within the Islands except by a licensed financial institution acting under the authority of a licence of the appropriate class, as set out in subsection (2).

Classes of
licences and
necessity for
licence of the
appropriate class

(2) Licences under this Ordinance are of the following two classes—

- (a) A National Banking Licence which shall authorise the licensee to carry on banking business in and from within the Islands with persons who are Belongers and persons who are ordinarily or temporarily resident in the Islands;
- (b) An Oversea Banking Licence which shall authorise the licensee to carry on banking business from within the Islands but shall not permit the licensee to accept deposits from or lend money to, or carry on any other banking business with, or on behalf of, any person who is ordinarily or temporarily resident in the Islands:

Provided that both a National Banking Licence and an Oversea Banking Licence may be issued to the same financial institution if the Governor is satisfied that the business conducted

is accounted for under separate accounting arrangements or business under each licence will be conducted through separate branches or subsidiaries.

(Substituted by Ord. 13 of 1989 and Amended by Ord. 10 of 1995)

(3) The terms of any licence granted under this section shall specify whether or not the licensee is a bank.

(4) Every licence shall be subject to the conditions that the licensee—

- (a) notifies the Permanent Secretary, Finance of any change, or proposed change, in its business plan;
- (b) carries on business only in accordance with its business plan and such changes therein as have been approved in writing by the Permanent Secretary, Finance;
- (c) furnishes annually to the Permanent Secretary, Finance a certificate in the prescribed form of compliance with the provisions of this section.

(Inserted by Ord. 13 of 1989 and Amended by Ord. 10 of 1995)

(5) Any person who contravenes the provisions of this section shall be guilty of an offence and liable on summary conviction to a fine of \$500 for each day during which the offence continues. *(Amended by Ord. 13 of 1989)*

Application for
Licence

5. (1) Any company desirous of commencing banking business in or from with the Islands shall apply to the Governor for a licence.

(2) An application for a licence under this Ordinance shall be made to the Governor in such form and in such manner as may be prescribed, shall state the class or classes of licence required and be accompanied by a copy of the memorandum and articles of association or of any other instrument under which such company is incorporated, a business plan, and such other information as the Governor may require. *(Amended by Ords. 13 of 1989 and 10 of 1995)*

Granting and
revocation of
licences

6. (1) The Governor may refuse an application made under section 5 or he may grant it conditionally or subject to such conditions as he may see fit to impose. A decision under this subsection is final and not subject to appeal to, or review by, any court or other authority.

(2) A licence shall not be granted to any company unless it includes the word “Bank” or a cognate expression in its name and meets all the requirements laid down in the First Schedule for the grant to it of such licence.

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(3) A licence shall not be granted to any company having its head office outside the Islands unless it maintains a principal office in the Islands and designates in writing to the Governor the names and addresses of two or more persons resident in the Islands who are its authorised agents and who shall accept on behalf of the company service of process and any notices required to be served on it.

(4) A licensee which has its head office outside the Islands shall forthwith notify the Governor of any change in its principal office in the Islands or in the persons designated under subsection (3).

(5) The other provisions of this section notwithstanding, the Governor may exempt the holder of an Oversea Banking Licence from complying with subsections (3) and (4) if, and as long as, he is satisfied that the banking business in the Islands is managed—

- (a) by another licensee which maintains a principal office in the Islands; or
- (b) by a person, or group of persons, resident in the Islands, qualified and experienced in the banking business and approved by the Governor for the purposes of this subsection.

A licensee, person or group so managing the business of a licensee, shall be deemed to be authorised to accept on its behalf service of process and any notice required to be served on it. The provisions of section 167(2) of the Companies Ordinance shall apply to a licensee, person or group in relation to the debts of such exempted licensee as it applies to a director thereof.

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(6) Every licensee, or in the case of a licensee exempted under subsection (5), the licensee, person or group managing its business in the Islands shall—

- (a) affix, and keep affixed, on the outside of its principal office, or place in which the business of such an exempted licensee is managed, as the case may be, the name of the licensee, or exempted licensee, in a conspicuous position and in easily legible letters;
- (b) display in such office or place its licence or that of the exempted licensee, as the case may be, with a statement—
 - (i) as to whether or not such licence allows the acceptance of deposits; and
 - (ii) giving particulars of the restrictions, if any, imposed on such licence; and

- (c) keep its principal office, or place where the business of the exempted licensee is managed, as the case may be, open during normal business hours.

(7) Any licensee which fails to comply with any of the requirements of subsection (4) or subsection (6) shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500 for every day during which the offence continues.

(8) The Governor may at any time by order revoke a licence—

- (a) for any contravention of any provision of this Ordinance;
- (b) for failure by the licensee concerned to comply with any directive lawfully issued by the Governor or Permanent Secretary, Finance under this Ordinance;
- (c) for failure of the licensee to carry on business in conformity with its current business plan;
- (d) if in the opinion of the Governor the licensee concerned is carrying on business in or from within the Islands in a manner detrimental to the public interest or to the interest of the depositors of such licensee;
- (e) if in the opinion of the Governor the licensee concerned has ceased to carry on banking business in or from within the Islands;
- (f) if the licensee concerned goes into liquidation or is wound up or otherwise dissolved; or
- (g) in the circumstances referred to in section 24(c).

(9) Before making an order under subsection (8) the Governor shall give the financial institution concerned notice in writing of his intention to do so specifying therein the grounds on which he proposes to revoke the licence and shall afford that institution an opportunity of submitting to him a written statement of objections to the making of the order and thereafter the Governor shall advise the institution of his decision in the matter.

(10) Any financial institution aggrieved by a decision of the Governor to revoke a licence under subsection (8) may appeal to the Supreme Court against such decision, but only on a point of law. Pending the hearing of any such appeal, the licence shall be deemed to have been suspended. The Chief Justice may make rules of court for regulating the practice and procedure in respect of any such appeal, but until such time as any such rules are made any

such appeal shall be made in accordance with such directions as the Chief Justice may give in any particular case.

(Inserted by Ord. 13 of 1989 and Amended by Ord. 10 of 1995)

7. (1) When and as often as any alteration is made in the memorandum or articles of association of a licensed financial institution or in any other instrument whereunder the said institution was incorporated, that institution shall forthwith give the Governor full particulars in writing of such alteration.

Alterations,
reconstruction
arrangements
and agreements

(2) Particulars given pursuant to subsection (1) shall be verified by an affidavit or declaration sworn to or, as the case may be, made by a senior officer of the financial institution.

(3) Where a reconstruction of any licensed financial institution has occurred or where any licensed financial institution makes an arrangement or enters into an agreement for—

- (a) the sale or other disposal of its business by amalgamation or otherwise; or
- (b) the purchase or other acquisition of the business of any other financial institution,

such licensed financial institution shall, forthwith after the occurrence of the said reconstruction or after the implementation of the said arrangement or agreement, inform the Governor thereof in writing. *(Amended by Ords. 13 of 1989 and 10 of 1995)*

(4) Where any particulars are or any information is, received under this section the Governor, having regard thereto, and notwithstanding the fact that the financial institution concerned is licensed, may direct that the institution apply for another licence within such time and in such form as the Governor may determine. *(Substituted by Ord. 13 of 1989 and Amended by Ord. 10 of 1995)*

(5) The issue of a directive pursuant to subsection (4) shall not affect the validity of any licence subsisting at the date of such directive and which was granted to the financial institution to which the said directive is issued.

(6) Every licence to which subsection (5) refers shall be of full force and effect until—

- (a) it is revoked by the Governor by order under subsection (8) of section 6; or
- (b) another licence is granted to the financial institution concerned upon an application made pursuant to a directive under subsection (4), and thereafter the licence referred to in subsection (5) shall cease to have effect.

(7) Any licensed financial institution which fails to comply with any of the provisions of subsections (1), (2) and (3) or with any directive of the Governor under subsection (4) shall be guilty of an offence and liable on conviction to a fine of \$500 for every day during which the offence continues.

PART III

CAPITAL AND RESERVES

Maintenance of
assets

8. Every licensee which accepts deposits in the Islands from the general public shall maintain in the Islands assets which are, or will be, available immediately to meet all the liabilities of the licensee as they fall due in the ordinary course of business. *(Substituted by Ord. 13 of 1989)*

PART IV

RESTRICTIONS ON BUSINESS

Restriction on
dividends

9. No licensed financial institution incorporated in the Islands shall pay any dividend on its shares, and no licensed financial institution incorporated outside the Islands shall remit any profits outside the Islands, until all its capitalised expenditure (including preliminary expenses, organisation expenses, share selling commission, brokerage and amounts of losses incurred) not represented by tangible assets has been completely written off.

Persons debarred
from
management

- 10.** (1) Any person—
- (a) who has been a director of, or directly concerned in the management of, a financial institution which has had its licence revoked in accordance with section 24(c) or has been wound up by a court; or
 - (b) who has been sentenced by a court in any country to a term of imprisonment for an offence involving dishonesty and has not received a full pardon for that offence; or
 - (c) who is or becomes bankrupt, suspends payment to or compounds with his creditors,

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shall not without the express written authorisation of the Permanent Secretary, Finance act or continue to act as a director, manager, secretary or other employee of any financial institution.
(Amended by Ords. 13 of 1989 and 10 of 1995)

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on summary conviction to a fine of \$5,000.

11. (1) Save with the permission of the Permanent Secretary, Finance, no person other than a licensed bank shall use the word “bank” or any of its derivatives in any language in the description or title under which such person is carrying on business in or from within the Islands; or make any such representation in any billhead, letter paper, notice, advertisement or in any other manner whatsoever:

Restrictions on
use of title
“bank”

Provided that nothing in this subsection shall apply to an association of banks or bank employees, formed for the protection of their common interests.

(Amended by Ords. 13 of 1989 and 10 of 1995)

(2) Any person or group of persons contravening the provisions of this section shall be guilty of an offence and liable on summary conviction to a fine of not less than \$250 or more than \$500 for each day during which the contravention continues.

12. (1) A licensed financial institution shall not at any time grant any financial concessions to—

Restriction upon
granting
financial
concessions to
persons
generally

- (a) any person; or
- (b) any group of persons

which is under the influence or control of one and the same person,

if—

- (i) the value of the concession, if granted, would exceed 25 *per centum* of the value of the total assets of that institution; or
- (ii) the effect of so granting would be to increase the total value of all the concessions granted to that person or that group before that time to an amount exceeding 25 *per centum* of the value of the total assets of that institution at that time.

- (2) For the purposes of this section—
- (a) a licensed financial institution grants a financial concession to a person or a group of persons if that institution—
- (i) grants an advance to that person or to that group;
 - (ii) grants a credit facility to that person or to that group;
 - (iii) gives a financial guarantee on behalf of that person or on behalf of that group; or
 - (iv) incurs any other liability on behalf of that person or on behalf of that group;
- whether such advance, credit facility, financial guarantee or other liability is granted to, given on behalf of or incurred on behalf of that person or that group singly or jointly with any other person or persons or is obtained by or on account of that person or that group singly or jointly with any other person or persons; and
- (b) a licensed financial institution grants a financial concession to a person if that institution grants that financial concession to that person or to—
- (i) a firm or other unincorporated body of which that person is the proprietor or beneficial owner;
 - (ii) a firm or other unincorporated body of which that person is a partner, director or manager or in which that person has a beneficial interest; or
 - (iii) a body corporate—
 - (A) where that person or a trustee or nominee on his behalf holds 20 *per centum* or more of the issued share capital of that body corporate;
 - (B) where that person or a trustee or nominee on his behalf, if the body corporate has no share capital, would be entitled to 20 *per centum* or more of the assets of that body corporate available for distribution among its members in the event of its winding up;
 - (C) where that person or a trustee or nominee on his behalf holds 20 *per centum* or more

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of the shares in that body corporate which carry voting rights at meetings of its members;

(D) where that person or a trustee or nominee on his behalf, if there are no shares in that body corporate which carry such voting rights, holds 20 *per centum* or more of the voting rights, however determined; or

(E) where that person or a nominee on his behalf is a director of that body corporate.

(3) This section shall not apply to—

- (a) transactions between banks or between branches of the same bank;
- (b) the purchase of bills of exchange or documents of title to goods where the holder of the bills or documents is entitled to payment outside the Islands for exports from the Islands;
- (c) advances made against such bills or documents; or
- (d) advances made against telegraphic transfers.

(Substituted by Ord. 28 of 1990)

13. A licensed financial institution shall not grant any advance or credit facility against the security of its own shares or for the purchase of such shares. *(Inserted by Ord. 28 of 1990)*

Restriction upon granting advances etc against security of or for the purchase of shares

14. (1) A licensed financial institution shall not at any time grant any unsecured financial concession to any one of its directors or permit any such unsecured financial concession to be outstanding if the effect of so granting or so permitting would be either—

Restriction upon granting unsecured financial concessions to directors

- (a) to increase the total value of all the unsecured financial concessions granted to that director before that time to an amount exceeding \$20,000 or 1 *per centum* of the value of the total assets of that financial institution at that time, whichever is the greater; or
- (b) to increase the total value of all the unsecured financial concessions granted to its directors as a whole before that time to an amount exceeding \$100,000 or 1 *per centum* of the value of the total assets of that financial institution at that time, whichever is the greater.

- (2) For the purposes of this section—
- (a) a licensed financial institution grants an unsecured financial concession to a director of that institution if that institution—
- (i) grants an unsecured advance to that director;
 - (ii) grants an unsecured credit facility to that director;
 - (iii) gives an unsecured financial guarantee on behalf of that director; or
 - (iv) incurs any other unsecured liability on behalf of that director,
- whether such advance, credit facility, financial guarantee or other liability is granted to, given on behalf of or incurred on behalf of that director singly or jointly with any other person or persons or is obtained by or on account of that director singly or jointly with any other person or persons;
- (b) a licensed financial institution grants an unsecured financial concession to a director of that institution if that institution grants that unsecured financial concession to that director or to—
- (i) a firm or other unincorporated body of which that director is the proprietor or beneficial owner;
 - (ii) a firm or other unincorporated body of which that director is a partner, director or manager or in which that director has a beneficial interest;
 - (iii) a body corporate—
 - (A) where that director singly or that director jointly with other directors, or a trustee or nominee on his or on their behalf, holds 20 *per centum* or more of the issued share capital of that body corporate;
 - (B) where that director singly or that director jointly with other directors, or a trustee or nominee on his or on their behalf, if that body corporate has no share capital, would be entitled to 20 *per centum* or more of the assets of that body corporate available for distribution among its members in the event of its winding up;

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(C) where that director singly or that director jointly with other directors, or a trustee or nominee on his or on their behalf, holds 20 *per centum* or more of the shares in that body corporate which carry voting rights at meetings of its members;

(D) where that director singly or that director jointly with other directors, or a trustee or nominee on his or on their behalf, if there are no shares in that body corporate which carry such voting rights, holds 20 *per centum* or more of the voting rights, however determined; or

(E) where that director or a nominee on his behalf is a director of that body corporate; or

(iv) any person of whom that director is a guarantor; and

(c) a financial concession is unsecured—

(i) if it is granted without security; or

(ii) where security is given, if the value of the concession granted exceeds the market value of the assets constituting that security.

(3) In this section “director” includes the wife, husband, father, mother, son or daughter of a director.

(Inserted by Ord. 28 of 1990)

15. (1) A licensed financial institution shall not at any time grant any unsecured financial concession to any related person or permit any such unsecured financial concession to be outstanding if the effect of so granting or so permitting would be either—

Restriction upon
granting
unsecured
financial
concession to
related persons

(a) to increase the total value of all the unsecured financial concessions granted to that related person before that time to an amount exceeding \$20,000 or 1 *per centum* of the value of the total assets of that financial institution at that time, whichever is the greater; or

(b) to increase the total value of all the unsecured financial concessions granted to related persons as a whole before that time to an amount exceeding \$100,000 or 1 *per centum* of the value of the total assets of that financial institution at that time, whichever is the greater.

- (2) For the purposes of this section—
- (a) a licensed financial institution grants an unsecured financial concession to a related person if that institution—
- (i) grants an unsecured advance to that related person;
 - (ii) grants an unsecured credit facility to that related person;
 - (iii) gives an unsecured financial guarantee on behalf of that related person; or
 - (iv) incurs any other unsecured liability on behalf of that related person,
- whether such advance, credit facility, financial guarantee or other liability is granted to, given on behalf of or incurred on behalf of that related person singly or jointly with any other person or persons or is obtained by or on account of that related person singly or jointly with any other person or persons;
- (b) a licensed financial institution grants an unsecured financial concession to a related person if that institution grants that unsecured financial concession to that related person or to—
- (i) a firm or other unincorporated body of which that related person is the proprietor or beneficial owner;
 - (ii) a firm or other unincorporated body of which that related person is a partner, director or manager or in which that related person has a beneficial interest;
 - (iii) a body corporate—
 - (A) where that related person singly or that related person jointly with other related persons, or a trustee or nominee on his or on their behalf, holds 20 *per centum* or more of the issued share capital of that body corporate;
 - (B) where that related person singly or that related person jointly with other related persons, or a trustee or nominee on his or on their behalf, if that body corporate has no share capital, would be entitled to 20 *per centum* or more of the assets of that

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body corporate available for distribution among its members in the event of its winding up;

(C) where that related person singly or that related person jointly with other related persons, or a trustee or nominee on his or on their behalf holds 20 *per centum* or more of the shares in that body corporate which carry voting rights at meetings of its members;

(D) where that related person singly or that related person jointly with other related persons, or a trustee or nominee on his or on their behalf, if there are no shares in that body corporate which carry such voting rights, holds 20 *per centum* or more of the voting rights, however determined; or

(E) where that related person or a nominee on his behalf is a director of that body corporate; or

(iv) any person of whom that related person is a guarantor; and

(c) a financial concession is unsecured—

(i) if it is granted without security; or

(ii) where security is given, if the value of the concession granted exceeds the market value of the assets constituting that security.

(3) In this section, “related person”, in relation to a licensed financial institution, means—

(a) a firm or other unincorporated body of which that institution is the proprietor or beneficial owner;

(b) a firm or other unincorporated body of which that institution is a partner, director or manager or in which that institution has a beneficial interest;

(c) a body corporate, where that institution singly or that institution jointly with other persons, or a trustee or nominee on its or on their behalf, or that institution together with any other corporation controlled by or associated with it, or a trustee or nominee on its or on their behalf—

(i) holds 20 *per centum* or more of the issued share capital of that body corporate;

- (ii) if that body corporate has no share capital, would be entitled to 20 *per centum* or more of the assets of that body corporate available for distribution among its members in the event of its winding up;
 - (iii) holds 20 centum or more of the shares in that body corporate which carry voting rights at meetings of its members;
 - (iv) if there are no shares in that body corporate which carry such voting rights, holds 20 *per centum* or more of the voting rights, however determined;
 - (d) a body corporate of which that institution or a nominee on its behalf is a director; or
 - (e) any person of whom that institution is a guarantor.
- (Inserted by Ord. 28 of 1990)*

Restriction upon
granting
unsecured
advances or
credit facilities to
employees

16. (1) A licensed financial institution shall not at any time grant any unsecured advance or unsecured credit facility to any one of its employees, other than a director, or permit any such unsecured advance or unsecured credit facility to be outstanding if the effect of so granting or so permitting would be to increase the total value of all the unsecured advances and unsecured credit facilities granted to that employee before that time to an amount exceeding one year's emoluments of that employee at that time in his employment with that institution.

(2) For the purposes of this section—

- (a) a licensed financial institution grants an unsecured advance or an unsecured credit facility to an employee of that institution, whether such advance or credit facility is granted to that employee singly or jointly with any other person or persons or is obtained by or on account of that employee singly or jointly with any other person or persons; and
- (b) an advance or a credit facility is unsecured—
 - (i) if it is granted without security; or
 - (ii) where security is given, if the value of the advance or credit facility granted exceeds the market value of the assets constituting that security.

(Inserted by Ord. 28 of 1990)

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17. (1) Notwithstanding sections 12, 13, 14, 15 or 16, a licensed financial institution may do any or all of the acts or things prohibited by those sections if the doing of any or all of those acts or things by that financial institution is approved by the Governor under subsection (2).

Approval for the
doing of
prohibited
activities

(2) The Governor may, either on his own motion or upon application being made to him for the purpose, if he is satisfied that the doing by a licensed financial institution of any or all of the acts or things prohibited by sections 12, 13, 14, 15 or 16 would not be inconsistent with the business plan of that financial institution and would not be detrimental to the public interest, approve in writing signed by him, subject to such conditions or restrictions as he may impose, the doing of any or all of those acts or things by that financial institution.

(Inserted by Ord. 28 of 1990 and Amended by Ord. 10 of 1995)

18. A licensed bank shall not—

- (a) engage, whether on its own account or on a commission basis, in the wholesale or retail trade, including the import or export trade or otherwise have a direct interest in any commercial, agricultural, industrial or other undertaking, except as permitted under paragraph (b) and except insofar as may be necessary with respect to such interest as a bank may acquire in the course of the satisfaction of debts due to it; but all such interests shall be disposed of at the earliest suitable opportunity;
- (b) acquire or hold to an aggregate value exceeding 25 *per centum* of the total assets of that bank, any part of the share capital of any financial, commercial, agricultural, industrial or other undertaking except such shareholding as a bank may acquire in the course of the satisfaction of debts due to it, which shareholding shall, however, be disposed of at the earliest suitable moment:

Restriction on
holding of
certain interests
by licensed
banks

Provided that this paragraph shall not apply to—

- (i) any shareholding approved in writing by the Permanent Secretary, Finance in a subsidiary bank or in a subsidiary company formed by a bank for the execution of nominee, executor or trustee functions incidental to banking business; or
- (ii) such shareholding as is necessary in the course of the underwriting or necessary to the acquisition or holding of shares in the course of

any underwriting business consistent with the current business plan of the licensed bank;

(Amended by Ords. 13 of 1989 and 10 of 1995)

- (c) purchase, acquire or lease real estate except as may be necessary for the purpose of conducting its business or housing its staff or providing amenities for its staff having regard to any reasonable requirements for future expansion of its business or staff; but in the event of any debt due to a bank which is secured upon any real or other property of the debtor becoming endangered the bank may acquire such property which shall, however, be resold at the earliest suitable moment.

Minimum
holdings of
liquid assets

19. (1) (a) Every licensed bank shall in relation to its operations in or from within the Islands maintain the minimum holding of liquid assets, provided that the minimum shall be the same for all banks holding licences of the same class and shall not exceed 10 *per centum* of deposit liabilities.

- (b) Every licensed financial institution not being a bank shall in relation to its operations in or from within the Islands maintain such minimum holding of liquid assets, as may from time to time be prescribed; provided that the minimum shall be the same for all such financial institutions and shall not exceed 7 *per centum* of deposit liabilities.

(2) The Permanent Secretary, Finance shall determine the method of computing the amounts of liquid assets to be held by banks and financial institutions.

(3) For the purposes of this section, “liquid assets” means such assets as the Permanent Secretary, Finance may from time to time specify.*

(4) Any licensed bank or licensed financial institution which fails to comply, within such reasonable time as the Permanent Secretary, Finance may appoint, with any requirement of subsection (1) shall be liable to pay, on being called upon to do so by the Permanent Secretary, Finance, a penalty interest charge not exceeding one-tenth of one *per centum* of the amount of the deficiency for every day on which the deficiency continues.

(Amended by Ords. 13 of 1989 and 10 of 1995)

* See also the definition in regulation 17 of the Banking Regulations

PART V

RETURNS AND ACCOUNTS

20. (1) Subject to subsection (3), every licensed financial institution shall in relation to its operations in or from within the Islands submit to the Permanent Secretary, Finance the undermentioned statements at such times as are specified therefor in the First Schedule and in such form as he may from time to time approve—

Returns

(a) in the case of the holder of a National Banking Licence—

(i) a monthly statement of assets and liabilities accompanied by a statement showing the total value of all the unsecured financial concessions granted to its directors and related persons and of all the unsecured advances and credit facilities granted to its employees within the meaning of sections 13, 14 and 15 respectively; and

(ii) a quarterly return providing an analysis of the liabilities of customers to such licensee in respect of loans, advances and other assets of the licensee at the close of the last day of business of the quarter to which the return relates;

(Substituted by Ord. 28 of 1990)

(b) in the case of a holder of an Oversea Banking Licence, or a financial institution which is not a bank, a quarterly statement of the assets and liabilities of its offices and branches in the Islands at the close of the last business day of the quarter to which the statement relates. *(Substituted by Ord. 13 of 1989)*

(2) Subject to subsection (3), the Permanent Secretary, Finance may require a licensed financial institution to submit such further information as he may deem necessary for the proper understanding of any statement or return furnished by that institution under subsection (1) and such information shall be submitted within such period and in such manner as the Permanent Secretary, Finance may require.

(3) No statement, return or information shall be required under subsection (1) or (2), as the case may be, with respect to the

affairs of any particular customer of a licensed financial institution.

(4) The period within which any statement or return is required to be submitted under this section may be extended by the Permanent Secretary, Finance where he considers that there are circumstances justifying an extension.

(5) Any licensed financial institution which fails to comply with any of the provisions of subsections (1), (2) or with any requirement of the Permanent Secretary, Finance thereunder shall be guilty of an offence and liable on summary conviction to a fine of \$500 for every day during which the offence continues.

(6) Any statement or return submitted by a licensed financial institution under subsection (1) and any information submitted by such institution under subsection (2) shall be regarded as secret, save that the Permanent Secretary, Finance may publish consolidated statements aggregating the figures in the statements or returns furnished under subsection (1).

(Amended by Ords. 13 of 1989, 28 of 1990 and 10 of 1995)

Publication of
balance sheet

21. (1) No later than three months after the close of each financial year of each licensed financial institution, or such longer period as the Permanent Secretary, Finance may, in any particular case permit, the financial institution shall publish in the *Gazette* and exhibit thereafter in a conspicuous position in each of its offices and branches in the Islands, and forward to the Permanent Secretary, Finance copies of its balance sheet and profit and loss account and the full and correct names of the directors of the financial institution. The balance sheet and profit and loss account shall bear on their face the certificate of an auditor who is an approved auditor in accordance with subsection (5) of section 25. *(Amended by Ords. 13 of 1989 and 10 of 1995)*

(2) Any licensed financial institution which contravenes any of the provisions of this section shall be guilty of an offence and liable on summary conviction to a fine of \$500.

PART VI

EXAMINATION AND AUDIT

Examination

22. (1) The Governor or Permanent Secretary, Finance may at his discretion from time to time appoint one or more qualified persons to make examination, under conditions of secrecy, of the books and affairs of all licensed financial institutions. *(Amended by Ords. 13 of 1989 and 10 of 1995)*

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(2) The Governor or Permanent Secretary, Finance may at any time appoint one or more qualified persons to make a special examination, under conditions of secrecy, of the books and affairs of any licensed financial institution—

- (a) where he has reason to believe that such institution may be carrying on its business in a manner detrimental to the interest of its depositors and other creditors or may have insufficient assets to cover its liabilities to the public or may be, either in the Islands or elsewhere, contravening any of the provisions of this Ordinance;
- (b) where application is made by shareholders holding not less than one-third of the total number of shares in that institution for the time being issued or by depositors holding not less than one-half of the gross amount of the total deposit liabilities in the Islands of that institution; but the applicants shall submit to the Governor or Permanent Secretary, Finance such evidence as he may consider necessary to justify an examination and they shall furnish adequate security for the payment of the cost of the examination;
- (c) if the financial institution suspends payment or informs the Governor or Permanent Secretary, Finance of its intention to do so.

(Amended by Ords. 13 of 1989 and 10 of 1995)

(3) Any person who discloses any information obtained by him in the course, or as the result, of an examination under this section otherwise than—

- (a) in the performance of his duties under this Ordinance or of official duties for which he is responsible; or
- (b) pursuant to an order or direction of court;

commits an offence and is liable to a fine of \$10,000 or to imprisonment for a term of twelve months or to both such fine and imprisonment. *(Inserted by Ord. 13 of 1989)*

23. (1) Every licensed financial institution of which an examination has been ordered under section 22 shall produce to the person or persons appointed under the provisions of that section, at such times and in such places as such person or persons may specify (being times and places which, in the opinion of such person or persons, would not be detrimental to the conduct of the normal daily business of the financial institution) all books, accounts and documents in the possession or custody of such

Production of
books, etc

institution or of which it is entitled to possession or custody relating to its business, and shall give within such times as such person or persons may specify, such oral information concerning its business as may be required.

(2) If any book, account, document or information is not produced in accordance with subsection (1), the financial institution shall be guilty of an offence and liable on summary conviction to a fine of \$500 in respect of every day during which the offence continues; and if any book, account, document or information specified in subsection (1) is false in any material particular, the financial institution concerned shall be liable to a fine of \$10,000.

(3) As soon as may be after the conclusion of an examination under section 22, the person or persons appointed under the provisions of section 22 shall submit a full report on such examination to the Governor or Permanent Secretary, Finance, as the case may be, and the Governor or the Permanent Secretary, Finance, as the case may be, shall forward a copy thereof to the Head Office of the financial institution concerned. (*Substituted by Ord. 10 of 1995*)

(4) The Governor or Permanent Secretary, Finance, as the case may be, may order that all expenses of and incidental to an examination under subsection (2) of section 22 shall be paid by the financial institution examined and he may also in respect of examinations made under section 22(2)(b), order that the said expenses shall be defrayed by the applicants. A financial institution shall not be required to pay expenses of and incidental to an examination under section 22(1). (*Amended by Ords. 13 of 1989 and 10 of 1995*)

Powers after
examination

24. If in the opinion of the Governor, an examination under this Part shows that the licensed financial institution concerned is carrying on its business in a manner detrimental to the interest of its depositors and other creditors, or has insufficient assets to cover its liabilities to the public, or is either in the Islands or elsewhere contravening any of the provisions of this Ordinance, the Governor may take such one or more of the following steps from time to time, as may seem to him necessary—

- (a) require the financial institution forthwith to take such measures as he may consider necessary in relation to its business, and if it is proved that such measures have not been taken, the financial institution shall be guilty of an offence and liable on summary conviction to a fine of \$500 in respect of every day during which the offence continues; and the officer responsible shall be guilty of an

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offence and liable on summary conviction to a fine of \$500; or

- (b) appoint a person who, in his opinion, has had adequate training and experience to advise the financial institution on the proper conduct of its business and fix the remuneration to be paid by the financial institution to such person; or
- (c) unless he is satisfied that the financial institution is taking adequate measures to put its affairs in order, make an order under section 6(8)(g) revoking the financial institution's licence.

(Amended by Ords. 13 of 1989 and 10 of 1995)

25. (1) Every licensed financial institution shall appoint annually an approved auditor whose duties shall be to make to the shareholders of that institution a report upon the annual balance sheet and accounts, and in every such report the auditor shall state whether, in his opinion the balance sheet is full and fair and properly drawn up, whether it exhibits a true and correct statement of the financial institution's affairs, and, in any case in which the auditor has called for explanation or information from the officers or agents of the financial institution, whether this is satisfactory.

Approved
auditor

(2) The report of an approved auditor under subsection (1) shall be read together with the report of the director of the financial institution at the annual meeting of shareholders and copies of that report shall be sent to the Permanent Secretary, Finance together with copies of the Balance Sheet and Profit and Loss Account, and if any default is made in complying with the requirements of this subsection, the financial institution concerned shall be guilty of an offence and liable on summary conviction to a fine of \$5,000.

(3) If a licensed financial institution fails to appoint an approved auditor under subsection (1) or, at any time, fails to fill a vacancy for such auditor, the Permanent Secretary, Finance may appoint an approved auditor and shall fix the remuneration to be paid by that institution to such auditor.

(4) The duties and powers conferred by subsections (1), (2) and (3) of section 23 in relation to a person or persons appointed under the provisions of section 22 are hereby conferred also in relation to approved auditors.

(5) For the purposes of this section, an approved auditor is an auditor who is a member of a firm which is for the time being declared by the Permanent Secretary, Finance by notice in the *Gazette* to be approved for such purposes.

(6) No person having an interest in any financial institution otherwise than as depositor, and no director, officer or agent of any financial institution shall be eligible for appointment as an approved auditor for that institution; and any person appointed as such auditor to any financial institution who subsequently acquires such interest or becomes a director, officer or agent of that institution shall cease to be such auditor.

(7) Where, in the case of a licensed financial institution incorporated outside the Islands, the Permanent Secretary, Finance is satisfied that a report upon the annual balance sheet and accounts of such institution has been duly made by an auditor in accordance with the law of the country in which such institution is incorporated, and a copy of such report together with the report of the directors of such institution is sent to the Permanent Secretary, Finance, he may by notice in writing exempt any such financial institution from the provisions of this section.

(Amended by Ords. 13 of 1989 and 10 of 1995)

PART VII

GENERAL

Fees payable

26. (1) The Licensee under each licence shall pay to the Permanent Secretary, Finance for the benefit of the revenues of the Islands the fees prescribed upon the granting of the licence and on the 31st day of March in each and every year during the subsistence of the licence, the prescribed annual renewal fee. *(Substituted by Ord. 13 of 1989 and Amended by Ord. 10 of 1995)*

(2) Without prejudice to the power of the Governor to revoke a licence, for contravention of any of the provisions of this Ordinance, under section 6(8), any licensed financial institution which fails to pay any fee payable under this section shall be guilty of an offence and liable on summary conviction to a fine of \$250 for each day during which such fee remains unpaid. *(Amended by Ords. 13 of 1989 and 10 of 1995)*

Publication of
annual list, etc.

27. The Permanent Secretary, Finance shall publish in the *Gazette*—

- (a) before the 31st May in each and every year, a list of all current licences showing in each case, the name of the licensee and the type of licence; and
- (b) immediately upon its occurrence, notice of—
 - (i) the revocation or suspension of a licence;

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(ii) the failure on the part of a licensee to pay the prescribed annual renewal fee on or before the prescribed date; and

(iii) the cessation of a licensee to carry on business.

(Substituted by Ord. 13 of 1989 and Amended by Ord. 10 of 1995)

28. (1) Subject to section 29 and except for the purpose of the performance of duties or the exercise of functions under this Ordinance or when lawfully required to do so by any court of competent jurisdiction in the Islands or under the provisions of any law for the time being in force in the Islands, neither the Permanent Secretary, Finance nor the Superintendent of Banking, nor any person acting under the authority of the Permanent Secretary, Finance or the Superintendent, shall disclose any information relating to any application by any person under the provisions of this Ordinance, or to the affairs of a licensee or a customer of a licensee which has been acquired by the Permanent Secretary, Finance, the Superintendent or authorised person in the performance of his duties or the exercise of his functions under this Ordinance.

Confidentiality

(2) Any person who contravenes the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine of \$50,000 or to imprisonment for a term not exceeding 12 months or to both.

(Inserted by Ord. 10 of 1995)

29. (1) For the purpose of assisting an overseas regulatory authority which has requested information in connection with inquiries being carried out by it, the Superintendent of Banking acting in his discretion may disclose to it such information which he has acquired in connection with the performance of his duties or in the exercise of his functions under this Ordinance as he considers appropriate.

Request for
assistance by
overseas
regulatory
authority

(2) An “overseas regulatory authority” means an authority which in a country or territory outside the Turks and Caicos Islands exercises any functions corresponding to the functions of the Superintendent of Banking under this Ordinance, the functions of Superintendent of Insurance under the Insurance Ordinance or the functions of Superintendent of Trustees under the Trustees (Licensing) Ordinance.

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(3) The Superintendent shall not disclose any such information to the authority unless he is satisfied—

(a) that the information requested by the authority is for the purposes of its regulatory functions;

(b) that the request is not for information that is related directly or indirectly to the imposition, calculation

and collection of taxes or the enforcement of exchange control regulations; and

(c) that the authority is subject to adequate legal restrictions on further disclosure.

(4) The Governor acting in his discretion may from time to time issue guidelines to the Superintendent concerning the discharge of his functions under this section; and the Superintendent shall have regard to any such guidelines in the discharge of his functions under this section.

(5) Before making any guidelines under subsection (4), the Governor shall consult Executive Council.

(6) The Governor shall keep under review the working of any guidelines made under subsection (4) and shall make to Executive Council a report on it at least once in every six months after the coming into operation of this section.

(Inserted by Ord. 10 of 1995)

Attorney
General's fiat

30. No prosecution in respect of any offence committed under this Ordinance shall be instituted except by or with the consent of the Attorney General.

Imprisonment in
default of
payment of fine

31. A person upon whom a fine is imposed under this Ordinance may be sentenced in default of payment thereof to imprisonment in the case of a fine—

(a) not exceeding \$1,000 for three months;

(b) exceeding \$1,000 but not exceeding \$2,500 for six months;

(c) exceeding \$2,500 for twelve months.

Liability of
officers

32. Where any offence under this Ordinance by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of such body corporate, he as well as such body shall be liable to be proceeded against and punished accordingly.

Regulations

33. (1) The Governor may make regulations prescribing all matters authorised or required to be authorised under this Ordinance or as may appear to him to be necessary or desirable for the purpose of giving effect to this Ordinance.

(2) Without derogation from the generality of the foregoing, regulations made under this section may—

(a) prescribe the First Schedule to this Ordinance and provide for amendments and additions to, and deletions from, such Schedule;

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- (b) prescribe the fees to be paid under this Ordinance;
- (c) provide for the granting of exemptions from any requirements of the regulations or the First Schedule;
- (d) define what assets constitute assets or any particular kind of assets for the purposes of this Ordinance and the methods to be employed in computing them;
- (e) such other matters or things as it is necessary or desirable to prescribe for the purposes of this Ordinance.

FIRST SCHEDULE

(Sections 6(2), 20(1) and 33(2)(a))

APPLICATION FOR A LICENCE: PROCEDURE

1. Every company applying for a licence under this Ordinance shall at the time of application furnish to the Governor the following—
 - (a) an application in writing in such form as may be prescribed or if none has been prescribed then in such form as shall be acceptable to the Governor in his discretion;
 - (b) a remittance for such fee as shall be prescribed;
 - (c) evidence in writing satisfactory to the Governor of the incorporation and registration of the applicant under the Companies Ordinance or, if the applicant was incorporated outside the Islands, then such evidence of its proper incorporation and registration according to the law of the place of its incorporation;
 - (d) where the Governor considers it appropriate, a statement in writing in a form acceptable to him from the authority responsible for the supervision of banking in the country in which the applicant or its parent company was incorporated, that such authority is aware of the intended application;
 - (e) evidence in writing satisfactory to the Governor that the board of directors or governing body of the applicant, and the persons responsible for the management of the applicant, is or are sufficiently experienced and knowledgeable in the business of banking;

- (f) either—
- (i) an undertaking in writing that the applicant shall maintain at all times commencing no later than the date it begins banking business, its fully paid up capital at an amount not less than such sum as shall be determined by the Governor at his discretion and notified to the applicant following receipt of its application; or
 - (ii) a guarantee given under seal by a holding or parent company of the applicant or some other person approved by the Governor:

Provided that such guarantee shall be in such form and in respect of such sums as the Governor may at his discretion approve;

And Provided further that such guarantee shall expressly provide that its formal validity, its essential validity, its interpretation and effect, and the rights and obligations of the parties thereto shall be governed exclusively by the law of the Islands and matters relating thereto shall be determined by the courts of the Islands;
- (g) the annual accounts of the applicant and (if appropriate) the annual accounts of the applicant's holding, parent and associated companies for the two years immediately preceding the application, such accounts to be duly audited and certified to the satisfaction of the Governor;
- (h) a statement of the assets and liabilities of the applicant at the end of the month prior to the lodging of the application, such statement to be certified by a director or senior officer of the applicant and, if such assets include a shareholding in another company, a statement of the capital of such company;
- (i) the name, address and professional qualifications of the proposed auditor of the applicant, and also the written consent of such auditor to act;
- (j) three references, one of which shall be financial in nature from a bank or trust company in respect of all the persons who are directors (not to be less than two), managers or senior officers of the applicant;
- (k) a list of all persons, with their addresses and nationalities, who are registered shareholders of the applicant, distinguishing the shareholdings of each, and a list of all persons, with their addresses and nationalities, who are beneficial owners of shares in the applicant but not

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registered shareholders, distinguishing the shares of which each is such beneficial owner, and two or more references verifying the financial good standing of each such shareholder or beneficial owner or person who is a natural person:

Provided that no applicant shall have issued any bearer shares nor shall it have power to issue such shares;

And provided further that no company which is, directly or indirectly, the registered or beneficial owner of any share or shares in the applicant shall have issued, nor have power to issue, any bearer shares;

- (l) a certified copy of the charter, statutes or memorandum and articles of the applicant or other instrument constituting or defining the constitution of the applicant, and if the instrument is not written in the English language, a certified translation thereof and in every case a certified copy of the certificate of incorporation:

Provided that—

- (i) in the case of a company incorporated in the Islands, certification shall be under seal by the Registrar of Companies; and
- (ii) in the case of a company incorporated outside the Islands, certification shall be under the public seal of the place under the law of which the company has been incorporated or under the public seal of the registrar or other responsible officer holding office under such law;

And provided further that every such copy, instrument, translation or certificate shall be verified by a statutory declaration made by a director or the secretary of the applicant;

- (m) a business plan which shall set out details of the commercial operations in which the applicant intends to engage if a licence is granted and which shall include the following information—
- (i) the business objectives of the applicant and the type and source of business contemplated;
 - (ii) the applicant's proposed initial assets and its anticipated assets and liabilities and estimated income at the end of each of the two years next succeeding the grant of the licence;
 - (iii) particulars of the applicant's management structure and personnel;

- (iv) the reasons for the selection of the Islands as a place for the conduct of the applicant's business;
- (v) particulars of the applicant's customer base;
- (n) in the case of an application for an Oversea Banking Licence, an undertaking in writing that the applicant shall not solicit or receive funds by way of trade or business from persons or companies other than those listed in such undertaking and which shall be approved by the Governor who may impose the terms of such undertaking as a condition to which any licence to be granted to the applicant shall be subject;
- (o) a list of all companies in which the applicant holds shares, distinguishing the number of shares held and stating the registered office of each company.

(Amended by L.N. 39/1994)

Returns And
Accounts: Filing
Times

2. All monthly statements required by section 20(1) of this Ordinance to be submitted to the Permanent Secretary, Finance shall be submitted within the first 21 days of the month following the month to which the statement relates. *(Amended by L.N. 39/1994)*

3. All quarterly statements and returns required to be submitted as aforesaid shall be submitted within the first 28 days of the month following the end of the quarter to which the statement or return relates.

BANKING REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATIONS

1. Short title
2. Interpretation
3. Amendments etc. to First Schedule of Ordinance
4. Exemptions: the Governor's power to grant
5. Second Schedule: Fees
6. Third Schedule: Form of Licence
7. Superintendent's power of investigation
8. Duty to report detrimental conduct
9. Prior approval of appointment of directors, senior officers or auditors
10. Prior approval of issue or disposal of shares
11. Duty to notify changes in shareholdings, members or beneficial owners
12. Duty to notify changes in directors or senior officers
13. Duty to notify changes of auditors
14. Prohibition of bearer shares
15. Duty to provide fees schedules
16. Directions
17. Meaning of "Liquid Assets"

FIRST SCHEDULE: (now First Schedule to the Ordinance)

SECOND SCHEDULE: Fees

THIRD SCHEDULE: Form of Licence

BANKING REGULATIONS – SECTION 33*(Legal Notices 9/1990, 39/1994 and Ord. 10 of 1995)*

[14 February 1988] Commencement

1. These Regulations may be cited as the Banking Regulations.

Short title

2. (1) In these Regulations, unless the context otherwise requires, the following expressions have the following meanings—

Interpretation

“the Ordinance” means the Banking Ordinance;

“applicant” means a company applying for a licence;

“licensee” means a company to which a licence has been granted;

“the Superintendent” means the person for the time being appointed under section 3 of the Ordinance to be the Superintendent of Banking;

“prescribed” means prescribed under the Ordinance or under these Regulations.

(2) The expressions defined in section 2(1) of the Ordinance shall, insofar as the same appear in these Regulations and unless the context otherwise requires, have the same meanings as those expressions have for the purposes of the Ordinance.

3. The Governor may by Order published in the *Gazette* make amendments and additions to and deletions from the First Schedule to the Ordinance.

Amendments etc.
to the First
Schedule to the
Ordinance

4. The Governor may, in any case where he deems it appropriate, whether on his own motion or upon application by a licensee, make an order exempting a licensee, wholly or partly and subject to such conditions as he may at his discretion impose, from any of the requirements of the First Schedule to the Ordinance. Any such order shall be published in the *Gazette*.

Exemptions: the
Governor's
power to grant

5. The fees to be paid under the Ordinance shall be as set forth in the Second Schedule to these Regulations.

Second
Schedule: Fees

6. A licence shall be in the form set forth in the Third Schedule to these Regulations.

Third Schedule:
Form of Licence

7. (1) The Superintendent shall have the power to investigate the affairs of any licensee either on his own motion or if so directed by the Governor or Permanent Secretary, Finance.

Superintendent's
power of
investigation

(2) For the purposes of exercising such powers of investigation, the Superintendent shall have the right to enter premises and to inspect, take into his possession, and copy, as appropriate, documentary records, microfilm,

assets held by the licensee, including cash and securities, and information stored as computer data, on disc or otherwise.

(3) The Superintendent shall have the right, in exercising such powers and rights, to require computer data to be copied from one disc to another, or to be printed out into documentary form.

(4) The rights hereinbefore set out shall extend to property of the licensee, property held in the possession of the licensee for a third party, and property of the licensee in the possession or control of a third party.

Duty to report detrimental conduct

8. If at any time a licensee has cause to believe that a customer of the licensee is conducting his business affairs or is likely to do so either contrary to any law of the Islands or in a manner which is, or may become, detrimental to the reputation or standing of the licensee or of the Islands, it shall forthwith notify the Superintendent and furnish full particulars thereof.

Prior approval of appointment of directors, senior officers or auditors

9. Unless expressly exempted from so doing by the Permanent Secretary, Finance, a licensee shall obtain the approval in writing of the Permanent Secretary, Finance prior to making the appointment of the director, senior officer or auditor of the licensee.

Prior approval of issue or disposal of shares

10. No shares in a licensee shall be issued and no issued shares shall be transferred, charged or disposed of in any manner without the prior approval of the Governor:

Provided that the Governor may exempt any licensee from the provisions of this regulation subject to such terms and conditions, if any, as he may deem necessary.

Duty to notify changes in shareholdings, members or beneficial owners

11. Without prejudice to regulation 10 hereof any change in the shareholdings in a licensee or in the persons who are beneficial but not registered owners of the shares in a licensee, shall be notified to the Governor within thirty days of such change and details of the new shareholdings or members or persons shall be given with such notification.

Duty to notify changes in directors or senior officers

12. Without prejudice to regulation 9 hereof any change in the directors or senior officers of the licensee shall be notified to the Permanent Secretary, Finance within fourteen days of such change and details of the newly appointed directors or senior officers shall be given with such notification.

Duty to notify changes of auditors

13. Without prejudice to regulation 9 hereof any change of a licensee's auditor shall be notified to the Permanent Secretary, Finance within fourteen days of such change and details of the newly appointed auditor together with his written consent to act shall be given with such notification:

Provided that the Permanent Secretary, Finance may at his discretion require that the former auditor disclose the circumstances responsible for the change.

14. (1) No licensee shall at any time issue bearer shares nor shall it at any time be authorised to do so by its memorandum or articles, or the charter, statutes or other instrument defining its constitution.

Prohibition of
bearer shares

(2) No company which is, or shall become, directly or indirectly, the registered or beneficial owner of any share or shares in any licensee shall have issued or shall issue at any time, or have power to issue, any bearer shares.

15. (1) Any licensee which holds a National Banking Licence shall keep a stock of forms or leaflets (herein referred to as a "fees schedule") setting out the fees and commissions charged to its customers for usual banking services.

Duty to provide
fees schedules

(2) Such services shall include the following insofar as provided by the licensee —

- (a) the sale and encashment of international money orders;
- (b) the clearing of cheques, including specifically cheques drawn on banks in the United States of America, Canada and the United Kingdom;
- (c) transactions of the customer on his current account or checking account, by reference to their number or amount;
- (d) the transfer of funds, telegraphically or otherwise, to or from a customer's account;
- (e) the supply of cheque books;
- (f) the maintenance of a customer's current or checking account, by reference to the balance at any particular time.

(3) Where the fee or commission is determined by reference to a scale, full particulars of the scale shall be stated.

(4) At the time of opening any type of account with the licensee every person shall be given a fees schedule, and in the event of any changes in such fees or commissions, or of the introduction of any new fees or commissions, all customers of the bank shall be notified and the fees schedule shall be revised accordingly.

16. Whenever anything is required or allowed to be done under the Ordinance or these Regulations and no form or procedure is prescribed for so doing, application may be made in writing to the Permanent Secretary, Finance for directions as to doing the same and anything done in accordance with such directions shall be deemed to have been properly done in compliance with the Ordinance or these Regulations, as the case may be.

Directions

Meaning of
“Liquid Assets”

17. For the purposes of the Ordinance the expression “liquid assets” shall, without prejudice to the generality thereof, include the following—

- (a) money market funds and other deposits at call or short notice with established banks approved by the Permanent Secretary, Finance; and
- (b) government securities with less than one month maturity traded on an established stock exchange approved by the Permanent Secretary, Finance; and
- (c) bills of exchange discountable at a Central Bank and having less than one month maturity.

FIRST SCHEDULE

(Now First Schedule to the Ordinance)

SECOND SCHEDULE*(Regulation 5)*

(FEES)

Fees on the grant of a Licence

1. Upon the grant of a National Banking Licence only \$15,000
Upon the grant of an Oversea Banking Licence Only \$10,000
Upon the simultaneous grant to the same applicant of
both a National Banking Licence and an Oversea
Banking Licence, in lieu of the above fees \$20,000

Provided that, in the case of any grant, such fee shall be reduced by one-twelfth for every completed month from the 31st day of March last preceding the date of the grant.

Fees on the renewal of a Licence

2. On or before the 31st day of March in each year after the grant of a National Banking Licence only and during its subsistence \$10,000
On or before the 31st day of March in each year after the grant of an Oversea Banking Licence only and during its subsistence \$ 7,500
On or before the 31st day of March in each year after the grant, simultaneous or otherwise, to the same applicant of both a National Banking Licence and an Oversea Banking Licence and during the subsistence of both licences, in lieu of the above fees \$17,000

THIRD SCHEDULE

(Regulation 6)

(FORM OF LICENCE)

BANKING ORDINANCE

BANKING REGULATIONS

LICENCE TO CARRY ON BANKING BUSINESS

1.being a financial institution incorporated in and having its Head Office at is hereby granted a National Banking Licence*
an Oversea Banking Licence*
both a National Banking Licence and an Oversea Banking Licence*
to carry on banking business in the Islands*
from within the Islands*
in and from within the Islands*
2. The licensee is/is not* permitted under section 11 of the Ordinance to use the word "bank" in the title or description of its business.
3. This licence is issued under and subject to the provisions of the Banking Ordinance and these Regulations and any other Regulations made under the Ordinance and subject also to the conditions (if any) set out hereunder.

CONDITIONS

Dated at Grand Turk thisday of 19/20

Governor

* Delete as appropriate.

DECLARATIONS OF APPROVED AUDITOR FIRMS –SECTION 25

(Gazette Notices 330, 331, 332, 333 and 334/1990)

The following firms have been declared to be approved for the purposes of section 25 of the Banking Ordinance, upon the conditions noted—

Name	Conditions	Gazette Notice	Date
Morris, Cottingham, Co.	Overseas Banks only	G.N. 335/90	5/10/90
Ernst and Young	None	G.N. 336/90	5/10/90
KPMG Peat Marwick	None	G.N. 337/90	5/10/90
Coopers and Lybrand	None	G.N. 338/90	5/10/90

GUIDELINES—OVERSEAS REGULATORY AUTHORITY
— SECTION 29

GUIDELINES FOR THE DISCLOSURE OF INFORMATION TO AN
OVERSEAS REGULATORY AUTHORITY

(Gazette Notice of 1 April 1997)

*(Issued by HE The Governor pursuant to section 29 of the
Banking Ordinance, section 12 of the Insurance Ordinance,
and section 9 of the Trustees Licensing Ordinance)*

1. These guidelines concern the discharge by the Superintendent of his functions under section 29 of the Banking Ordinance, section 12 of the Insurance Ordinance, or section 9 of the Trustees Licensing Ordinance, relating to the disclosure to an Overseas Regulatory Authority (ORA) of information which he has acquired in connection with the performance of his duties, or in the exercise of his functions under the Ordinance.

Cap. 121

Cap. 123

2. Assistance may only be given for the purpose of the regulatory function of the ORA, which may include purposes relating to the prudential supervision of the financial services industry and for the obtaining of information relating to market oversight and the protection of the markets of the Turks and Caicos Islands and the markets of the country of the ORA against fraudulent transactions.

3. Where the Superintendent expects to request corresponding assistance from an ORA or expects an ORA to make frequent requests for assistance from him, he should enter into a Memorandum of Understanding (MOU) with the ORA based on the proforma MOU annexed to these guidelines.*

4. The Superintendent must satisfy himself that an ORA is an authority which exercises regulatory functions corresponding to his functions under the Insurance Ordinance and Regulations, the functions of the Superintendent of Banking under the Banking Ordinance and Regulations, or the functions of the Superintendent of Trustees under the Trustees Licensing Ordinance and Regulations.

5. A request from an ORA should be in writing and should contain sufficient particulars of the following to enable the Superintendent to assess whether the conditions set out in the Ordinance governing the disclosure of information are satisfied—

(a) details of the information requested (including the identity of the person making the request);

* The proforma is not included in this Revised Edition, it may be found in the Revised Edition of the Trustees Licensing Ordinance, Cap. 123

- (b) the link between the information requested and the territory of the ORA;
- (c) the purpose for which the information is sought;
- (d) a description of the conduct, or suspected conduct, which gives rise to the request;
- (e) the link between the specified laws or regulatory requirements and the regulatory function of the ORA;
- (f) the relevance of the requested information to the specified laws or regulatory requirements;
- (g) copies of any statutory provisions in the territory of the ORA which prohibit or restrict the further disclosure of information disclosed to it by the Superintendent; and
- (h) the steps, if any, taken by the ORA to obtain the requested information by some other means.

6. In deciding whether to accept or decline a request for assistance, the Superintendent should take into account whether the requested information should be obtained by some other means.

7. No assistance will be given where the request is for information relating directly or indirectly, to the imposition, calculation and collection of taxes or the enforcement of exchange control laws and regulations. If the Superintendent is of the view that the request is for such information, he must refuse all assistance. An ORA must furnish the Superintendent with an undertaking that the request is not for such information.

8. An ORA must furnish the Superintendent with an undertaking that it will keep confidential to the extent permitted by law any information disclosed to it by the Superintendent. However, an ORA may disclose such information to another regulatory authority in its jurisdiction if such authority is responsible for taking regulatory action or imposing regulatory requirements in the ORA's jurisdiction; but before doing so, an ORA must obtain the approval of the Superintendent for such disclosure.

9.1 Where the information which is requested is information to which this paragraph applies, the Superintendent may disclose the information without regard to paragraphs 5, 6 and 8 of these guidelines.

9.2 This paragraph applies to requests for information about companies, being information which is routine in nature and which concerns non-sensitive matters, and which relate to—

- (a) a company's local agent;
- (b) a company's registered office or principal office;
- (c) a company's local manager;

- (d) a company's licence: details of the licence (i.e. type, date, number, class of business for which it is licensed and the conditions and restrictions if any, endorsed on its licence;
 - (e) the standing of the company with the Superintendent, and the Registrar of Companies;
 - (f) company records which are available for public inspection.
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