

CAYMAN ISLANDS



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BANKS AND TRUST COMPANIES LAW

(2013 Revision)

Law 4 of 1989 consolidated with Laws 20 of 1993, 28 of 1993, 16 of 1996 (part), 10 of 1998, 12 of 1999, 3 of 2000, 2 of 2001, 35 of 2002, 31 of 2006, 8 of 2008, 7 of 2012 and 32 of 2012.

Revised under the authority of the Law Revision Law (1999 Revision).

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Law 4 of 1989-15th March, 1989

Banks and Trust Companies Law (2013 Revision)

Law 20 of 1993-24th September, 1993
Law 28 of 1993-29th November, 1993
Law 16 of 1996-20th September, 1996
Law 10 of 1998-17th June, 1998
Law 12 of 1999-10th June, 1999
Law 3 of 2000-14th July, 2000
Law 2 of 2001-20th April, 2001
Law 35 of 2002-19th December, 2002
Law 31 of 2006-29th September, 2006
Law 8 of 2008-30th June, 2008
Law 7 of 2012-29th August, 2012
Law 32 of 2012-23rd November, 2012.

Consolidated and revised this 31st day of July, 2013.

Note (not forming part of the Law): This revision replaces the 2009 Revision which should now be discarded.

BANKS AND TRUST COMPANIES LAW

(2013 Revision)

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BANKS AND TRUST COMPANIES LAW

(2013 Revision)

1. This Law may be cited as the Banks and Trust Companies Law (2013 Revision). Short title

2. In this Law-

Definitions

“authorised agent” means a person so designated by a bank or trust company under paragraph (b) of section 6(2);

“Authority” means the Cayman Islands Monetary Authority established under section 3(1) of the Monetary Authority Law (2011 Revision) and includes any employee of the Authority acting under the Authority’s authorisation; 2011 Revision

“bank” means a person carrying on banking business;

“banking business” means the business of receiving (other than from a bank or trust company) and holding on current, savings, deposit or other similar account money which is repayable by cheque or order and may be invested by way of advances to customers or otherwise;

“company” means a company incorporated under the laws of the Islands or under the laws of any other country or place;

“controlled subsidiary” means a trust company-

- (a) that is incorporated in the Islands;
- (b) that is a wholly owned subsidiary of a licensee under section 6(5)(c); and
- (c) whose directors and senior officers are directors and senior officers of the licensee or are otherwise persons approved by the Authority as fit and proper persons to be directors and senior officers of licensees holding licences for trust business under section 6(5).

“Court” means the Grand Court;

“debt” has the meaning assigned to that expression in section 2 of the Mutual Funds Law (2013 Revision); 2013 Revision

“Governor” means the Governor in Cabinet;

“licence” means a licence granted under section 6;

“licensee” means a person holding a licence under this Law;

“net worth” means excess assets over liabilities as presented under applicable generally accepted accounting principles subject to adjustment for non-admitted assets as determined by the Authority;

	<p>“trust business” means the business of acting as trustee, executor or administrator; and</p> <p>“trust company” means a company carrying on trust business.</p>
Determination of fitness and propriety	<p>3. In determining for the purposes of this Law whether a person is a fit and proper person, regard shall be had to all circumstances, including that person’s -</p> <ul style="list-style-type: none">(a) honesty, integrity and reputation;(b) competence and capability; and(c) financial soundness.
Extent of Law	<p>4. (1) This Law has effect in addition to and not in derogation of any other provisions having the force of law in the Islands.</p> <p>(2) This Law does not apply to the Cayman Islands Civil Service Association Co-operative Credit Union Limited.</p>
Licence or registration required to carry on banking or trust business	<p>5. (1) No banking business may be transacted from within the Islands, whether or not such business is carried on in the Islands, except by a person who is in possession of a valid licence granted by the Authority authorising him to carry on such business.</p> <p>(2) Subject to subsection (3) and to such other exemptions and conditions as may be prescribed by regulations made by the Governor under this subsection, no trust company may carry on trust business from within the Islands, whether or not such business is carried on in the Islands, unless it is in possession of a valid licence granted by the Authority authorising it to carry on such business.</p> <p>(3) A trust company that is a controlled subsidiary does not require a licence to carry on the business of issuing debt instruments or to carry on other trust business that is-</p> <ul style="list-style-type: none">(a) connected with the trust business of the licensee by which the controlled subsidiary is owned; and(b) within the scope of that licensee’s Trust licence. <p>(4) Notwithstanding subsection (3), a controlled subsidiary to which that subsection refers shall register with the Authority; and, in order to be registered, such controlled subsidiary shall-</p> <ul style="list-style-type: none">(a) at that time of registration and on or before the 31st day of January every year thereafter during the continuation of the registration, file with the Authority an annual declaration, in such form as the Authority may approve, declaring-<ul style="list-style-type: none">(i) the name of the controlled subsidiary;(ii) the name of the licensee of which the controlled subsidiary is a subsidiary;

- (iii) the names of the directors and senior officers of the controlled subsidiary; and
- (iv) that the controlled subsidiary is a controlled subsidiary to which subsection (3) applies; and
- (b) at the time of registration and on or before the 31st day of January every year thereafter during the continuation of the registration, pay to the Government the prescribed fee.

(5) A controlled subsidiary that is registered under subsection (4) may, on payment of the prescribed fee, act as a trustee of a trust that is registered as a mutual fund under the Mutual Funds Law (2013 Revision) without being licensed as a mutual fund administrator under that Law, if the licensee by which the controlled subsidiary is owned is itself licensed under that Law to administer such trust.

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(6) A person who contravenes this section or any regulations made under subsection (2) commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year, and in the case of a continuing offence to a fine of one thousand dollars for each day during which the offence continues.

6. (1) Any person desirous of carrying on banking business and any company desirous of carrying on trust business from within the Islands shall make application to the Authority for the grant of a licence. Every such application shall be in writing and shall be sent to the Authority accompanied by such information and particulars and details as may be prescribed together with the prescribed application fee (which the Authority shall forward to the Financial Secretary for the benefit of the revenue and which shall be refunded if the licence is granted), and the Authority may, if satisfied that the carrying on of such business will not be against the public interest, grant a licence to such person or company subject to such terms and conditions, if any, as the Authority may deem necessary.

Application to be made to Authority

- (2) A licence shall not be granted to a bank or trust company unless it has-
 - (a) a place of business in the Islands, approved by the Authority, which will be its principal office in the Islands; and
 - (b) two individuals or a body corporate, approved by the Authority, resident or incorporated in the Islands to be its agent in the Islands.

(3) Where, in accordance with paragraph (b) of subsection (2), a licensee has appointed two individuals in the Islands to act as its agent in the Islands, the licensee may appoint them to act either separately or jointly.

- (4) A licensee shall not-

- (a) cease to have a principal office in the Islands;
 - (b) change its principal office in the Islands without the prior approval of the Authority;
 - (c) cease to have an authorised agent under paragraph (b) of subsection (2), or
 - (d) change its agent (or, where the licensee has appointed two individuals to be its agent, either of them) without the prior approval of the Authority.
- (5) Licences granted under subsection (1) shall be granted either for carrying on of-
- (a) banking business within and outside the Islands but subject to such conditions as may be imposed by the Authority, known as “A” licences;
 - (b) banking business with the restrictions on that business mentioned in subsection (6), known as “B” licences;
 - (c) trust business within and outside of the Islands but subject to such conditions as may be imposed by the Authority, known as Trust licences;
 - (d) banking business with the restrictions on that business mentioned in subsection (6), and incorporating a further restriction that the licensee shall not receive or solicit funds by way of trade or business from persons other than those listed in any undertaking accompanying the application for the licence, known as Restricted “B” licences;
 - (e) trust business with the restriction that the licensee shall not undertake trust business for persons other than those listed in any undertaking accompanying the application for the licence, known as Restricted Trust licences; or
 - (f) trust business under a Trust licence to a licensee which is a wholly-owned subsidiary of another licensee and where the sole purpose of that subsidiary is to act as its nominee, known as Nominee (Trust) licences.

Any conditions imposed pursuant to this subsection may, at any time, be varied or revoked by the Authority.

- (6) The holder of a “B” licence shall not-
- (a) take deposits from any person resident in the Islands, other than another licensee, or an exempted or an ordinary non-resident company which is not carrying on business in the Islands;
 - (b) invest in any asset which represents a claim on any person resident in the Islands, except a claim resulting from-

- (i) a loan to an exempted or an ordinary non-resident company not carrying on business in the Islands;
 - (ii) a loan by way of mortgage to a member of its staff or to a person possessing or being deemed to possess Caymanian status under the Immigration Law (2013 Revision) for the purchase or construction of a residence in the Islands to be owner-occupied;
 - (iii) a transaction with another licensee; or
 - (iv) the purchase of bonds or other securities issued by the Government, a body incorporated by statute, or a company in which the Government is the sole or majority beneficial owner; or
- (c) without the written approval of the Authority, carry on any business in the Islands other than one for which the “B” licence has been obtained,

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and, without prejudice to the foregoing restrictions, a holder of a “B” licence which is not a subsidiary or branch of a bank licensed in a country or territory outside the Islands, shall not after the 26th April, 2003 carry on business in the Islands unless it has such resources (including staff and facilities) and such books and records as the Authority considers appropriate having regard to the nature and scale of the business.

(7) Every person to whom a licence is first granted shall, at the date of such grant, pay the prescribed fee to the Financial Secretary for the benefit of the revenue.

(8) Every holder of a licence shall, on or before every 15th day of January after the first grant of the licence, pay the prescribed annual fee to the Financial Secretary for the benefit of the revenue:

Provided that, unless the Authority waives the same, there shall be payable to the Financial Secretary for the benefit of the revenue by a licensee who fails to pay the prescribed annual fee by that date a surcharge not exceeding one-twelfth of that fee for every month or part of a month that the fee is not paid.

(9) Without prejudice to the foregoing provisions of this section, if the annual fee referred to in subsection (8) is not paid on or before every 15th day of January after the first grant of the licence, the unpaid annual fee may be sued for by the Crown by action as a civil debt and the Crown may require, and the court may order, the payment of any penalties accrued in respect of the late payment of the fee.

(10) Whenever it is considered to be in the public interest, the Authority may refuse to grant a licence.

(11) The Authority shall refuse to grant a licence if the Authority is of the opinion that the business to which the application relates would not be carried on by persons who are fit and proper persons to be directors or, as the case may be, managers or officers.

(12) For the purposes of subsection (2)(a)-

“place of business”, with reference to any bank applying for the grant of a “B” licence (other than a subsidiary or branch of a bank licensed in a country or territory outside the Islands), means having such resources (including staff and facilities) and such books and records as the Authority considers appropriate having regard to the nature and scale of the business.

(13) In subsection (9)-

“court” means the Grand Court or a court of summary jurisdiction, as the case may be.

Shares not to be issued
or transferred without
approval of Authority

7. (1) No shares in a company which is a licensee under this Law shall be issued, and no issued shares shall be transferred or disposed of in any manner, without the prior approval of the Authority.

(2) The Authority may exempt from the provisions of subsection (1) a licensee whose shares are publicly traded on a stock exchange recognised by the Authority, and any such exemption-

- (a) shall be subject to a condition that the licensee shall, as soon as reasonably practicable, notify the Authority of-
 - (i) any change in control of the licensee;
 - (ii) the acquisition by any person or group of persons of shares representing more than ten per cent of the licensee’s issued share capital or total voting rights; or
 - (iii) the acquisition by any person or group of persons of shares representing more than ten per cent of the issued share capital or total voting rights of the licensee’s parent company;
- (b) shall be subject to a condition that the licensee shall, as soon as reasonably practicable, provide such information to the Authority, and within such period of time, as the Authority may require for the purpose of enabling an assessment as to whether persons acquiring control or ownership of the licensee in the circumstances set out in paragraph (a) are fit and proper persons to have such control or ownership; and
- (c) shall be subject to such terms and other conditions as the Authority may deem necessary.

(3) In subsection (1) the reference to shares being transferred or disposed of includes not only the transfer or disposal of the legal interest in the shares but also the transfer or disposal of any beneficial interest in the shares.

8. (1) Except in the case of a Restricted “B” licence, or a Restricted Trust licence, or a Nominee (Trust) licence, a licence shall not be granted to a bank or trust company unless it has a net worth of not less than four hundred thousand dollars or its equivalent in other currencies, or such greater sum as may be determined by the Authority. Net worth requirements

(2) A Restricted “B” licence or a Restricted Trust licence shall not be granted to a bank or trust company unless it has a net worth of not less than twenty thousand dollars or its equivalent in other currencies, or such greater sum as may be determined by the Authority.

(3) A Nominee (Trust) licence shall not be granted to a trust company unless such trust company furnishes a guarantee from the licensee of which it is a wholly-owned subsidiary for liabilities of up to two hundred thousand dollars or its equivalent in other currencies, or such greater sum as may be determined by the Authority.

(4) When the Authority has reasonable cause to believe that there are grounds for doing so, the Authority may require a licensee to increase its net worth by increasing its paid-up capital to such greater sum as the Authority may determine for the nature of the banking business or trust business, current or proposed.

(5) A licensee shall at all times maintain the net worth required by this section unless exempted by the Authority.

9. (1) The Authority may, by notice in writing, require a licensee to maintain such portion of its issued capital, in cash or cash equivalent instruments, in such amounts and in such manner, as the Authority considers appropriate, having regard to the risks arising from the activities of the licensee and such other factors as the Authority considers relevant. Capital funds requirements

(2) In this section-

“cash equivalent instruments” means a highly liquid security with a known market value and a maturity, when acquired, of less than three months.

10. (1) A licensee holding a licence for the carrying on of banking business and incorporated under the Companies Law (2013 Revision) shall not, at any time, have a capital adequacy ratio of less than ten per cent (or such other percentage as may be determined by the Authority from time to time) as Capital adequacy ratio
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calculated in accordance with such form, content and manner as may be prescribed.

(2) The Authority may, if it considers it to be appropriate in the particular circumstances of a licensee incorporated under the Companies Law (2013 Revision) having regard to the risks arising from the activities of the licensee and such other factors as the Authority considers relevant, vary the capital adequacy ration applicable to that licensee.

(3) A licensee which fails to comply with the requirements of this section may, for the purposes of section 18, be treated by the Authority as carrying on business in a manner detrimental to the public interest, the interest of its depositors or other creditors.

Use of word "bank", etc.

11. (1) Except with the approval of the Authority, no person, other than a licensee, shall-

- (a) use or continue to use the words "bank", "trust", "trust company", "trust corporation", "savings" or "savings and loan" or any of their derivatives, either in English or in any other language, in the description or title under which such person is carrying on business from within the Islands, whether or not such business is carried on in the Islands;
- (b) make or continue to make any representation in any billhead, letter, letterhead, circular, paper, notice, advertisement or in any other manner whatsoever that such person is carrying on banking business or trust business; or
- (c) in any manner whatsoever solicit or receive deposits from the public.

(2) Except with the approval of the Authority, no company shall be registered, or continue to be registered, by a name which contains the words "bank", "trust", "trust company", "trust corporation", "savings" or "savings and loan" or any of their derivatives, either in English or in any other language, in the description or title under which such company is carrying on business from within the Islands, whether or not such business is carried on in the Islands.

(3) Before giving its approval under subsection (1) or (2), the Authority may require of any person such references and such information and particulars as may be prescribed.

(4) Whenever the Authority considers it to be in the public interest, the Authority may withdraw any approval given under subsection (1).

(5) The Authority may refuse to grant a licence to a bank or trust company or, if such bank or trust company is already in possession of a licence, the

Authority may revoke such licence if, in the Authority's opinion, such bank or trust company is carrying on or intending to carry on banking or trust business, as the case may be, under a name which-

- (a) is identical with that of any company, firm or business house, whether within the Islands or not, or which so nearly resembles that name as to be calculated to deceive;
- (b) is calculated to suggest, falsely, the patronage of or connection with some person or authority, whether within the Islands or not; or
- (c) is calculated to suggest, falsely, that such bank or trust company has a special status in relation to or derived from the Government, has the official backing of or acts on behalf of the Government, of any department, branch, agency or organ of Government, or of any officer thereof, or is recognised in the Islands as a national or central bank or trust company.

(6) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year and, in the case of a continuing offence, to a fine of one thousand dollars for each day during which the offence continues.

12. (1) Every licensee incorporated under the Companies Law (2013 Revision) shall have its accounts audited annually or at such other times as the Authority may require by an auditor, who shall be a chartered accountant, certified public accountant or some other professionally qualified accountant, approved by the Authority.

Accounts
2013 Revision

(2) The audited accounts shall be forwarded to the Authority within three months of the end of the financial year of the licensee, unless prior written approval for an extension has been granted by the Authority.

(3) Every licensee not incorporated under the Companies Law (2013 Revision) shall provide a copy of the audited annual accounts of its head office to the Authority within three months of the end of the financial year of such parent company, unless prior approval for an extension has been granted by the Authority.

(4) When a licensee incorporated under the Companies Law (2013 Revision) changes its auditor, the Authority may require the former auditor to explain the circumstances responsible for such change.

13. (1) If an auditor, in the course of carrying out an audit of the accounts of a licensee, obtains information or suspects that the licensee is-

Obligation of auditors

2011 Revision
2013 Revision

- (a) unable or likely to become unable to meet its obligations as they fall due;
- (b) carrying on or attempting to carry on business or is winding up its business voluntarily in a manner that is prejudicial to its investors or creditors;
- (c) carrying on or attempting to carry on business without keeping any or sufficient accounting records to allow its accounts to be properly audited;
- (d) carrying on or attempting to carry on business in a fraudulent or criminal manner; or
- (e) carrying on or attempting to carry on business without compliance with-
 - (i) this Law or any regulations made hereunder;
 - (ii) the Monetary Authority Law (2011 Revision);
 - (iii) the Money Laundering Regulations (2013 Revision); or
 - (iv) a condition of the licence,

the auditor shall immediately give the Authority written notice of his information or suspicion and, in the case of suspicion, his reason for that suspicion.

(2) Without prejudice to subsection (8), if it appears to the Authority that an auditor has failed to comply with subsection (1), the Authority may disqualify him from being an auditor of a licensee; but the Authority may remove any disqualification imposed under this subsection if satisfied that the person in question will in future comply with subsection (1).

(3) A licensee shall not appoint as an auditor a person disqualified under subsection (2).

(4) Where the Authority has granted approval of an auditor under this Law, the approval may be revoked by the Authority if the Authority is of the opinion that the auditor is not sufficiently competent to carry out an audit of the accounts of a licensee or that, in all the circumstances, the auditor is incapable of carrying out the audit objectively.

(5) No person carrying out or charged with the carrying out of any duty, obligation or function under this section shall incur civil liability to any other person for anything done or omitted to be done in respect of the discharge or purported discharge of that duty or function unless it is shown that the act or omission was in bad faith.

(6) A reference in this section to an auditor carrying out an audit of the accounts of a licensee includes an auditor who was engaged to carry out such an audit or who was in the course of carrying out such an audit but resigned before

carrying out or completing the audit or whose contract to carry out or complete the audit was otherwise terminated.

(7) Nothing in subsection (1) shall impose on an auditor carrying out an audit of the accounts of a licensee an obligation to do anything that he would not otherwise be required to do in accordance with generally accepted auditing standards, other than the obligation to provide notice and reasons to the Authority.

(8) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.

14. (1) A licensee incorporated under the Companies Law (2013 Revision) shall not, without the prior written approval of the Authority-

Certain prohibitions on licensee
2013 Revision

- (a) open outside the Islands, a subsidiary, branch, agency or representative office; or
- (b) change its name.

(2) A licensee incorporated under the Companies Law (2013 Revision) holding a licence for the carrying on of banking business shall not acquire or hold a beneficial interest in an entity, whether directly or indirectly, so that the value of the interest at any time exceeds twenty per cent of the net worth of the licensee-

- (a) except with the prior written approval of the Authority; or
- (b) except insofar as may be necessary with respect to any interest acquired by the licensee in satisfaction of debts due to it, but any such interest acquired in satisfaction of debts shall be disposed of within a period not exceeding five years unless permission to extend such period has been given by the Authority.

(3) Subject to subsections (4) and (5), a licensee holding a licence for the carrying on of banking business shall not purchase, acquire or lease real estate unless the Authority has given prior written approval or-

- (a) such real estate is necessary for the purpose of conducting its business or providing housing or amenities for its staff, having regard to any reasonable requirements for future expansion of its business or staff; and
- (b) the market value of the real estate does not exceed twenty per cent of the net worth of the licensee, or such other sum as to the Authority may seem appropriate to a maximum of fifty per cent of the net worth of the licensee.

(4) Where the licensee exercises its legal right in respect of any property which is the security for any debt, the licensee may acquire such property, but in that case the property shall not be retained for a period in excess of five years without the permission of the Authority.

- (5) Nothing in this section shall require a licensee-
- (a) which holds a licence for the carrying on of banking business; and
 - (b) which immediately before the 14th November, 2006 owns or leases real estate the market value of which exceeds fifty per cent of the net worth of the licensee,

to comply with subsection (3)(b) before the expiry of a period of five years commencing with that date.

(6) A contract, transaction, obligation or instrument entered into by any person shall not be rendered unenforceable merely because it is entered into in connection with banking business carried on by that person in contravention of this section.

General requirements for trust companies

15. (1) A licensee holding a Trust Licence shall obtain and maintain adequate professional indemnity insurance, or have in place other appropriate arrangements to cover risks, in respect of its trust business, and such insurance or arrangements shall be subject to review by the Authority.

(2) In conducting reviews under subsection (1), the Authority shall have regard to relevant factors including the nature and scope of the trust business, the financial position and reputation of the licensee and its parent company, and the existence of any group coverage or financial commitment made by the parent company or other appropriate body to cover risks in respect of the licensee's trust business.

Annual fees in relation to provision of registered office services

15A.(1) A licensee holding a Trust licence shall pay the prescribed fee for each company for which the licensee provided a registered office up to the 31st day of December in the preceding year.

(2) Subsection (1) shall not apply to a company over which the licensee has power by virtue of the articles of association of the company -

- (a) to appoint or remove unilaterally the directors of the company; or
- (b) through a chain of one or more companies, to procure the appointment or removal unilaterally of the directors of the company.

(3) Every Trust licensee shall, on or before every 15th day of January, pay the annual fee referred to in subsection (1) for the benefit of the revenue and, unless the Authority waives the annual fee, there shall be payable by a licensee who fails to pay the annual fee by that date a surcharge not exceeding one-twelfth of that fee for every month or part of a month that the fee is not paid, such surcharge being for the benefit of the revenue.

(4) Where the annual fee is not paid on or before the 15th day of January, the unpaid annual fee may be sued for by the Crown by action as a civil debt and the Crown may require, and the court may order, the payment of any penalties accrued in respect of the late payment of the fee.

16. (1) A licensee shall at no time have less than two directors.

Number and approval of directors

(2) Unless exempted from such a requirement by the Authority, a licensee shall, before the appointment of a director or other senior officer, apply to the Authority for its written approval of such appointment.

(3) The Authority shall refuse to grant approval under subsection (2) if the Authority is of the opinion that the director or other senior officer to whom the application relates is not a fit and proper person to be such director or, as the case may be, senior officer.

(4) Approval granted under subsection (2)-

- (a) *ipso facto* lapses if the director or senior officer becomes bankrupt or is convicted of an offence involving dishonesty; and
- (b) may be revoked by the Authority.

(5) Approval granted under paragraph (b) of section 6(2) may be revoked by the Authority.

17. (1) It is the duty of the Authority-

Powers and duties of Authority

- (a) to maintain a general review of banking practice in the Islands;
- (b) whenever it thinks fit, to examine, by way of the receipt of regular returns or in such other manner as it thinks necessary, the affairs or business of any licensee carrying on business in or from within the Islands for the purpose of satisfying itself that this Law is being complied with and that the licensee is in a sound financial position and, whenever it thinks fit, to report to the Governor the results of every such examination;
- (c) to assist in the investigation of any offence against the laws of the Islands which it has reasonable grounds to believe has or may have been committed by a licensee or by any of its directors or officers in their capacity as such; and
- (d) to examine accounts and audited annual accounts forwarded to it under section 10 and to report on them to the Governor whenever it thinks fit.

(2) The Authority may-

- (a) examine and make decisions with respect to applications for licences;

- (b) examine all proposals and make decisions in respect of the exercise of its powers under sections 18, 19 and 20; and
- (c) take all necessary action, including originating applications to the Grand Court, to ensure the proper and just implementation of every provision of this Law.

(3) In the performance of its functions under this Law, the Authority is entitled at all reasonable times-

- (a) to have access to such books, records, vouchers, documents, cash and securities of any licensee; and
- (b) to request any information, matter or thing from any person whom it has reasonable grounds to believe is carrying on banking or trust business in the Islands in contravention of section 5(1) or (2),

as the Authority may reasonably require for the purpose of enabling it to perform its functions under this Law.

(4) The Authority may, in writing, authorise any other person to assist the Authority in the performance of its functions under this Law, and the Authority may make provision for the payment of such person's remuneration and expenses whether or not the performance of the function has been completed.

(5) If it appears to it that there is reasonable ground for suspecting that an offence against this Law has been or is being committed by any person, the Authority may, with the approval of the Court, take such action as it considers necessary, in the interests of the depositors or of the beneficiaries of any trust, or other creditors of that person, to preserve any assets held by that person.

Additional powers of Authority

18. (1) Whenever the Authority is of the opinion that-

- (a) a licensee is or appears likely to become unable to meet its obligations as they fall due;
- (b) a licensee is carrying on business in a manner detrimental to the public interest, the interest of its depositors or of the beneficiaries of any trust, or other creditors;
- (c) a licensee has contravened this Law;
- (d) a licensee has failed to comply with a condition of its licence;
- (e) the direction and management of a licensee's business has not been conducted in a fit and proper manner;
- (f) a person holding a position as a director, manager or officer of a licensee's business is not a fit and proper person to hold the respective position; or

- (g) a person acquiring control or ownership of a licensee in the circumstances set out in paragraph (a) of section 7(2) is not a fit and proper person to have such control or ownership,

the Authority may forthwith do any of the following-

- (i) revoke the licence;
- (ii) impose conditions, or further conditions, as the case may be, upon the licence and may amend or revoke any such condition;
- (iii) require the substitution of any director or officer of the licensee;
- (iv) at the expense of the licensee, appoint a person to advise the licensee on the proper conduct of its affairs and to report to the Authority thereon within three months of the date of his appointment;
- (v) at the expense of the licensee, appoint a person to assume control of the licensee's affairs who shall, *mutatis mutandi*, have all the powers of a person appointed as a receiver or manager of a business appointed under section 18 of the Bankruptcy Law (1997 Revision); and
- (vi) require such action to be taken by the licensee as the Authority considers necessary.

1997 Revision

(2) Notwithstanding section 25(1), a licensee may, within seven days of the decision, apply to the Authority for a reconsideration of its decision to revoke a licence under paragraph (i) of subsection (1).

(3) A person appointed under subparagraph (iv) or (v) of subsection (1) or whose appointment has been extended under paragraph (b) of subsection (4) shall from time to time at his discretion and in any case within three months of the date of his appointment or of the extension of his appointment (as the case may be), prepare and furnish a report to the Authority of the affairs of the licensee and of his recommendations thereon.

(4) On receipt of a report under subsection (3), the Authority may-

- (a) revoke the appointment of the person appointed under subparagraph (iv) or (v) of subsection (1);
- (b) extend the period of his appointment;
- (c) subject to such conditions as the Authority may impose, allow the licensee to reorganise its affairs in a manner approved by the Authority; or
- (d) revoke the licence and apply to the Court for an order that the licensee be forthwith wound up by that Court in which case the provisions of the Companies Law (2013 Revision) relating to the

winding up of a company by that Court shall, *mutatis mutandis*, apply.

(5) Notwithstanding any provisions herein, the Authority may revoke a licence if the licensee-

- (a) has ceased to carry on banking business or trust business; or
- (b) goes into liquidation or is wound up or otherwise dissolved.

(6) Whenever the Authority revokes a licence under subparagraph (i) of subsection (1), paragraph (d) of subsection (4) or subsection (5) the Authority shall cause notice of such revocation to be gazetted, and may also cause such notice to be published (whether within the Islands or elsewhere) in such newspaper or other publication as the Authority may consider necessary in the circumstances.

Authority may apply to Court

19. (1) The Authority may, in any case in which a licensee, or a person who has at any time been a licensee, is being wound up voluntarily, apply to the Court if the Authority considers that the winding up is not being conducted in the best interests of its depositors, the beneficiaries of any trust, or other creditors, and the Court shall make such order as it shall consider appropriate.

(2) Where a petition for the winding up of a licensee, or a person who has at any time been a licensee, is presented by a person other than the Authority, the Authority shall be served with a copy of the petition by the petitioner and may appear at the hearing of the petition, and the provisions of subsections (3) and (4) shall apply.

(3) A document which relates to a petition for winding up and which is required to be sent to a licensee or former licensee or any of their respective depositors, beneficiaries, or other creditors, shall, in addition, be sent to the Authority.

(4) A person appointed for the purpose by the Authority may-

- (a) attend a meeting of creditors of a licensee or former licensee;
- (b) attend a meeting of a committee established to discuss a compromise or arrangement; and
- (c) make representations as to any matter for decision at any such meeting.

Surrender of licence

20. (1) A licensee which has ceased to carry on the business in respect of which the licence was granted may apply to the Authority to surrender its licence if it-

- (a) has ceased to carry on such business, and produces evidence that it has repaid all deposits held by it and has transferred all trust assets held or administered by it: or

- (b) is being wound up voluntarily and produces evidence that it is solvent and able forthwith to repay all deposits held by it and all its other creditors and has transferred all trust assets held or administered by it,

and the Authority may thereupon approve the surrender.

(2) In the case of an application under paragraph (b) of subsection (1) the Authority may apply to the Court for the licensee to be wound up either by that Court or subject to its supervision, and on the making of such an order the provisions of the Companies Law (2013 Revision) relating to the winding up of a company by or subject to the supervision of that Court shall, *mutatis mutandis*, apply.

2013 Revision

21. The Chief Justice may make rules governing the procedure in relation to applications to the Court under section 17(5), paragraph (d) of section 18(4), section 19 and section 20(2).

Chief Justice may make rules

22. (1) If a Justice of the Peace is satisfied by information on oath given by the Authority or by a person authorised under section 17(4) to assist him either that-

Power of search

- (a) there is reasonable ground for suspecting that an offence against this Law has been or is being committed and that evidence of the commission of the offence is to be found at any premises specified in the information, or in any vehicle, vessel or aircraft so specified; or
- (b) any books, records, vouchers, documents, cash or securities which ought to have been produced under section 17(3) and have not been produced are to be found at any such premises or in any such vehicle, vessel or aircraft,

he may grant a search warrant authorising the Authority or such person authorised under section 17(4) or any constable of the rank of Inspector or above, together with any other person named in the warrant and any other constables to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, vessel or aircraft so specified may be, at any time within one month from the date of the warrant, and to search such premises or, as the case may be, such vehicle, vessel or aircraft.

(2) The person authorised by any such warrant to search any premises or any vehicle, vessel or aircraft may search every person who is found in or whom he has reasonable grounds to believe to have recently left or to be about to enter those premises or that vehicle, vessel or aircraft, as the case may be, and may seize any books, records, vouchers, documents, cash or securities found in the possession of any such person or in such premises or in such vehicle, vessel or

aircraft which he has reasonable grounds for believing ought to have been produced under section 17(3):

Provided that no female shall, in pursuance of any warrant issued under this subsection, be searched except by a female.

(3) Where under this section a person has any power to enter any premises he may use such force as is reasonably necessary for the purpose of exercising that power.

(4) A person who obstructs the Authority or any other person in the exercise of any powers conferred on it or him under this section commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year.

False or misleading information

23. Any licensee or any director or officer of a licensee who knowingly or wilfully supplies false or misleading information to the Authority commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year.

Offences

24. A person who contravenes any provision or requirement of this Law for which no offence is specifically created commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year.

Appeals

25. (1) An appeal lies to the Court from any decision of the Authority-

- (a) revoking a licence under section 11(5), paragraph (i) of section 18(1), or section 18(4) or (5);
- (b) withdrawing any approval under section 11(4); or
- (c) requiring a licensee to take certain steps which the Authority may specify under section 18.

(2) An appeal against the decision of the Authority shall be on motion. The appellant within twenty-one days after the day on which the Authority has given its decision shall serve a notice in writing signed by the appellant or his attorney-at-law on the Authority of his intention to appeal and of the general ground of his appeal:

Provided that any person aggrieved by a decision of the Authority may, upon notice to the Authority, apply to the Court for leave to extend the time within which the notice of appeal prescribed by this section may be served and the Court upon hearing of such application may extend the time prescribed by this section as it deems fit.

(3) The Authority shall, upon receiving the notice of appeal, transmit to the Clerk of the Court without delay a copy of the decision and all papers relating to the appeal:

Provided that the Authority is not compelled to disclose any information if it is considered that the public interest would suffer by such disclosure.

(4) The Clerk of the Court shall set the appeal down for argument on such day, and shall cause notice of the same to be published in such manner, as the Court may direct.

(5) At the hearing of the appeal the appellant shall, before going into the case, state all the grounds of appeal on which he intends to rely and shall not, unless by leave of the Court, go into any matters not raised by such statements.

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

(7) An appeal against a decision of the Authority shall not have the effect of suspending the execution of such decision.

26. The Authority shall not be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions under this Law, unless it is shown that the act or omission was in bad faith. Immunity

27. (1) The Governor may make regulations- Regulations

- (a) to prescribe the information, particulars and references which may be prescribed under section 6(1) or 11(3);
- (b) to control the form of advertising by licensees;
- (c) to prescribe fees payable under this Law; and
- (d) generally for carrying this Law into effect.

(2) Regulations made under this Law may create offences punishable on summary conviction by a fine not exceeding ten thousand dollars.

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Carmena Watler
Acting Clerk of Cabinet

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