



BERMUDA

BANKS AND DEPOSIT COMPANIES ACT 1999

1999 : 40

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WHEREAS it is expedient to make new provision for regulating deposit-taking business; for protecting depositors; and for purposes connected with those matters:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

BANKS AND DEPOSIT COMPANIES ACT 1999

PRELIMINARY

Short title and commencement

1 This Act may be cited as the Banks and Deposit Companies Act 1999, and shall come into operation on such day as the Minister may appoint by notice published in the Gazette.

Interpretation

2 In this Act—

“associate”, has the meaning given in section 7(9);

“the Authority” means the Bermuda Monetary Authority established by the Bermuda Monetary Authority Act 1969;

“available capital” means such capital as is determined by the Authority pursuant to section 38(7) to be available capital;

“company” means a body corporate wherever incorporated;

“controller” has the meaning given in section 7(3);

“court” means the Supreme Court;

“day” means any day on which institutions in Bermuda are open for business;

“debenture” has the same meaning as in the Companies Act 1981;

“decision notice” means a notice prepared in accordance with section 49K;

“deposit” has the meaning given in section 3;

“deposit-taking business” has the meaning given in section 4;

“director” has the meaning given in section 7(2);

“documents” includes information recorded in any form; and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“financial statements” in relation to the business of an institution means the statements specified in subsection (1)(a) and the notes specified in subsection (1A) of section 84 of the Companies Act 1981;

“financial year”, in relation to an institution, means the period not exceeding fifty-three weeks at the end of which the balance of the accounts is struck or, if no such balance is struck or a period of more than fifty-three weeks is employed for that purpose, means a calendar year;

“holding company” has the same meaning as in the Companies Act 1981;

“institution” means a company licensed under this Act as a bank or deposit company;

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“licence” means a licence granted under section 14;

“the Minister” means the Minister of Finance;

“related company” has the meaning given in section 6;

“senior executive” has the meaning given in section 7(7);

“share” has the same meaning as in the Companies Act 1981;

“shareholder controller” has the meaning given in section 7(5);

“significant shareholder” has the meaning given in section 36(2);

“subsidiary” has the same meaning as in the Companies Act 1981;

“warning notice” means a notice prepared in accordance with section 49J.

[Section 2 definitions “decision notice” and “warning notice” inserted by 2012 : 34 s. 2 effective 19 September 2012]

Meaning of “deposit”

3 (1) Subject to the provisions of this section, in this Act “deposit” means a sum of money paid on terms—

- (a) under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
- (b) which are not referable to the provision of property or services or the giving of security;

and references in this Act to money deposited and to the making of a deposit shall be construed accordingly.

(2) For the purposes of subsection (1)(b)—

- (a) money is paid on terms which are referable to the provision of property or services if, and only if it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is not or are not in fact sold, hired or otherwise provided;
- (b) money is paid on terms which are referable to the giving of security if, and only if—
 - (i) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
 - (ii) without prejudice to paragraph (i), it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

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(3) Except so far as any provision of this Act otherwise provides, in this Act “deposit” does not include—

- (a) a sum which is paid by one company to another at a time when one is a subsidiary of the other or both are subsidiaries of another company or the same individual holds 50 per cent or more of the shares in both of them; or
 - (b) a sum which is paid by a person who, at the time when it is paid, is a close relative of the person receiving it or who is, or is a close relative of, a director, controller or senior executive of that person.
- (4) In subsection (3)(b), “close relative”, in relation to any person, means—
- (a) his spouse;
 - (b) his children and step children, his parents and step-parents, his brothers and sisters and step-brothers and step-sisters; and
 - (c) the spouse of any person within paragraph (b).

Meaning of “deposit-taking business”

4 (1) Subject to the provisions of this section, a person carries on deposit-taking business for the purposes of this Act if—

- (a) in the course of the business, he lends money received by way of deposit to others; or
- (b) he finances any other activity of the business wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.

(2) For the purposes of subsection (1), all the activities which a person carries on by way of business shall be regarded as a single business carried on by him.

Power to amend definitions of “deposit” and “deposit-taking business”

5 (1) The Minister acting on the advice of the Authority may by order amend the meaning of deposit or deposit-taking business for the purposes of all or any provisions of this Act.

(2) An order under subsection (1) may contain such transitional provisions as the Minister acting on the advice of the Authority thinks necessary or expedient.

(3) An order made under this section shall be subject to affirmative resolution procedure.

Meaning of “related company”

6 (1) In this Act a “related company” in relation to an institution or the parent company of an institution, means a company (other than a subsidiary company) in which the institution or parent company holds a qualifying capital interest.

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(2) A qualifying capital interest means an interest in relevant shares of the company which the institution or parent company holds on a long term basis for the purpose of securing a contribution to its own activities by the exercise of control or influence arising from that interest.

(3) A holding of 20 per cent or more of the nominal value of the relevant shares of a company shall be presumed to be a qualifying capital interest unless the contrary is shown.

(4) Relevant shares means shares comprised in the equity share capital of the company of a class carrying rights to vote in all circumstances at general meetings of the company.

(5) Equity share capital means the issued share capital of a company excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

Meaning of “director”, “controller”, “senior executive” and “associate”

7 (1) In this Act, “director”, “controller”, “senior executive” and “associate” shall be construed in accordance with the provisions of this section.

(2) “Director”, in relation to an institution, includes any person who occupies the position of director, by whatever name called.

(3) “Controller”, in relation to an institution, means—

- (a) a managing director of the institution or of another company of which it is a subsidiary;
- (b) a chief executive of the institution or of another company of which it is a subsidiary;
- (c) a person who satisfies the requirements of this paragraph; and
- (d) a person in accordance with whose directions or instructions the directors of the institution or of another company of which it is a subsidiary or persons who are controllers of the institution by virtue of paragraph (c) (or any of them) are accustomed to act.

(4) A person satisfies the requirements of subsection (3)(c) in relation to an institution if, either alone or with any associate or associates—

- (a) he holds 10 per cent or more of the shares in the institution or another company of which it is a subsidiary company;
- (b) he is entitled to exercise, or control the exercise of 10 per cent or more of the voting power at any general meeting of the institution or another company of which it is such a subsidiary; or
- (c) he is able to exercise a significant influence over the management of the institution or another company of which it is such a subsidiary by virtue of—

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- (i) a holding of shares in; or
- (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of,
the institution, or as the case may be, the other company concerned.

(5) A person who is a controller of an institution by virtue of subsection (3)(c) is in this Act referred to as a “shareholder controller” of the institution; and in this Act—

- (a) a “10 per cent shareholder controller” means a shareholder controller in whose case the percentage referred to in the relevant paragraph is 10 or more but less than 20;
- (b) a “20 per cent shareholder controller” means a shareholder controller in whose case that percentage is 20 or more but less than 30;
- (c) a “30 per cent shareholder controller” means a shareholder controller in whose case that percentage is 30 or more but less than 40;
- (d) a “40 per cent shareholder controller” means a shareholder controller in whose case that percentage is 40 or more but less than 50;
- (e) a “50 per cent shareholder controller” means a shareholder controller in whose case that percentage is 50 or more but less than 60;
- (f) a “60 per cent shareholder controller” means a shareholder controller in whose case that percentage is 60 or more but less than 75; and
- (g) a “principal shareholder controller” means a shareholder controller in whose case that percentage is 75 or more.

(6) In subsection (5), “the relevant paragraph” in relation to a shareholder controller means whichever of paragraphs (a) and (b) of subsection (4) gives the greater percentage in his case.

(7) “Senior executive”, in relation to an institution, means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the institution—

- (a) exercises managerial functions; or
- (b) is responsible for maintaining accounts or other records of the institution.

(8) In this section “chief executive”, in relation to an institution, means a person who, either alone or jointly with one or more persons, is responsible under the immediate authority of the directors for the conduct of the business of the institution.

(9) In this Act “associate” in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, a company, means—

- (a) if that person is an individual—
 - (i) the spouse, child, step-child or parent of that person;

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- (ii) the trustees of any settlement under which that person has a life interest in possession;
- (iii) any company of which that person is a director;
- (iv) any person who is an employee or partner of that person;
- (b) if that person is a company—
 - (i) any director of that company;
 - (ii) any subsidiary of that company ;
 - (iii) any director or employee of any such subsidiary company;
- (c) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that company or under which they undertake to act together in exercising their voting power in relation to it, that other person.

(10) For the purposes of subsection (9), “settlement” includes any disposition or arrangement under which property is held in trust.

Functions of Bermuda Monetary Authority

8 (1) The Authority shall have the powers conferred on it by this Act and the duty generally to supervise the institutions licensed by it in the exercise of those powers.

(2) It shall also be the duty of the Authority to keep under review the operation of this Act and developments in the field of deposit-taking which appear to it to be relevant to the exercise of its powers and the discharge of its duties.

(3) The Authority shall as soon as practicable after the end of each of its financial years, make to the Minister and publish in such manner as it thinks appropriate a report on its activities under this Act in that year.

(4) Neither the Authority nor any person who is, or is acting as, an officer or servant of the Authority shall be liable in damages for anything done or omitted in the discharge or purported discharge of the functions of the Authority under this Act unless it is shown that the act or omission was in bad faith.

Authority’s statement of principles

9 (1) The Authority shall as soon as practicable after the coming into force of this Act, publish in such manner as it thinks fit a statement of principles in accordance with which it is acting or proposing to act—

- (a) in interpreting the criteria specified in the Second Schedule and the grounds for revocation specified in section 18;
- (b) in exercising its power to grant, revoke or restrict a licence;
- (c) in exercising its power to obtain information, reports and to require production of documents; and

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- (d) in exercising its powers—
 - (i) under section 49A to impose a civil penalty;
 - (ii) under section 49C to censure publicly;
 - (iii) under section 49E to make a prohibition order; and
 - (iv) under section 49M to publish information about any matter to which a decision notice relates.

(2) If the Authority makes a material change to the principles it shall publish a statement of the change or the revised statement of principles in the same manner as it published the statement under subsection (1).

[Section 9 subsection (1) amended by 2012 : 34 s. 3 effective 19 September 2012]

Minister to issue directions to Authority

10 The Minister may from time to time give to the Authority general policy directions, not inconsistent with the provisions of this Act, as to the performance of its functions under this Act and the Authority shall give effect to such directions.

LICENSING

Restriction on carrying on deposit-taking business

11 (1) Subject to the provisions of section 12, no person shall carry on a deposit-taking business in or from within Bermuda unless that person is a company incorporated in Bermuda and is for the time being licensed by the Authority under this Act.

- (2) A person who contravenes this section is guilty of an offence and liable—
 - (a) on summary conviction, to a fine of \$100,000 or to imprisonment for a period of two years or to both;
 - (b) on conviction on indictment, to a fine of \$250,000 or to imprisonment for a period of five years or to both.

Exempted persons

12 (1) Section 11 shall not apply to the carrying on of a deposit-taking business in or from within Bermuda by the persons for the time being specified in the First Schedule to this Act.

(2) The exemption of a person specified in the First Schedule shall be subject to any restrictions there specified in respect of that person.

(3) The Minister acting on the advice of the Authority may by order amend the First Schedule—

- (a) by adding any person or class of persons or relaxing any restriction ; or
- (b) by removing any person or class of persons for the time being specified in it or imposing or extending any restriction.

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(4) Any order made under subsection (1) shall be subject to affirmative resolution procedure.

Applications for licences

13 (1) A company incorporated in Bermuda may make application for a licence to the Authority in such manner as the Authority may direct and such application shall be accompanied with—

- (a) a business plan setting out the nature and scale of the deposit-taking business which the applicant intends to carry on, any plans of the applicant for the future development of that business and particulars of the applicant's arrangements for the management of the business;
- (b) such fee as may be prescribed under the Bermuda Monetary Authority Act 1969; and
- (c) such other information, documents or reports as the Authority may reasonably require for the purposes of determining the application.

(2) An application may be withdrawn by notice in writing to the Authority at any time before it is granted or refused, but in any such case no application fee shall be refunded to the applicant.

[Section 13 subsection (1)(b) amended by 2002:39 s.7 & Sch effective 30 December 2002]

Grant and refusal of licences

14 (1) Subject to this section, the Authority may grant or refuse the application for a licence.

(2) The Authority shall not grant a licence unless it is satisfied that—

- (a) the minimum criteria specified in the Second Schedule are fulfilled with respect to the applicant; and
- (b) the Minister has advised the Authority that he is satisfied that the grant of the licence is in accordance with the economic and financial policy of the government.

(3) The Minister acting on the advice of the Authority may by order amend the Second Schedule by adding new criteria or by amending or deleting the criteria for the time being specified in the Second Schedule.

(4) An order made under subsection (3) shall be subject to negative resolution procedure.

(5) The Authority may grant licences of the following classes—

- (a) a banking licence, which requires the institution to provide the following minimum services to the public in Bermuda—
 - (i) current accounts in Bermuda dollars on terms which require repayment on demand;

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- (ii) the payment and collection of cheques, drafts and orders;
 - (iii) savings, deposit or other similar accounts in Bermuda dollars;
 - (iv) overdraft and other loan facilities in Bermuda dollars;
 - (v) either directly or indirectly, loans in Bermuda dollars secured on the mortgage of real property in Bermuda;
 - (vi) foreign exchange services; and
 - (vii) either directly or indirectly, credit card or debit card facilities;
- (b) a deposit company licence, which does not authorise the institution to accept deposits of money on current account or otherwise on terms which require repayment on demand, and which requires the institution to provide the following minimum services to the public in Bermuda—
- (i) savings, deposit or other similar accounts in Bermuda dollars on terms which require repayment on notice;
 - (ii) loans in Bermuda dollars secured on the mortgage of real property in Bermuda whereby not less than the prescribed minimum percentage of total assets of the institution shall at all times be invested in loans secured to the full amount of the outstanding balance owed to the institution under such mortgages .
- (c) a restricted banking licence, which authorises the institution to provide to persons specified in the Third Schedule such of the services set out in paragraph (a)(i) to (vii) as the Authority may approve.

(5A) In respect of a licence granted in accordance with subsection (5)(c), the Authority—

- (a) may impose conditions on or restrict the services that can be provided under such licence; and
- (b) may vary or revoke any condition or restriction so imposed.

(5B) The Third Schedule, which specifies the persons to whom services may be provided under a licence granted in accordance with subsection (5)(c), shall have effect.

(5C) The Minister acting on the advice of the Authority may, by order, amend the Third Schedule.

(6) For the purposes of subsection (5), “prescribed minimum percentage” means such percentage as the Minister acting on the advice of the Authority prescribes by Order.

(7) An order made under subsection (5C) or (6) shall be subject to negative resolution procedure.

[Section 14 amended by 2018 : 52 s. 2 effective 17 August 2018]

Form, display and registration

15 (1) A licence shall be in such form as may be prescribed.

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(2) An institution shall, at all times, keep the licence on display at its principal place of business in Bermuda.

(3) The Authority shall cause a notice to be published in the Gazette of every grant of a licence.

(4) The Authority shall compile and maintain in such manner as it thinks fit a register containing, in respect of each licence, such particulars as may be prescribed; and the register shall, at all reasonable times, be available for inspection at the offices of the Authority by any person upon payment of the fee prescribed under the Bermuda Monetary Authority Act 1969.

[Section 15 subsection (4) amended by 2002:39 s.7 & Sch effective 30 December 2002]

Supervision fee

16 (1) An institution shall pay such fee ("supervision fee") as may be prescribed under the Bermuda Monetary Authority Act 1969 on the grant of its licence, and thereafter shall pay the supervision fee in each calendar year on or before 31 March after the year in which the licence was granted.

(2) The supervision fee payable on the grant of the licence shall be a proportion of the fee for the period from the date of such grant to 31 December next following, counting part of a month as one month for the purpose of calculating the fee.

(3) If an institution fails to pay the prescribed fee as provided in subsection (1), it shall pay in addition to such fee a late penalty fee of an amount equal to ten per cent of the fee due for every month or part thereof during which the fee remains unpaid.

(4) *[Repealed by 2012 : 34 s. 15]*

[Section 16 repealed and replaced by 2000:16 s.3 effective 29 March 2000; subsection (1) amended, and (4) deleted, by 2002:39 s.7 & Sch effective 30 December 2002; section 16 amended by 2010 : 58 s. 5 effective 1 January 2011; subsection (4) repealed by 2012 : 34 s. 15 effective 19 September 2012]

Restriction of licence

17 (1) The Authority may restrict a licence—

- (a) if it is satisfied of the matters specified in paragraphs (a), (b), (d) or (e) of section 18 but it appears to it that the circumstances are not such as to justify revocation;
- (b) if it is satisfied that a person has become a controller of an institution in contravention of section 25 or has become or remains a controller after being given a notice of objection pursuant to section 26 or 27; or
- (c) in connection with the revocation of a licence—
 - (i) when giving the institution notice that it proposes to revoke its licence; or
 - (ii) at any time after such notice has been given to the institution; or

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(d) at any time after the institution has served a notice surrendering its licence with effect from a later date.

(2) The Authority may restrict a licence by imposing such conditions as it thinks desirable for the protection of the institution's depositors or potential depositors, and for safeguarding its assets or otherwise, and may in particular—

- (a) require the institution to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
- (b) impose limitations on the acceptance of deposits, the granting of credit or the making of investments;
- (c) prohibit the institution from soliciting deposits, either generally or from persons who are not already depositors;
- (d) prohibit the institution from entering into any other transactions or class of transactions;
- (e) require the removal of any director, controller or senior executive;
- (f) specify requirements to be fulfilled otherwise than by action taken by the institution.

(3) Any condition imposed under this section may be varied or withdrawn by the Authority.

(4) The Authority may on the application of an institution vary any condition imposed on its licence.

(5) *[Repealed by 2012 : 34 s. 4]*

(6) The fact that a condition imposed under this section has not been complied with shall, where the restriction has been imposed pursuant to paragraphs (a) or (b) of subsection (1), be a ground for the revocation of the licence in question but shall not invalidate any transaction.

[Section 17 subsection (5) repealed and subsection (6) amended by 2012 : 34 s. 4 effective 19 September 2012]

Revocation of licence

18 Subject to section 20, the Authority may revoke the licence of an institution if the Authority is satisfied that—

- (a) the criteria specified in the Second Schedule are not or have not been fulfilled, or may not be or may not have been fulfilled, in respect of the institution;
- (b) the institution has failed to comply with any obligation imposed on it by or under this Act;
- (c) a person has become a 50 per cent, 60 per cent or a principal shareholder controller of the institution in contravention of section 25 or has become

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or remains such a controller after being given a notice of objection pursuant to section 26 or 27;

- (d) the Authority has been provided with false, misleading or inaccurate information by or on behalf of the institution or, in connection with an application for a licence, by or on behalf of a person who is or is to be a director, controller or senior executive of the institution; or
- (e) the interests of the depositors or potential depositors of the institution are in any way threatened, whether by the manner in which the institution is conducting or proposes to conduct its affairs or for any other reason.

Winding up on petition from the Authority

19 (1) On a petition presented by the Authority by virtue of this section, the court may wind up an institution in respect of which a licence is revoked, if the court is of the opinion that it is just and equitable that the institution be wound up.

(2) Part XIII (Winding Up) of the Companies Act 1981 shall apply to the winding up of an institution under this section.

Notice of restriction or revocation of licence

20 (1) Where the Authority proposes to—

- (a) restrict a licence under section 17(1);
- (b) vary a restriction imposed on a licence otherwise than with the agreement of institution concerned; or
- (c) revoke a licence under section 18,

the Authority shall give to the institution concerned a warning notice under section 49J.

(2) *[Repealed by 2012 : 34 s. 5]*

(3) *[Repealed by 2012 : 34 s. 5]*

(4) Where—

- (a) the ground for a proposal to impose or vary a restriction or for a proposed revocation is that it appears to the Authority that the criterion in paragraph 1 of the Second Schedule is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person; or
- (b) a proposed restriction consists of or includes a condition requiring the removal of any person as a director, controller or senior executive,

the Authority shall give that person a copy of the warning notice but the Authority may omit from such copy any matter which does not relate to him.

(4A) After giving a notice under subsection (1) and taking into account any representations made under section 49J(2), the Authority shall decide—

- (a) whether to proceed with the action proposed in the notice;

- (b) whether to take no further action;
- (c) if the proposed action was to revoke the institution's licence, to restrict its licence instead; or
- (d) if the proposed action was to restrict the institution's licence or to vary the restrictions on a licence, to restrict it or to vary the restrictions in a different manner.

(4B) Once the Authority has made a decision under subsection (4A) it shall forthwith provide either a decision notice under section 49K or a notice of discontinuance under section 49L, as the case may be.

(5) *[Repealed by 2012 : 34 s. 5]*

(6) *[Repealed by 2012 : 34 s. 5]*

(7) *[Repealed by 2012 : 34 s. 5]*

(8) *[Repealed by 2012 : 34 s. 5]*

(9) *[Repealed by 2012 : 34 s. 5]*

(10) *[Repealed by 2012 : 34 s. 5]*

(11) *[Repealed by 2012 : 34 s. 5]*

(12) *[Repealed by 2012 : 34 s. 5]*

(13) The Authority shall publish in the Gazette, in such form as it thinks fit, notice of every revocation of a licence under this Act.

[Section 20 subsection (1) amended, subsections (4A) and (4B) inserted, and subsections (2), (3), and (5) - (12) repealed by 2012 : 34 s. 5 effective 19 September 2012]

Restriction in cases of urgency

21 (1) No notice need be given under section 20 in respect of the imposition or variation of a restriction on an institution's licence in any case in which the Authority considers that the restriction should be imposed or varied as a matter of urgency.

(2) In any such case the Authority may by written notice to the institution impose or vary the restriction.

(3) Any such notice shall state the reason for which the Authority has acted and particulars of the rights conferred by subsection (5) and section 30.

(4) Section 20(4) shall apply to a notice under subsection (2) imposing or varying a restriction as it applies to a notice under section 20(1) in respect of a proposal to impose or vary a restriction; but the Authority may omit from a copy given to a person by virtue of this subsection any matter which does not relate to him.

(5) An institution to which a notice is given under this section of the imposition or variation of a restriction and a person who is given a copy of it by virtue of subsection (4) may within the period of fourteen days beginning with the day on which the notice was given make representations to the Authority.

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(6) After giving a notice under subsection (2) imposing or varying a restriction and taking into account any representations made in accordance with subsection (5) the Authority shall decide whether—

- (a) to confirm or rescind its original decision; or
- (b) to impose a different restriction or to vary the restriction in a different manner.

(7) The Authority shall within the period of twenty-eight days beginning with the day on which the notice was given under subsection (2) give the institution concerned written notice of its decision under subsection (6) and, except where the decision is to rescind the original decision, the notice shall state the reason for the decision.

(8) Where the notice under subsection (7) is of a decision to take the action specified in subsection (6)(b), the notice under subsection (7) shall have the effect of imposing the restriction or making the variation specified in the notice and with effect from the date on which it is given.

Directions to protect interests of depositors

22 (1) The Authority may give an institution directions under this section at any time after its licence is revoked or surrendered.

(2) Directions under this section shall be such as appear to the Authority to be desirable for safeguarding the interests of the institution's depositors.

(3) No direction shall be given to an institution under this section after it has ceased to have any liability in respect of deposits for which it had a liability at a time when it was licensed; and any such direction which is in force with respect to an institution shall cease to have effect when the institution ceases to have any such liability.

(4) An institution which fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section shall be guilty of an offence and liable—

- (a) on summary conviction to a fine of \$50,000;
- (b) on conviction on indictment to a fine of \$150,000.

Notification and confirmation of directions

23 (1) A direction under section 22 shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the Authority by a notice in writing to the institution concerned.

(2) A direction under section 22, except one varying a previous direction with the agreement of the institution concerned—

- (a) shall state the reasons for which it is given and give particulars of the institution's rights under subsection (3) and section 30; and
- (b) without prejudice to section 22(3) shall cease to have effect at the end of the period of twenty-eight days beginning with the day on which it is given

unless before the end of that period it is confirmed by a further written notice given by the Authority to the institution concerned.

(3) An institution to which a direction is given which requires confirmation under subsection (2) may, within the period of fourteen days beginning with the day on which the direction is given, make written representations to the Authority; and the Authority shall take any such representations into account in deciding whether to confirm the direction.

Surrender of licence

24 (1) An institution may surrender its licence by written notice to the Authority.

(2) A surrender shall take effect on the giving of the notice or, if a later date is specified in it, on that date; and where a later date is specified in the notice the institution may by further written notice to the Authority substitute an earlier date, not being earlier than that on which the first notice was given.

(3) The surrender of a licence shall be irrevocable unless it is expressed to take effect at a later date and before that date the Authority by notice in writing allows it to be withdrawn.

OBJECTIONS TO CONTROLLERS

Notification of new or increased control

25 (1) No person shall become a 10 per cent, 20 per cent, 30 per cent, 40 per cent, 50 per cent, 60 per cent or principal shareholder controller of an institution unless—

- (a) he has served on the Authority a written notice stating that he intends to become such a controller of the institution; and
- (b) either the Authority has, before the end of the period of three months beginning with the date of service of that notice, notified him in writing that there is no objection to his becoming such a controller of the institution, or that period has elapsed without the Authority having served him under section 26 or 27 a written notice of objection to his becoming such a controller of the institution.

(2) A notice under subsection (1)(a) shall contain such information as the Authority may direct and the Authority may after receiving such a notice from any person, by notice in writing require him to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve notice of objection.

(3) Where additional information or documents are required from any person by a notice under subsection (2) the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (1)(b).

Objection to new or increased control

26 (1) The Authority may serve a notice of objection under this section on a person who has given notice under section 25 unless it is satisfied—

- (a) that the person concerned is a fit and proper person to become a controller of the description in question of the institution;
- (b) that the interests of depositors and potential depositors of the institution would not be in any other manner threatened by that person becoming a controller of that description of the institution; and
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the institution as a controller of the description in question the criteria in the Second Schedule would continue to be fulfilled in the case of the institution or, if any of those criteria is not fulfilled, that the person is likely to undertake adequate remedial action.

(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice—

- (a) shall specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and, subject to subsection (5), the reasons for which it is not satisfied; and
- (b) shall give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall—

- (a) specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and, subject to subsection (5), the reasons for which it is not satisfied; and
- (b) give particulars of the rights conferred by section 30.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

(6) Where a person required to give a notice under section 25 in relation to becoming a controller of any description becomes a controller of that description without having given the notice, the Authority may serve him with notice of objection under this section at any time within three months after becoming aware of his having done so and may, for the purpose of deciding whether to serve him with such a notice, require him by notice in writing to provide such information or documents as the Authority may reasonably require.

(7) The period mentioned in section 25(1)(b) (with any extension under subsection (3) of that section) and the period mentioned in subsection (6) shall not expire, if it would otherwise do so, until fourteen days after the end of the period within which representations can be made under subsection (3).

Objection to existing shareholder controller

27 (1) Where it appears to the Authority that a person who is a shareholder controller of any description of an institution is not or is no longer a fit and proper person to be such a controller of the institution it may serve him with a written notice of objection to his being such a controller of the institution.

(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice shall—

- (a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and
- (b) give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall—

- (a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and
- (b) give particulars of the rights conferred by section 30.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

Contraventions by controller

28 (1) Subject to subsection (2), any person who contravenes section 25 by—

- (a) failing to give the notice required by subsection (1)(a) of that section; or
- (b) becoming a controller of any description to which that section applies before the end of the period mentioned in subsection (1)(b) of that section in a case where the Authority has not served him with a preliminary notice under section 26(2),

shall be guilty of an offence.

(2) A person shall not be guilty of an offence under subsection (1) if he shows that he did not know of the acts or circumstances by virtue of which he became a controller of the relevant description; but where any person becomes a controller of any such description without such knowledge and subsequently becomes aware of the fact that he has become such a controller he shall be guilty of an offence unless he gives the Authority written notice of the fact that he has become such a controller within fourteen days of becoming aware of the fact.

- (3) Any person who—
- (a) before the end of the period mentioned in section 25 (1)(b), becomes a controller of any description to which that subsection applies after being served with a preliminary notice under section 26(2);
 - (b) contravenes section 25 by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description; or
 - (c) having become a controller of any description in contravention of that section (whether before or after being served with such notice of objection) continues to be such a controller after such a notice has been served on him,

shall be guilty of an offence.

(4) A person guilty of an offence under subsection (1) or (2) shall be liable on summary conviction to a fine of \$50,000.

- (5) A person guilty of an offence under subsection (3) shall be liable—
- (a) on summary conviction to a fine of \$50,000 and in respect of an offence under paragraph (c) of that subsection, to a fine of \$500 for each day on which the offence has continued;
 - (b) on conviction on indictment to a fine of \$100,000 to imprisonment for two year or to both.

Restriction on and sale of shares

- 29 (1) The powers conferred by this section shall be exercisable where a person—
- (a) has contravened section 25 by becoming a shareholder controller of any description after being served with a notice of objection to his becoming a controller of that description;
 - (b) having become a shareholder controller of any description in contravention of that section continues to be one after such a notice has been served on him; or
 - (c) continues to be a shareholder controller of any description after being served under section 27 with notice of objection to his being a controller of that description.
- (2) The Authority may by notice in writing served on the person concerned direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions—
- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of or an agreement to transfer the right to be issued with them, shall be void;
 - (b) no voting rights shall be exercisable in respect of the shares;

- (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder; or
- (d) except in liquidation no payment shall be made of any sums due from the institution on the shares, whether in respect of capital or otherwise.

(3) The court may, on the application of the Authority, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions.

(4) No order shall be made under subsection (3) in a case where the notice of objection was served under section 26 or 27—

- (a) until the end of the period within which an appeal can be brought against the notice of objection;
- (b) if such an appeal is brought, until it has been determined or withdrawn.

(5) Where an order has been made under subsection (3) the court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.

(6) Where shares are sold in pursuance of an order under this section the proceeds of sale, less the costs of the sale, shall be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for the whole or part of the proceeds to be paid to him.

(7) This section applies—

- (a) to all the shares in the institution of which the person in question is a shareholder controller of the relevant description which are held by him or any associate of his and were not so held immediately before he became such a controller of the institution; and
- (b) where the person in question became a shareholder controller of the relevant description as a result of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held before he became such a controller of that institution.

(8) A copy of the notice served on the person concerned under subsection (2) shall be served on the institution or company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.

Rights of appeal

30 (1) An institution or person which is aggrieved by a decision of the Authority—

- (a) to restrict its licence, to restrict it in a particular manner or to vary any restrictions of its licence;
- (b) to revoke its licence;

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- (c) to impose a civil penalty under section 49A; or
- (d) to publish a statement in respect of it pursuant to section 49C,

may appeal against the decision to a tribunal constituted in accordance with section 31.

(2) Where—

- (a) the ground or a ground for a decision within subsection (1)(a) or (b) is that mentioned in section 20(4)(a); or
- (b) the effect of a decision within subsection (1)(a) is to require the removal of a person as a controller or senior executive of an institution,

the controller or senior executive to whom the ground relates or whose removal is required may appeal to a tribunal constituted as aforesaid against the finding that there is such a ground for the decision or, as the case may be, against the decision to require his removal.

(3) Any person on whom notice of objection is served under section 26 or 27 may appeal to a tribunal constituted as aforesaid against the decision of the Authority to serve the notice; but this subsection does not apply to a person in any case in which he has failed to give a notice or become or continued to be a controller in circumstances in which his doing so constitutes an offence under section 28(1), (2) or (3).

(3A) Any person in respect of whom a prohibition order has been made under section 49E, may appeal to the tribunal against the decision.

(3B) Any person in respect of whom a decision notice has been issued refusing a revocation or variation of a prohibition order under section 49G(3) may appeal to the tribunal.

(4) The tribunal may suspend the operation of the decision appealed against pending the determination of an appeal in respect of the decision.

(5) The revocation of an institution's licence pursuant to a decision against which there is a right of appeal under this section shall not have effect—

- (a) until the end of the period within which the appeal can be brought; and
- (b) if such an appeal is brought, until it is determined or withdrawn.

[Section 30 subsections (1) and (4) amended, and subsections (3A) and (3B) inserted by 2012 : 34 s. 6 effective 19 September 2012]

Constitution of tribunals

31 (1) Where an appeal is brought under section 30 a tribunal to determine the appeal shall be constituted in accordance with this section.

(2) The tribunal shall consist of a chairman, or, in his absence, a deputy chairman and two other members.

(3) The chairman and the deputy chairman shall be appointed by the Minister for a term not exceeding three years, and shall be barristers and attorneys of at least seven years' standing.

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(4) The two other members of the tribunal shall be selected by the chairman, or, in his absence, the deputy chairman, from a panel of members appointed by the Minister, who shall be persons appearing to the chairman or, as the case may be, the deputy chairman, to have respectively experience of accountancy and experience of banking.

(5) The Minister shall appoint a panel of not less than nine persons with experience in accountancy and banking to serve as members of appeal tribunals.

(6) A person shall not be eligible for appointment as chairman, deputy chairman or member of the tribunal if he is or has at any time during the period of three years ending with the date of his appointment been an officer, servant or agent of the Authority or of any institution.

(7) There shall be paid to the members of the tribunal such remuneration and such allowances as the Minister may determine.

[Section 31 subsection (7) amended by 2017 : 38 s. 3 effective 30 October 2017]

Determination of appeals

32 (1) On an appeal under section 30 the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.

(2) On any such appeal the tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except that—

- (a) where the decision was to impose or vary any restriction the tribunal may direct the Authority to impose different restrictions or to vary them in a different way; or
- (b) where the decision was to revoke a licence the tribunal may direct the Authority to restrict it instead.

(3) Notice of a tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Authority; and, unless the tribunal otherwise directs, the determination shall come into operation when the notice is given to the appellant and to the Authority.

[Section 32 subsection (1) amended by 2016 : 33 s. 3 effective 1 January 2017]

Costs, procedure and evidence

33 (1) A tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.

(2) The Minister may make regulations with respect to appeals and those regulations may in particular make provision—

- (a) as to the period within which and the manner in which such appeals are to be brought;

- (b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private and as to the persons entitled to appear on behalf of the parties;
- (c) as to the procedure to be adopted where appeals are brought both by an institution and by a person who is to be a controller or senior executive of an institution, including provision for the hearing of the appeals together and for the mutual disclosure of information;
- (d) for requiring an appellant or the Authority to disclose or allow the inspection of documents in his or its custody or under his or its control;
- (e) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;
- (f) for enabling an appellant to withdraw an appeal or the Authority to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
- (g) for taxing or otherwise settling any costs or expenses which the tribunal directs to be paid and for the enforcement of any such direction;
- (h) for enabling any preliminary or incidental functions in relation to an appeal to be discharged by the chairman or, as the case may be, the deputy chairman of the tribunal; and
- (i) as to any other matter connected with such appeals.

(3) Regulations made under subsection (2) shall be subject to negative resolution procedure.

(4) A person who, having been required in accordance with regulations made under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence, shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

(5) A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, shall be guilty of an offence and liable—

- (a) on summary conviction to a fine of \$50,000 or to imprisonment for six months or to both; and
- (b) on conviction on indictment to a fine of \$100,000 or to imprisonment for two years or to both.

Further appeals on a point of law

34 (1) An institution or other person who has appealed to a tribunal may appeal to the court on any question of law arising from the decision of the appeal by the tribunal and

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an appeal on any such question shall also lie at the instance of the Authority; and if the court is of the opinion that the decision was erroneous in point of law it shall remit the matter to the tribunal for re-hearing and determination by it.

(2) No appeal to the Court of Appeal shall be brought from a decision under subsection (1) except with leave of that court.

INFORMATION

Notification of change of director, controller or senior executive

35 (1) An institution shall give written notice to the Authority of the fact that any person has become or ceased to be a director, controller or senior executive of the institution.

(2) A notice required to be given under subsection (1) shall be given before the end of the period of fourteen days beginning with the day on which the institution becomes aware of the relevant facts.

(3) *[Repealed by 2012 : 34 s. 15]*

[Section 35 subsection (3) repealed by 2012 : 34 s. 15 effective 19 September 2012]

Notification of acquisition of significant shareholding

36 (1) A person who becomes a significant shareholder in relation to an institution shall within seven days thereof give written notice of that fact to the Authority.

(2) For the purposes of this section “a significant shareholder”, in relation to an institution, means a person who is not a shareholder controller but who, either alone or with any associate or associates—

(a) holds five per cent or more of the shares in the institution or another company of which it is a subsidiary company; or

(b) is entitled to exercise, or control the exercise of, five per cent or more of the voting power at any general meeting of the institution or of another company of which it is such a subsidiary.

(3) *[Repealed by 2012 : 34 s. 15]*

(4) *[Repealed by 2012 : 34 s. 15]*

(5) *[Repealed by 2012 : 34 s. 15]*

[Section 36 subsections (3), (4) and (5) repealed by 2012 : 34 s. 15 effective 19 September 2012]

Prudential and other returns

36A (1) The Authority may make Rules prescribing statutory returns that must be made by institutions.

(2) Without prejudice to the generality of subsection (1), Rules may prescribe—

(a) capital adequacy returns;

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- (b) liquidity returns;
- (c) large exposure returns;
- (d) foreign currency returns; and
- (e) annual returns of controllers and officers.

(3) Every institution shall, not later than 28 days after the relevant day, file with the Authority such returns as the Authority may prescribe in Rules made under this section.

(4) Every institution that fails to file a return within the time specified in subsection (3) shall be liable to a civil penalty not exceeding \$5,000 for each week or part of a week that it is in default.

(5) Sections 6, 7 and 8 of the Statutory Instruments Act 1977 shall not apply to Rules made under this section.

(6) In this section “relevant day” means such day as may be specified in Rules made under this section.

(7) The Schedules to the Rules made by the Authority under this section shall be published separately on the website of the Authority: www.bma.bm, and shall be available for inspection at the offices of the Authority.

[Section 36A inserted by 2012 : 34 s. 7 effective 19 September 2012]

Annual returns

37 *[Repealed by 2012 : 34 s. 15]*

[Section 37 repealed by 2012 : 34 s. 15 effective 19 September 2012]

Reports of large exposures

38 (1) An institution shall make a report to the Authority if—

- (a) it has entered into a transaction or transactions relating to any one person as a result of which it is exposed to the risk of incurring losses in excess of 10 per cent of its available capital resources; or
- (b) it proposes to enter into a transaction or transactions relating to any one person which, either alone or together with a previous transaction or previous transactions entered into by it in relation to that person, would result in its being exposed to the risk of incurring losses in excess of 25 per cent of those resources.

(2) Subsection (1) applies also where the transaction or transactions relate to different persons if they are connected in such a way that the financial soundness of any of them may affect the financial soundness of the other or others or the same factors may affect the financial soundness of both or all of them.

(3) If an institution to which subsection (1) applies has one or more subsidiaries which are not licensed under this Act the Authority may by notice in writing to that

institution direct that that subsection shall apply to it as if the transactions and available capital resources of the subsidiary or subsidiaries, or such of them as are specified in the notice, were included in those of the institution.

(4) The reports required to be made by an institution under subsection (1) shall be made, in a case within paragraph (a) of that subsection, in respect of such period or periods and, in a case within paragraph (b) of that subsection, at such time before the transaction or transactions are entered into, as may be specified by notice in writing given to the institution by the Authority; and those reports shall be in such form and contain such particulars as the Authority may reasonably require.

(5) For the purposes of this section a transaction entered into by an institution relates to a person if it is—

- (a) a transaction under which that person incurs an obligation to the institution or as a result of which he may incur such an obligation;
- (b) a transaction under which the institution will incur, or as a result of which it may incur, an obligation in the event of that person defaulting on an obligation to a third party; or
- (c) a transaction under which the institution acquires or incurs any obligation to acquire, or as a result of which it may incur an obligation to acquire, an asset the value of which depends wholly or mainly on that person performing his obligations or otherwise on his financial soundness;

and the risk of loss attributable to a transaction is, in a case within paragraph (a) or (b), the risk of the person concerned defaulting on the obligation there mentioned and, in a case within paragraph (c), the risk of the person concerned defaulting on the obligations there mentioned or of a deterioration in his financial soundness.

(6) Any question whether an institution is or would be exposed to risk as mentioned in subsection (1) (or in that subsection as extended by subsection (2)) shall be determined in accordance with principles published by the Authority or notified by it to the institution concerned; and those principles may in particular make provision for determining the amount at risk in particular circumstances or the event to which any such amount is to be taken into account for the purposes of this section.

(7) For the purposes of this section the available capital resources of an institution (or, in a case within subsection (3), of an institution and its relevant subsidiary or subsidiaries) and the value of those resources at any time shall be determined by the Authority and notified by it to the institution by notice in writing; and any such determination, which may be varied from time to time, shall be made by the Authority after consultation with the institution concerned and in accordance with principles published by the Authority.

(8) The principles referred to in subsections (6) and (7) may make different provision for different cases and those referred to in subsection (6) may, in particular, exclude from consideration, either wholly or in part, risks resulting from transactions of a particular description or entered into in particular circumstances or with persons of particular descriptions.

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(9) *[Repealed by 2012 : 34 s. 15]*

(10) *[Repealed by 2012 : 34 s. 15]*

(11) The Minister acting on the advice of the Authority may by order—

- (a) amend subsection (1) so as to substitute for either of the percentages for the time being specified in that subsection such other percentage as may be specified in the order;
- (b) make provision, whether by amending subsection (5) or otherwise, with respect to the transactions and risks to be taken into account for the purposes of this section.

(12) An order made under subsection (11) shall be subject to negative resolution procedure.

[Section 38 subsections (9) and (10) repealed by 2012 : 34 s. 15 effective 19 September 2012]

Power to obtain information and reports

39 (1) The Authority may by notice in writing served on an institution—

- (a) require the institution to provide the Authority (or such person acting on behalf of the Authority as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Authority may reasonably require for the performance of its functions under this Act;
- (b) require the institution to provide the Authority with a report, in such form as may be specified in the notice, by the institution's auditor or by an accountant or other person with relevant professional skill on, or on any aspect of, any matter about which the Authority has required or could require the institution to provide information under paragraph (a).

(2) The person appointed by an institution to make the report required under subsection (1)(b) shall forthwith give written notice to the Authority of any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the institution, of the Authority's functions under this Act.

(3) Without prejudice to section 60(1), regulations made under that section shall prescribe the facts or matters which are likely to be of material significance for the discharge of the Authority's functions under this Act.

[Section 39 subsection (2) substituted, and (3) inserted, by 2005:41 s.2 effective 10 July 2006]

Power to require production of documents

40 (1) The Authority may—

- (a) by notice in writing served on an institution require it to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;

- (b) authorise an officer, servant or agent of the Authority, on producing evidence of his authority, to require any such institution to provide him forthwith with such information, or to produce to him forthwith such documents, as he may specify,

being such information or documents as the Authority may reasonably require for the performance of its functions under this Act.

(2) Where, by virtue of subsection (1), the Authority or any officer, servant or agent of the Authority has power to require the production of any documents from an institution, the Authority or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(3) The power under this section to require an institution or other person to produce any documents includes power—

- (a) if the documents are produced, to take copies of them or extracts from them and to require that institution or person, or any other person who is a present or past director, controller or senior executive of, or is or was at any time employed by or acting as an employee of, the institution in question, to provide an explanation of any of them; and
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) If it appears to the Authority to be desirable in the interests of the depositors or potential depositors of an institution to do so, it may also exercise the powers conferred by section 39 and subsection (1) of this section in relation to any company which is or has at any relevant time been—

- (a) a parent company, subsidiary company or related company of that institution;
- (b) a subsidiary company of a parent company of that institution;
- (c) a parent company of a subsidiary company of that institution; or
- (d) a company in the case of which a shareholder controller of that institution, either alone or with any associate or associates, holds 50 per cent or more of the shares or is entitled to exercise, or control the exercise of more than 50 per cent of the voting power at a general meeting.

(5) The Authority may by notice in writing served on any person who is or is to be a director, controller or senior executive of an institution require him to provide the Authority, within such time as may be specified in the notice, with such information or documents as the Authority may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.

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(6) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of six months or to both.

(7) Nothing in this section shall compel the production by a barrister and attorney of a document containing a privileged communication made by him or to him in that capacity.

Right of entry to obtain information and documents

41 (1) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under sections 39(1) and 40(1) for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by section 40(3).

(2) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by any person on whom a notice could be served under sections 39(1) and 40(1) for the purpose of obtaining there such information or documents as are specified in the authority, but the Authority shall not authorise any person to act under this subsection unless it has reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(3) Any person who intentionally obstructs a person exercising rights conferred by this section shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both.

INVESTIGATIONS

Investigations on behalf of the Authority

42 (1) If it appears to the Authority desirable to do so in the interests of the depositors or potential depositors of an institution the Authority may appoint one or more competent persons to investigate and report to the Authority on—

- (a) the nature, conduct or state of the institution's business or any particular aspect of it; or
- (b) the ownership or control of the institution;

and the Authority shall give written notice of any such appointment to the institution concerned.

(2) If a person appointed under subsection (1) thinks it necessary for the purposes of the investigation he is appointed to carry out, he may also investigate the business of any company which is or has at any relevant time been—

- (a) a parent company, subsidiary company or related company of the institution under investigation;
- (b) a subsidiary company or related company of a parent company of that institution;

- (c) a parent company of a subsidiary company of that institution; or
- (d) a company in the case of which a shareholder controller of that institution, either alone or with any associate or associates, holds 50 per cent or more of the shares or is entitled to exercise, or control the exercise of more than 50 per cent of the voting power at a general meeting.

(3) Where a person appointed under subsection (1) decides to investigate the business of any company by virtue of subsection (2) he shall give it written notice to that effect.

(4) It shall be the duty of every person who is or was a director, controller, senior executive, employee, agent, banker, auditor or barrister and attorney of a company which is under investigation (whether by virtue of subsection (1) or (2)), any person appointed to make a report in respect of that company under section 39(1)(b) and anyone who is a significant shareholder in relation to that company within the meaning of section 36—

- (a) to produce to the persons appointed under subsection (1), within such time and at such place as they may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation which are in his custody or power;
- (b) to attend before the persons so appointed at such time and place as they may require and answer questions relevant to the investigation as such persons may require; and
- (c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give;

and those persons may take copies of or extracts from any documents produced to them under paragraph (a).

(5) For the purpose of exercising his powers under this section a person appointed under subsection (1) may enter any premises occupied by a company which is being investigated by him under this section; but he shall not do so without prior notice in writing unless he has reasonable cause to believe that if such a notice were given any documents whose production could be required under this section would be removed, tampered with or destroyed.

(6) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.

(6A) Unless the Authority otherwise directs, the institution under investigation shall pay to the Authority all expenses of, and incidental to, the investigation.

(7) Any person who—

- (a) without reasonable excuse fails to produce any documents which it is his duty to produce under subsection (4) ;
- (b) without reasonable excuse fails to attend before the persons appointed under subsection (1) when required to do so;

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- (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to an institution which is under investigation or a company which is being investigated by virtue of subsection (2); or
- (d) intentionally obstructs a person in the exercise of the rights conferred by subsection (5) ,

shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of six months or to both.

(8) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him in criminal proceedings.

(9) Nothing in this section shall compel the production by a barrister and attorney of a document containing a privileged communication made by him or to him in that capacity.

[Section 42 amended and subsection (6A) inserted by 2012 : 34 s. 8 effective 19 September 2012]

Investigation of suspected contraventions

42A (1) The Authority may conduct an investigation if it appears to the Authority that—

- (a) a person may have contravened section 11;
- (b) an institution may have failed to comply with any requirements or contravened any prohibition imposed by or under this Act, Regulations, Rules or Orders made thereunder; or
- (c) an individual may not be a fit and proper person to perform functions in relation to a regulated activity (within the meaning of section 49E(9)).

(2) The power conferred by subsection (1)(b) may be exercised in relation to a company that was a former licensed deposit-taking business but only in relation to—

- (a) business carried on at any time when the company was licensed under this Act; or
- (b) the ownership or control of a company at any time when it was licensed under this Act.

[Section 42A inserted by 2012 : 34 s. 9 effective 19 September 2012]

Power to require production of documents

43 (1) The Authority may by notice in writing require the person who is the subject of an investigation under section 42A (“the person under investigation”) or any person connected with the person under investigations—

- (a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Authority may reasonably require for the purpose of the investigation;

- (b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation;
- (c) to attend at such place and time as may be specified in the notice and answer questions relevant to the investigation as the Authority may require.

(1A) The Authority may by notice in writing require every person who is or was a director, controller, senior executive, employee, agent, banker, accountant, auditor or barrister and attorney of a person under investigation—

- (a) to produce to the Authority, within such time and at such place as the Authority may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation which are in his custody or power;
- (b) to attend before the Authority at such time and place as the Authority may require and answer questions relevant to the investigation as the Authority may require; and
- (c) to take such actions as the Authority may direct in connection with the investigation.

(2) The Authority or a duly authorised officer, servant or agent of the Authority may take copies of or extracts from any documents produced under this section.

(3) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under subsection (1) for the purpose of obtaining there the information or documents required by the notice, putting the questions referred to in paragraph (c) of that subsection or exercising the powers conferred by subsection (2).

(4) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section or intentionally obstructs a person in the exercise of the rights conferred by subsection (3) shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of six months or to both.

(5) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him.

(6) Nothing in this section shall compel the production by a barrister and attorney of a document containing a privileged communication made by him or to him in that capacity.

(7) For the purposes of this section, a person is connected with the person under investigation if such person is or has at any relevant time been—

- (a) a member of the group of the person under investigation;
- (b) a controller of the person under investigation;

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- (c) a partner of a partnership of which the person under investigation is a member.

[Section 43 subsection (1) amended, and subsections (1A) and (7) inserted by 2012 : 34 s. 10 effective 19 September 2012]

Powers of entry in cases of suspected contraventions

44 (1) A magistrate may issue a warrant under this section if satisfied on information on oath that the Authority is conducting an investigation under section 42A and—

- (a) that a person has failed to comply with a notice served on him under section 43;
- (b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by him in response to such a notice; or
- (c) that there are reasonable grounds for suspecting that if a notice were served on him under that section it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(2) A warrant under this section shall authorise any police officer not below the rank of inspector, together with any other person named in the warrant and any other police officers—

- (a) to enter any premises occupied by the person referred to in subsection (1) (a) which are specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1)(c) or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of or extracts from any such documents;
- (d) to require any person named in the warrant to answer questions relevant for determining whether that person is guilty of any such contravention as is mentioned in section 43.

(3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(4) Any documents of which possession is taken under this section may be retained—

- (a) for a period of three months; or
- (b) until the conclusion of proceedings, if within the period of three months referred to in paragraph (a) proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 42A.

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(5) Any person who intentionally obstructs the exercise of any right conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (2)(d) shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$10,000 or to imprisonment for a term of six months or to both;
- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for a term of two years or to both.

[Section 44 amended by 2012 : 34 s. 11 effective 19 September 2012]

Obstruction of investigations

45 (1) A person who knows or suspects that an investigation is being or is likely to be carried out—

- (a) into a suspected contravention of section 11; or
- (b) under section 42,

shall be guilty of an offence if he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

(2) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine of \$10,000 or to imprisonment for a term of six months or to both;
- (b) on conviction on indictment, to a fine of \$50,000 to imprisonment for a term of two years or to both.

FINANCIAL STATEMENTS AND AUDIT

Appointment of auditors

46 (1) Every institution shall appoint annually an approved auditor to audit the financial statements of the institution.

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

(3) An institution shall forthwith give written notice to the Authority if the institution—

- (a) proposes to remove an auditor before the expiration of his term of office; or
- (b) proposes to replace an auditor at the expiration of the term of his office with a different auditor.

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(4) An auditor of an institution shall forthwith give written notice to the Authority if the auditor—

- (a) resigns before the expiration of his term of office;
- (b) does not seek to be re-appointed;
- (c) decides to include a modification of his report on the institution's financial statements and in particular, a qualification or denial of his opinion, or the statement of an adverse opinion;
- (d) becomes aware of any fact or matter which is likely to be of material significance for the discharge, in relation to the institution, of the Authority's functions under this Act.

(4A) Without prejudice to section 60(1), regulations made under that section shall prescribe the facts or matters which are likely to be of material significance for the discharge of the Authority's functions under this Act.

(5) An institution or auditor who fails to comply with subsections (1), (3) and paragraphs (a), (b) and (c) of subsection (4) shall be guilty of an offence and shall be liable on summary conviction to a fine of \$50,000 .

(6) For the purposes of this section, "approved auditor" means a person who is a member of a professional body for the time being declared by the Minister by notice published in the Gazette to be approved for the purposes of this Act.

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

[Section 46 subsection (4)(d) substituted, (4A) inserted, and (5) amended, by 2005:41 s.3 effective 10 July 2006]

Duty to audit etc.

47 (1) Notwithstanding anything to the contrary in any other Act, an institution shall prepare annual financial statements of its business copies of which shall be laid before the institution in general meeting.

(2) An institution shall cause the financial statements of its business to be audited annually and shall at each of its offices in Bermuda—

- (a) keep a copy of its most recent audited financial statements together with the auditor's report on the financial statements ;
- (b) during normal business hours make that copy of the financial statements and report available for inspection by any person on request.

(3) An institution shall provide the Authority with a copy of the audited financial statements and report not later than four months after the close of each financial year of an institution.

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(4) *[Repealed by 2012 : 34 s. 15]*

[Section 47 subsection (4) repealed by 2012 : 34 s. 15 effective 19 September 2012]

Auditor's report

48 (1) An approved auditor shall make a report to the institution's members on all annual financial statements of the institution of which copies are to be laid before the institution in general meeting during his tenure of office.

(2) The auditor shall conduct his audit and prepare his report pursuant to the provisions of section 90 of the Companies Act 1981.

Communication by auditor, etc. with Authority

49 (1) No duty to which—

(a) an auditor of an institution;

(b) a person appointed to make a report under section 39(1)(b),

may be subject shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request made by the Authority, any information or opinion on a matter to which this section applies and which is relevant to any function of the Authority under this Act.

(2) In relation to an auditor of an institution this section applies to any matter of which he becomes aware in his capacity as auditor and which relates to the business or affairs of the institution or any associated company.

(3) In relation to a person appointed to make a report under section 39(1)(b) this section applies to any matter of which he becomes aware in his capacity as the person making the report and which—

(a) relates to the business or affairs of the institution in relation to which his report is made or any associated company of that institution;

(b) if by virtue of section 40(4) the report relates to an associated company of an institution, to the business or affairs of that company.

(4) In this section "associated company", in relation to an institution, means any such company as is mentioned in section 40(4).

DISCIPLINARY MEASURES

Power to impose civil penalties for breach of requirements

49A (1) Except as provided in sections 16 and 36A, every person who fails to comply with any requirement or contravenes any prohibition imposed by or under this Act shall be liable to a penalty not exceeding \$500,000, as the Authority considers appropriate, for each such failure or contravention.

(2) For the purposes of subsection (1), "appropriate" means effective, proportionate and dissuasive.

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(3) The Authority shall not impose a penalty under subsection (1) where it is satisfied that the person concerned took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

[Section 49A inserted by 2012 : 34 s. 12 effective 19 September 2012]

Civil penalties procedures

49B (1) If the Authority proposes to impose a civil penalty, it must give the person concerned a warning notice.

(2) If the Authority decides to impose a civil penalty, it must give the person concerned a decision notice.

[Section 49B inserted by 2012 : 34 s. 12 effective 19 September 2012]

Public censure

49C (1) If the Authority considers that an institution has contravened a requirement imposed on it by or under this Act, the Authority may publish a statement to that effect.

(2) After a statement under this section is published, the Authority shall send a copy of it to the institution.

[Section 49C inserted by 2012 : 34 s. 12 effective 19 September 2012]

Public censure procedure

49D (1) If the Authority proposes to publish a statement in respect of an institution under section 49C, it must give the institution a warning notice.

(2) If the Authority decides to publish a statement under section 49C (whether or not in the terms proposed), it must give the institution concerned a decision notice.

[Section 49D inserted by 2012 : 34 s. 12 effective 19 September 2012]

Prohibition orders

49E (1) Subsection (2) applies if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by a person who is licensed by the Authority under this Act ('a regulated person').

(2) The Authority may make a prohibition order prohibiting the individual from performing a specified function, any function falling within a specified description, or any other function.

(3) A prohibition order may relate to—

- (a) a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities;
- (b) regulated persons generally, or any person within a specified class of regulated persons.

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(4) In exercising its discretion to make a prohibition order under subsection (2), the Authority must have regard (among other things) to such factors, including assessment criteria as the Authority may establish in a statement of principles.

(5) An institution must ensure that no function performed in relation to the carrying on of a regulated activity, is performed by an individual who is prohibited from performing that function by a prohibition order.

(6) The Authority may, on the application of the individual named in a prohibition order, vary or revoke the prohibition order.

(7) The Authority must publish a prohibition order that is in effect, and every variation of such order, in such manner as it considers appropriate to bring the order to the attention of the public.

(8) Any person who fails to comply with the terms of a prohibition order commits an offence and is liable—

(a) on summary conviction to a fine of \$50,000 or to imprisonment for two years or to both;

(b) on conviction on indictment to a fine of \$200,000 or to imprisonment for four years or to both.

(9) In this section—

“regulated activity” means any activity that is carried on by way of business requiring licensing by the Authority under any provision of this Act;

“regulated person” has the meaning given in subsection (1);

“specified” means specified in the prohibition order.

[Section 49E inserted by 2012 : 34 s. 12 effective 19 September 2012]

Prohibition orders: procedures

49F (1) If the Authority proposes to make a prohibition order it must give the individual concerned a warning notice.

(2) If the Authority decides to make a prohibition order it must give the individual concerned a decision notice.

[Section 49F inserted by 2012 : 34 s. 12 effective 19 September 2012]

Applications relating to prohibition orders: procedures

49G (1) This section applies to an application for the variation or revocation of a prohibition order.

(2) If the Authority decides to grant the application, it must give the applicant written notice of its decision.

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(3) If the Authority decides to refuse the application, it must give the applicant a decision notice.

[Section 49G inserted by 2012 : 34 s. 12 effective 19 September 2012]

Determination of applications for variation etc.

49H (1) The Authority may grant an application made under section 49G if it is satisfied that the applicant is a fit and proper person to perform the function to which the application relates.

(2) In deciding that question, the Authority may have regard (among other things) to whether the applicant—

- (a) has obtained a qualification;
- (b) has undergone, or is undergoing, training; or
- (c) possesses a level of competence,

required in relation to persons performing functions of the kind to which the application relates.

[Section 49H inserted by 2012 : 34 s. 12 effective 19 September 2012]

Injunctions

Injunctions

49I (1) If, on the application of the Authority, the Court is satisfied—

- (a) that there is a reasonable likelihood that any person will contravene a relevant requirement; or
- (b) that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may make an order restraining the contravention.

(2) If, on the application of the Authority, the Court is satisfied—

- (a) that any person has contravened a relevant requirement; and
- (b) that there are steps which could be taken for remedying the contravention,

the Court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If, on the application of the Authority, the Court is satisfied that any person may have—

- (a) contravened a relevant requirement; or
- (b) been knowingly concerned in the contravention of such a requirement,

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the Court may make an order restraining such person from disposing of, or otherwise dealing with, any of his assets which it is satisfied the person is reasonably likely to dispose of or otherwise deal with.

(4) In subsection (2), references to remedying a contravention include references to mitigating its effect.

(5) "Relevant requirement" in relation to an application by the Authority, means a requirement which is imposed by or under this Act.

[Section 49I inserted by 2012 : 34 s. 12 effective 19 September 2012]

Notices

Warning notices

49J (1) A warning notice must—

- (a) state the action which the Authority proposes to take;
- (b) be in writing; and
- (c) give reasons for the proposed action.

(2) The warning notice must specify a reasonable period (which may not be less than 14 days) within which the person to whom it is given may make representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to give a decision notice.

(3) The Authority may extend the period specified in the notice.

(4) A warning notice given under section 20 proposing action within subsection (1) (a) or (1)(b) of that section must specify the proposed restriction or, as the case maybe, the proposed variation.

(5) A warning notice about a proposal to publish a statement given under section 49D must set out the terms of the statement.

(6) A warning notice given under section 49F(1) must set out the terms of the prohibition.

[Section 49J inserted by 2012 : 34 s. 12 effective 19 September 2012]

Decision notices

49K (1) A decision notice must—

- (a) be in writing;
- (b) give reasons for the Authority's decision to take the action to which the notice relates;
- (c) give its decision; and
- (d) give an indication of the right to appeal the decision to the appeal tribunal under section 30.

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(2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 49J was given; and if no decision notice under subsection (1) is given within that period, the Authority shall be treated as having at the end of that period given a notice of discontinuance under section 49L.

(3) A decision notice under section 20(4B) imposing a restriction or variation shall set out the terms of the restriction or variation.

(4) A decision notice about the imposition of a civil penalty under section 49A must state the date of payment.

(5) A decision notice about public censure under section 49C must—

- (a) set out the terms of the statement;
- (b) give details of the manner in which, and the date on which, the statement will be published.

(6) A decision notice about a prohibition order made under section 49F must—

- (a) name the individual to whom the prohibition order applies;
- (b) set out the terms of the order; and
- (c) be given to the individual named in the order.

(7) A decision notice shall state the day on which it is to take effect.

(8) The Authority may, before it takes the action to which a decision notice (“the original notice”) relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.

(9) The Authority may give a further decision notice as a result of subsection (8) only if the person to whom the original notice was given consents.

(10) If the person to whom a decision notice is given under subsection (1) had the right to refer the matter to which the original decision notice related to the tribunal, he has that right as respects the decision notice given under subsection (8).

[Section 49K inserted by 2012 : 34 s. 12 effective 19 September 2012]

Conclusion of action

Notices of discontinuance

49L (1) Subject to section 49K(2), if the Authority decides not to take the action proposed in a warning notice it must give a notice of discontinuance to the person to whom the warning notice was given.

(2) A notice of discontinuance must identify the action which is being discontinued.

[Section 49L inserted by 2012 : 34 s. 12 effective 19 September 2012]

Publication

Publication

49M (1) Subject to sections 20, 49C and 49E, the Authority may publish such information about a matter to which a decision notice relates as it considers appropriate.

(2) The Authority must not publish a decision under subsection (1)—

(a) before notifying the person concerned; and

(b) pending an appeal under section 30.

[Section 49M inserted by 2012 : 34 s. 12 effective 19 September 2012]

RESTRICTION ON INSTITUTIONS ACTIVITIES

Restriction on advances on institution shares

50 (1) An institution shall not accept any form of security over its own shares as security for any advances, credit facilities or guarantee given to it by any person.

(2) *[Repealed by 2012 : 34 s. 15]*

[Section 50 subsection (2) repealed by 2012 : 34 s. 15 effective 19 September 2012]

Restriction on commercial activities of institutions

51 (1) Subject to this section, an institution shall not without obtaining the prior approval of the Authority—

(a) in the case of all institutions—

(i) engage in manufacture;

(ii) trade in any goods;

(iii) acquire or hold any interest in land;

(b) in the case of an institution holding a banking licence, provide any services other than the business of banking or dealing in money or securities of any kind, including all services normally associated with such business;

(c) in the case of an institution holding a deposit company licence, provide any services other than deposit-taking business including all services normally associated with such business,

except in so far as may be necessary with respect to any interests the institution may acquire in the course of the satisfaction of debts due to it, and provided such interests are disposed of at the earliest suitable opportunity.

(2) An institution may acquire and hold an interest in any undertaking to a value not exceeding such percentage of the amount of the paid-up capital and published reserves of the institution as the Minister acting on the advice of the Authority may prescribe by order.

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(3) An order made under subsection (2) shall be subject to negative resolution procedure.

(4) An institution may acquire and hold an interest or estate in land—

- (a) for the purpose of accommodating its business; or
- (b) as security for any advances, credit facilities or guarantees given to it by any person.

(5) An institution that contravenes the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine of \$50,000.

RESTRICTION ON DISCLOSURE OF INFORMATION

Restricted information

52 (1) Except as provided by sections 53, 54 and 55—

- (a) no person who under or for the purposes of this Act receives information relating to the business or other affairs of any person; and
- (b) no person who obtains such information directly or indirectly from a person who has received it as aforesaid,

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received as aforesaid.

(2) This section does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) Any person who discloses information in contravention of this section commits an offence and is liable—

- (a) on summary conviction to a fine of \$50,000 and to imprisonment for two years or to both;
- (b) on conviction on indictment to a fine of \$100,000 or to imprisonment for five years or to both.

Disclosure for facilitating the discharge of functions of the Authority

53 (1) Section 52 does not preclude the disclosure of information in any case in which disclosure is for the purpose of enabling or assisting the Authority to discharge—

- (a) its functions under this Act; and
- (b) its functions under the Bermuda Monetary Authority Act 1969.

(2) Without prejudice to the generality of subsection (1), section 52 does not preclude the disclosure of information by the Authority to the auditor of an institution if it appears to the Authority that disclosing the information would enable or assist the

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Authority to discharge the functions mentioned in that subsection or would otherwise be in the interests of the depositors.

Disclosure for facilitating the discharge of functions by other authorities

54 (1) Section 52 does not preclude the disclosure of information to the Minister or other authority in Bermuda in any case in which the disclosure is for the purpose of enabling or assisting him to discharge his regulatory functions.

(2) Section 52 does not preclude the disclosure of information for the purpose of enabling or assisting an authority in a country or territory outside Bermuda to exercise functions corresponding to the functions of the Authority under this Act.

(3) Subsection (2) does not apply in relation to disclosures to an authority unless the Authority is satisfied that the authority is subject to restriction on further disclosure at least equivalent to those imposed by sections 52, 53 and this section.

(4) Section 52 does not preclude the disclosure of information—

(a) for the purpose of enabling or assisting a person to do anything which he is required to do in pursuance of a requirement imposed under section 39(1)(b);

(b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or otherwise;

(c) in connection with any other proceedings arising out of this Act.

(5) Section 52 does not preclude the disclosure by the Authority to the Director of Public Prosecutions or a police officer not below the rank of inspector of information obtained pursuant to section 42, 43 or 44 or of information in the possession of the Authority as to any suspected contravention in relation to which the powers conferred by those sections are exercisable.

(5A) Section 52 does not preclude the disclosure of information to the Chartered Professional Accountants of Bermuda for the purpose of instituting disciplinary proceedings for a breach of any duty imposed on its members under this Act.

(6) Information which is disclosed to a person in pursuance of this section shall not be used otherwise than for the purpose mentioned in this section.

[Section 54 subsection (5A) inserted by 2005:41 s.4 effective 10 July 2006; subsection (5A) amended by 2014 : 8 s. 16 effective 11 April 2014]

Information supplied to the Authority by relevant overseas authority

55 (1) Section 52 applies to information which has been supplied to the Authority for the purposes of any relevant functions by the relevant supervisory authority in a country or territory outside Bermuda.

(2) Information supplied to the Authority as mentioned in subsection (1) shall not be disclosed except as provided by section 52 or—

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- (a) for the purpose of enabling or assisting the Authority to discharge its functions under this Act; or
- (b) with a view to the institution of, or otherwise for the purpose of, criminal proceedings, whether under this Act or otherwise.

(3) In this section—

“relevant functions” in relation to the Authority means its functions under this Act and the Bermuda Monetary Authority Act 1969;

“relevant supervisory authority” means the authority discharging in that country or territory functions corresponding to those of the Authority under this Act.

[Section 55 subsection (2) amended by 2005:41 s.5 effective 10 July 2006]

False documents or information

55A (1) Any person who, for any purposes of this Act—

- (a) issues a document, or supplies information, which is false or misleading in a material respect; or
- (b) signs a document which is false or misleading in a material respect; or
- (c) takes part in the preparation or issue of a document, or the supplying of information, which is false in a material respect,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

- (a) on summary conviction to a fine of \$50,000 or to imprisonment for two years or to both;
- (b) on conviction on indictment to a fine of \$200,000 or to imprisonment for four years or to both.

(3) It shall be a defence for a person charged with an offence under subsection (1) to prove—

- (a) if an individual, that he had no knowledge of the falsity or misleading character of the document or information, and took every reasonable precaution to ensure its accuracy; and
- (b) if not an individual, that every person acting on his behalf had no such knowledge, and took every such reasonable precaution, as aforesaid.

[Section 55A inserted by 2012 : 34 s. 13 effective 19 September 2012]

MISCELLANEOUS AND SUPPLEMENTAL

Offences by companies

56 (1) Where an offence under this Act committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the

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part of, any director, senior executive, secretary or other similar officer of the company, or any person who was purporting to act in any such capacity, he, as well as the company, shall be guilty of that offence and be liable to be proceeded against and punished accordingly unless such person shows that he took all reasonable steps to avoid the commission of an offence.

(2) Where the affairs of a company are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the company.

Civil debt and civil penalties

56A (1) When a person is convicted of an offence under this Act, such person shall not also be liable to a civil penalty imposed by or under section 49A in relation to the same matter.

(2) A civil penalty levied pursuant to this Act may be recovered by the Authority as a civil debt.

[Section 56A inserted by 2012 : 34 s. 14 effective 19 September 2012]

Restriction on use of word “bank”

57 No person carrying on business in Bermuda shall use any name which indicates or may reasonably be understood to indicate (whether in English or in any other language) that he is a bank or banker or is carrying on deposit-taking business authorised under a banking licence unless it is an institution holding a banking licence under this Act.

Notices

58 (1) This section has effect in relation to any notice, direction or other document required or authorised by or under this Act to be given to or served on any person other than the Authority.

(2) Any such document may be given to or served on the person in question—

- (a) by delivering it to him;
- (b) by leaving it at his principal place of business; or
- (c) by sending it to him at that address by facsimile or other similar means which produce a document containing the text of the communication.

(3) Any such document may in the case of a company be given to or served—

- (a) by delivering it to the company's principal place of business or registered office in Bermuda; or
- (b) by sending it by registered post addressed to the company's principal place of business.

Service of notice on Authority

59 (1) No notice required by this Act to be given or served on the Authority shall be regarded as given or served until it is received.

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(2) Subject to subsection (1), such notice may be given by facsimile or other similar means which produce a document containing the text of the communication.

Regulations

60 (1) The Minister acting on the advice of the Authority, may make regulations prescribing anything which may be prescribed under this Act and generally for the implementation of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may in particular—

- (a) prescribe forms, fees and charges;
- (b) regulate advertising and the soliciting of deposits by whatever means (including electronic soliciting).
- (c) prescribe penalties not exceeding \$10000 for any breach of the regulations.

(3) Regulations made under this section are subject to negative resolution procedure.

Repeals

61 The following enactments shall cease to have effect and are hereby repealed—

The Banks Act 1969; and

The Deposit Companies Act 1974.

Consequential amendments

62 (1) The Minister may by order amend any enactment as he thinks fit in consequence of this Act and the repeal of the enactments listed in section 61.

(2) An order made under this section shall be subject to affirmative resolution procedure.

Transitional

63 (1) Notwithstanding the provisions of this Act, where, upon the commencement of this Act a person is carrying on a deposit-taking business—

- (a) under a licence issued by the Minister under the repealed Banks Act 1969;
or
- (b) under a licence issued by the Minister under the repealed Deposit Companies Act 1974,

the Authority shall issue to the person holding the licence referred to in paragraph (a) a banking licence, and to a person holding the licence referred to in paragraph (b) a deposit company licence.

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(2) Subject to this section and section 64, upon the issue of the licence the provisions of this Act shall apply to the institution as if such licence were granted under section 14.

(3) Except where the Authority directs otherwise in the interests of the depositors or potential depositors, for the period of twelve months from the date of commencement of this Act, or such other longer period as the Authority may in any particular case specify, paragraph 7 of the minimum criteria specified in the Second Schedule shall not apply to an institution licensed under this section.

(4) *[Repealed by 2012 : 34 s. 15]*

(5) An institution shall not be liable to pay the supervision fee prescribed by virtue of section 16(1) on the issue of its licence under subsection (1), but shall be liable to pay the fee prescribed thereby on or before 30 April 2000, and annually thereafter.

[Section 63(5) added by 2000:16 effective 29 March 2000; subsection (4) repealed by 2012 : 34 s. 15 effective 19 September 2012]

Savings

64 Nothing in this Act shall require an institution licensed under section 63 to provide any services to the public in Bermuda that it did not provide before the commencement of this Act.

FIRST SCHEDULE

(section 12(1))

EXEMPTIONS

- 1 The following are exempt from all of the provisions of this Act—
- (a) the Government of Bermuda;
 - (b) the Bermuda Monetary Authority;
 - (c) every public authority in Bermuda;
 - (d) a credit union licensed under the Credit Unions Act 2010;
 - (e) (i) Any person carrying on deposit-taking business who is for the time being registered under the Insurance Act 1978.
 - (ii) This paragraph applies only to persons who accept deposits in the course of carrying on the insurance business for which they are registered;
 - (f) (i) Any person carrying on deposit-taking business who is for the time being licensed under the Investment Business Act 1998.
 - (ii) This paragraph applies only to persons who accept deposits in the course of carrying on the investment business for which they are licensed.

[First Schedule para (d) inserted by BR 80/1999 effective 1 January 2000; paras (e) and (f) inserted by BR 87/2001 effective 28 December 2001; para 1(d) amended by 2010 : 43 s. 47 effective 1 January 2011]

SECOND SCHEDULE

(section 14(2))

MINIMUM CRITERIA FOR LICENSING

DIRECTORS ETC. TO BE FIT AND PROPER PERSONS

1 (1) Every person who is, or is to be, a director, controller or senior executive of the institution is a fit and proper person to perform functions in relation to any activity carried on by the institution.

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfill those responsibilities and to whether the interests of depositors or potential depositors of the institution are, or are likely to be, in any way threatened by his holding that position.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has—

- (a) committed an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under any enactment appearing to the Authority to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
- (c) engaged in any business practices appearing to the Authority to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on his method of conducting business;
- (d) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

CORPORATE GOVERNANCE

1A (1) The institution shall implement corporate governance policies and processes as the Authority considers appropriate given the nature, size, complexity and risk profile of the institution.

(2) Without prejudice to subparagraph (1) the business of an institution shall be—

- (a) effectively directed by at least two individuals; and

- (b) under the oversight of such number of non-executive directors appointed as the Authority considers appropriate given the nature, size, complexity and risk profile of the institution.

BUSINESS TO BE DIRECTED BY AT LEAST TWO INDIVIDUALS

2 *[Repealed by 2012 : 34 s. 15]*

COMPOSITION OF BOARD OF DIRECTORS

3 *[Repealed by 2012 : 34 s. 15]*

BUSINESS TO BE CONDUCTED IN PRUDENT MANNER

4 (1) The institution conducts, or, in the case of an institution which is not yet carrying on a deposit-taking business, will conduct its business in a prudent manner.

(2) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain capital which, together with other financial resources available to the institution of such nature and amount as considered appropriate by the Authority, are—

- (a) of an amount which is commensurate with the nature and scale of the institution's operations; and

- (b) of an amount and nature sufficient to safeguard the interests of its depositors and potential depositors, having regard to the particular factors mentioned in subparagraph (3) and any other factors appearing to the Authority to be relevant.

(3) The particular factors referred to above are—

- (a) the nature and scale of the institution's operations; and

- (b) the risks inherent in those operations and in the operations of any other undertaking in the same group so far as capable of affecting the institution.

(4) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate liquidity, having regard to the relationship between its liquid assets and its actual and contingent liabilities, to the times at which those liabilities will or may fall due and its assets mature, to the factors mentioned in subparagraph (3) and to any other factors appearing to the Authority to be relevant.

(5) For the purposes of subparagraph (4) the Authority may, to such extent as it thinks appropriate, take into account as liquid assets, assets of the institution and facilities available to it which are capable of providing liquidity within a reasonable period.

(6) An institution shall not be regarded as conducting its business in a prudent manner unless it makes or, as the case may be, will make adequate provision for depreciation or diminution in the value of its assets (including provision for bad or doubtful

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debts), for liabilities which will or may fall to be discharged by it and for losses which it will or may incur.

(7) An institution shall not be regarded as conducting its business in a prudent manner unless it makes or, as the case may be, will maintain adequate accounting and other records of its business and adequate systems of control of its business and records.

(8) Those records and systems shall not be regarded as adequate unless they are such as to enable the business of the institution to be prudently managed and the institution to comply with the duties imposed on it by or under this Act and in determining whether those systems are adequate the Authority shall have regard to the functions and responsibilities in respect of them of any such directors of the institution as are mentioned in paragraph 3 .

(9) Subparagraphs (2) to (8) are without prejudice to the generality of subparagraph (1) .

(10) In determining whether an institution is conducting its business in a prudent manner, the Authority shall take into account any failure by the institution to comply with the provisions of—

- (a) this Act;
- (b) any other law, including provisions of the law pertaining to anti-money laundering and anti-financing of terrorism as provided in the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008; and
- (c) international sanctions in force in Bermuda.

CONSOLIDATED SUPERVISION

5 The position of the institution within the structure of any group to which it may belong or its links with any related companies shall be such that it will not obstruct the conduct of effective consolidated supervision.

INTEGRITY AND SKILL

6 The business of the institution is or, in the case of an institution which is not yet carrying on a deposit-taking business, will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.

MINIMUM NET ASSETS

7 The institution will at the time when the licence is granted to it have initial net assets amounting to not less than \$10 million in the case of a bank and \$1 million in the case of a deposit company (or an amount of equal value denominated wholly or partly in another unit of account).

[Second Schedule amended by 2012 : 34 s. 15 effective 19 September 2012]

THIRD SCHEDULE

(section 14(5B))

SPECIFIED PERSONS BANKING ACTIVITIES CRITERIA

1 An institution licensed under section 14(5)(c) may provide services to a person that—

- (a) has submitted a Form No. 1 application to the Authority, in accordance with the Companies (Forms) Rules 1982, to be registered under the Companies Act 1981; and has indicated on such form the intention to conduct digital asset business or undertake a digital asset issuance in Bermuda;
- (ba) has submitted an application, in such form as may be prescribed, to be registered as a partnership under the Limited Partnership Act 1882, Exempted Partnerships Act 1992 or the Overseas Partnership Act 1995; and has indicated on such form the intention to conduct digital asset business or undertake a digital asset issuance in Bermuda;
- (b) has submitted a Form 1 application to the Authority, in accordance with the Limited Liability Company (Forms) Regulations 2016, to be formed under the Limited Liability Companies Act 2016; and has indicated on such form the intention to conduct digital asset business or undertake a digital asset issuance in Bermuda;
- (c) is licensed to conduct digital asset business in Bermuda under the Digital Asset Business Act 2018;
- (d) has obtained the authorisation from the Authority to undertake a digital asset issuance under the Digital Asset Issuance Act 2020;
- (e) is an affiliated company of a person mentioned in paragraphs (a) to (d); or
- (f) is an agent of, or is contracted to provide services for, a person mentioned in paragraph (c) or (d).

2 For the purposes of this Schedule—

“affiliated company” has the meaning given in section 2(1) of the Companies Act 1981;

“digital asset business” has the meaning given in section 2(1) of the Digital Asset Business Act 2018; and

“digital asset issuance” has the meaning given in section 2 of the Digital Asset Issuance Act 2020;

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“initial coin offering” [Deleted by 2020 : 18 s. 83]”.

[Third Schedule inserted by 2018 : 52 s. 3 effective 17 August 2018; Third Schedule paragraph (1) amended, paragraph (2) definition "initial coin offering" deleted, and "digital asset issuance" inserted by 2020 : 18 s. 83 effective 6 May 2020]

[Assent Date: 23 September 1999]

[Operative Date: 1 January 2000]

[Amended by:

BR 72 / 1999

BR 80 / 1999

2000 : 16

BR 87 / 2001

2002 : 39

2005 : 41

BR 62 / 2006

2010 : 58

2010 : 43

2012 : 34

2014 : 8

2016 : 33

2017 : 38

2018 : 52

2020 : 18]