



SAINT VINCENT AND THE GRENADINES

ACT NO. 19 OF 1996

IN ASSENT

CHARLES J. ANTROBUS
Ag Governor-General
7th October, 1996

[L.S.]

AN ACT to provide for the licensing and regulation of off shore banking business and related matters.

[By Proclamation]

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

PART 1

Short Title, Purpose and Interpretation

1. (1) This Act may be cited as the International Banks Act, 1996.

Short title and purpose

(2) The purpose of this Act is to encourage the development of the State as a responsible offshore financial centre and to provide incentives by way of tax exemptions for offshore banking business carried on from within the State.

2. (1) In this Act-

Interpretation

“auditor” means a person who is licensed and in good standing as a member of an association of chartered accountants or other similar body approved by the Authority as a reputable auditing association:

“Authority” means the Saint Vincent and the Grenadines Offshore Finance Authority created pursuant to the Saint Vincent and the Grenadines Offshore Finance Authority Act, 1996;

“bank” means any financial institution whose operations include the acceptance of deposits subject to transfer by the depositor by cheque or other means of payment transfer, being the same meaning as in the Banking Act Cap 63 as amended from time to time;

“banking business” means-

- (a) the business of receiving funds through
 - (i) the acceptance of monetary deposits which are repayable on demand or after notice or any similar operation;
 - (ii) the sale or placement of bonds, certificates, notes or other securities;

and the use of such, either in whole or in part, for loans or investment for the risk of the customer; and

- (b) any other activities recognised by the Central Bank as customary banking practice and which a financial institution is additionally authorised to do;

being the same meaning as in the Banking Act Cap 63, as amended from time to time;

“court” means the High Court of the State or a judge thereof;

“eligible company” means a body corporate

- (a) having at least one director who is a Resident.
- (b) which is incorporated, subsisting or continued under the Companies Act, 1994 or under the International Business Companies Act, 1996, and
- (c) whose objects or business activities are restricted to offshore banking business;

“financial year” means, in relation to a licensee under this Act,

- (a) a period not exceeding fifty-three weeks at the end of which the balance of the licensee’s account is struck; or
- (b) if no such balance is struck, or if a period in excess of fifty-three weeks is used, then, a calendar year;

“international business company” means a company incorporated or subsisting under the International Business Companies Act, 1996;

“licence” means a licence granted under section 4(4) of this Act;

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

“Minister” means the Minister for Finance;

“offshore banking business” means banking business which does not involve --

- (a) taking deposits from any Resident, provided that another licensee, an international business company, or a trust that is exempt from tax under the International Trusts Act, 1996 or the Saint Vincent Trust Authority Act (Cap. 114), shall be presumed not to be a Resident for purposes of this definition;
- (b) investing in any asset which represents a liability on any Resident, except a liability resulting from --
 - (i) a loan to an international business company or to a trust referred to under the Saint Vincent Trust Authority Act (Cap. 114) or the Saint Vincent and the Grenadines Offshore Finance Authority Act, 1996;
 - (ii) a loan by way of a mortgage to a member of the licensee's staff for the purchase or construction of a residence in the State to be owner-occupied; or
 - (iii) a transaction with another licensee under this Act, or
- (c) the purchase of bonds or other securities issued by the Government of the State, a statutory corporation of the State or a company in which the Government is the sole or majority beneficial owner;

For the removal of doubt, but subject to regulations as may be made applicable thereto, the acceptance in trust of

- (i) amounts of money in foreign currencies or in foreign securities or both,

(ii) **personal or movable** property with its **situs outside of the State, or**

(iii) real or immovable property with its **situs** outside the State,

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

“Offshore Finance Inspector” means the Offshore Finance Inspector appointed pursuant to the Saint Vincent and the Grenadines Offshore Finance Authority Act, 1996;

“registered agent” means a person licensed to carry on the **business** of Offshore Representation under the Registered Agent and Trustee licensing Act, 1996;

“Resident” means, for purposes of this Act,

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

(2) a trust company, partnership, limited partnership or other body, **incorporated, established, formed or organised** in the State under the laws of the State, the majority of shares or other ownership of which is legally or beneficially owned, directly or **indirectly**, by **persons** who are resident under the provisions of subparagraph (1) or (3) hereof, or by the State, and

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

provided that for purposes hereof the term “Resident” shall not **include** an international trust registered under the International Trusts Act; an international trust registered under the income tax exemption under the Trust Authority Act; an International Business Company that complies with the tax exemption provisions of the International Business Companies Act; or a bank which is licensed under this Act; so long as and to the extent that such registration or compliance continues under the provisions of the applicable Act; and

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

(2) In this Act unless the context requires otherwise, any reference to “dollar” or “\$” shall, unless otherwise stated, be to the lawful currency of the United States of America.

PART II

Licences

3. (1) No offshore banking business may be transacted from within the State, in whole or in part, **except** by an eligible company which is in possession of a licence granted **hereunder** to that company to carry on **such** offshore banking business.

Requirement for licence

(2) Whoever contravenes this section is guilty of an **offence** and liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a **term** not exceeding one year or to both such fine and **imprisonment**, and in the case of a **continuing offence** to a **fine** not exceeding one thousand dollars for each day during which the **offence** continues.

4. (1) An eligible company desirous of carrying on an offshore banking business from within the State shall make application to the authority for the grant of a licence.

Application for licence

(2) An application under subsection (1) shall be filed with the Offshore Finance **Inspector**, shall contain the particulars set out in the Schedule hereto, and shall be accompanied by the fee prescribed in regulations **hereunder**. The Offshore **Finance Inspector** shall review the application to ensure it contains the required information and is accompanied by **the** proper fee, and shall forward complete applications to the Authority.

(3) The Schedule may be amended by an order made by the Authority.

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

(5) A decision to issue or to refuse to issue a licence under this Act to an applicant must be made within 3 months of the receipt of the complete application.

(6) A decision to refuse to **grant** a licence, other than with respect to a renewal or continuation of **an** existing license, is final and is not subject to any appeal, and no reason for the refusal need be given.

(7) **The Authority shall cause notice** of the grant of a licence **under this Act to be published in the Gazette.**

(8) A licence issued **under this** Act shall be prominently **displayed** on each premises where **the** offshore banking **business is carried on.**

Duration and
renewal of licence

5. (1) Subject to the provisions of subsection (2), licence issued **under this Act is valid** until the **31st** December of the year in which it is issued and is renewable for the **following** year upon payment on **or before** January 15 of the **following** year of the fee **prescribed in** regulations hereunder. A licensee **which** fails to pay **the** prescribed **renewal** fee by that date **may** have its licence revoked by the Authority but **in** any event **shall** pay a **surcharge** not exceeding **one-twelfth** of that fee for every month or part of a month that the annual fee is not paid.

(2) A licence is renewable for an extended period of time not exceeding fifteen years **dependent** upon the merits of each individual case and subject to **the following** terms and conditions-

(a) **that the remaining** provisions of the Act continue to **apply; and**

(b) that the company **may** the appropriate licence **fee** set forth in the **regulations** promulgated under this Act.

Notification of
change of
particulars of
licensee

6. Where a **change** occurs in the **particulars** of a licensee as set out in the application for the licence, **the** licensee shall, as soon as possible thereafter, inform the Authority in writing of the nature and circumstances of the change.

Principal office
and registered
agent

7. (1) A licence shall not be granted to any **otherwise eligible company** **unless**

(a) it has a place of business in the State, and

(b) it designates and notifies to the Authority **by name** a registered agent, which is not an official of the applicant, to act as its registered agent in the State.

(2) **It** shall be a **condition** of every licence granted hereunder that the **licensee** shall forthwith **notify** the Authority in writing of **any** change in the location of its **office** in the State and of any change of its registered agent.

(3) Where the Authority has approved a **person** under subsection (1) as a registered agent, it may in writing **voke** the approval if **such person ceases** to **hold** a licence to act **as** registered agent as provided herein.

(4) By **accepting any** licence granted **under** this Act, the **licensee** appoints its **registered agent** as its agent for the **acceptance** of **service of documents** in any action **arising** out of the **operations** of the **licensee**.

Categories of
licences

8. A licence granted under this Act shall be in one **of the** following two categories:

- (a) a Class I **Offshore Banking** Licence for the purpose of **carrying on an offshore banking business** generally; or
- (b) a Class II **Offshore Banking** Licence for the purpose of carrying on offshore banking business **subject to** the restriction that the licensee shall not **offer or** provide its offshore banking business services, or otherwise receive or solicit funds by way of trade or business, except for non-Resident persons specifically named or described in an **undertaking accompanying** the application for the licence, **which** undertaking shall, **without** further notice, constitute a condition to the Class II licence, if and when the same is granted.

9. The holder of a Class I or a Class II Offshore Banking Licence shall not, without the written approval of the Authority, **carry** on any **banking business with** any Resident except in **connection with** the rendering of offshore banking business **services** from within the State or as **expressly** provided herein or in other laws governing the operations and activities of the licensee.

Limitations on
activities

10. (1) No Class I Offshore Banking Licence shall be granted to or maintained by any company unless it remains an eligible company and-

Capital
requirements

- (a) has and maintains a fully paid-up capital of not less than five hundred **thousand** dollars or its **equivalent** in another currency, or such greater sum as the Authority may reasonably determine; and
- (b) **has** deposited or invested the sum of **one** hundred thousand dollars or its equivalent in another **currency**, in such manner as the Authority may **reasonably prescribe**.

(2) No Class II Offshore Banking **Licence** shall be granted to or maintained by any company unless it **remains** an eligible company and --

- (a) has and maintains a fully paid-up capital of not less than one hundred thousand dollars or its equivalent in another currency, or **such** greater sum as the Authority may reasonably determine; and
- (b) has deposited or invested the sum of fifty thousand dollars or its **equivalent** in another currency in such manner as the **Authority** may reasonably prescribe.

(3) The Authority may require a licensee to increase its fully paid-up capital to such greater amount as it may determine to be

reasonable for the nature of the offshore banking business being, or sought to be, undertaken.

**Surrender of
licence**

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

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

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

and the Authority may thereupon approve the surrender of the licence.

(2) In the case of an application under subsection (1) **(b)**, the Authority may **request** the Attorney-General to **apply** to the court for an order that the **licensee** be wound up, either by the court or subject to the supervision of the court, and where the court so orders the **provisions** of the International Business Companies Act, 1996 or the **Companies Act, 1994 (or prior law of the State, as the case may be) relating to the winding up of a company by or subject to the supervision of the court mutatis mutandis** apply.

PART III

Transferability of **Shares** and Beneficial interests

**Shares not to be
issued or
transferred
without approval**

12. No shares or other interests, whether legal or equitable, in a licensee shall be issued, transferred or otherwise disposed of without the prior written approval of the Authority, **except** that the **Authority** may exempt any **licensee** from the provisions of **this section subject to such** terms and conditions as the Authority may deem necessary.

PART IV

Administration

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

(2) In ~~administering this~~ Act, the ~~functions of~~ the Authority, either acting as ~~a body or through~~ the Offshore Finance Inspector, ~~are—~~

**Functions of the
Minister,
the Authority and the
Offshore Finance
Inspector**

- (a) where it thinks fit or when required by the laws of the State or by regulations promulgated under this Act, to examine by way of the receipt of ~~regular~~ returns or in such other manner as it thinks fit the affairs or business of any licensee carrying on business within or outside the State for the purpose of determining that all requirements of this Act have been met and that the licensee is in a sound financial position and is ~~carrying~~ on its business in a satisfactory manner;
- (b) to assist in the ~~investigation~~ of any contravention of the laws of the State that it has reasonable grounds to believe has or may have ~~been committed~~ by a ~~licensee~~ or by any of the licensee's directors or officers;
- (c) to examine accounts and audited annual accounts forwarded to it under section 15; and
- (d) to examine and approve or deny the applications for licenses under ~~this~~ Act.

(3) In ~~the performance of his functions~~ under this Act and ~~subject to the confidentiality provisions in this~~ Act and elsewhere ~~under~~ the laws of the State, the Offshore Finance Inspector may at all reasonable times and solely for the purpose of carrying out the requirements of this Act and the ~~reasonable requests~~ and directions of the Authority

- (a) have access to the books, records, vouchers, documents, cash and securities of any licensee;
- (b) request any information, matter or thing ~~from~~ any person who it has reasonable grounds to believe is carrying on an offshore banking business in the State in contravention of this Act; and
- (c) demand of the registered agent of a licensee any reasonable information or explanation as to the offshore banking business being conducted by a company for which it serves as ~~registered~~ agent, for the purpose of enabling the Authority ~~and~~ the

Minister to perform its **functions** under the Act;

but in no **event**, except as expressly provided by law, may **the** Offshore Finance Inspector or the Authority or any person or **entity** acting under or with either of them remove, **communicate**, send or in any manner transmit any such information, documents, or related material out of the State.

(4) For the purposes of subsection (3), the Offshore Finance Inspector shall have access to the name or **title** of an account of a depositor and any other confidential **information** about or in the possession of a licensee only pursuant to an order of the court made under the circumstances set forth in the Confidential Relationships Preservation (International Finance) Act, 1996 on the ground that there is no other way to obtain the information required.

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

Use of the word
"bank, etc.

14. (1) Except with the approval of the Minister with the advice and consent of the Authority, or under the authority of another law of the State, no person or entity, **other than** a licensee, shall-

(a) use or continue to use the words "**bank**", "**building society**", "**financial institution**", "**savings**", "**savings and loan**" "**deposit**" or any of their derivatives, either in English or in any other language, in the name, description or title under which **that** person or entity is **carrying** on offshore **banking business from within** the State., whether or not the offshore banking business is **carried** on within or outside the State; or

(b) make or continue to make any representation in **any** advertisement, billhead, circular, letter, **letterhead**, notice, paper or in any other **manner that** the, persons or **entity** is carrying on offshore **banking business**.

(2) **Any** person or entity who contravenes subsection (1) shall be guilty of an **offence** and liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year or both, and in the case of a continuing **offence** to a fine not exceeding one thousand dollars for each day during which the **offence** continues.

(3) The Minister may, before giving its approval under subsection (1), require the production **of** such references and such information and particulars as it may prescribe.

(4) The Minister, with the advice and consent of the Authority, may withdraw any approval given under subsection (1) where it considers it to be in the public interest.

(5) Except where provided elsewhere in the laws of the State, the Authority may refuse to grant a licence to a company or, if the company is already in possession of a licence, it may revoke the licence if, in its opinion, the company is carrying on or intends to carry on offshore banking business under a name that is—

- (a) identical with that of any other person or entity, whether within or outside the State, or which so nearly resembles that name as to be calculated to deceive;
- (b) calculated to suggest falsely the patronage of or connection with some person or entity whether within or outside the State; or
- (c) calculated to suggest falsely that the person or entity
 - (i) has special status in relation to or derived from the Government,
 - (ii) has the official approval of or acts on behalf of the Government or of any department, branch, agency or organisation of Government, or any office thereof, or
 - (iii) is recognised in the State as a national or central bank.

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

15. (1) Every licensee shall have its accounts audited by an auditor annually or at such other periods as the Authority may require.

Accounts

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

(3) Where a licensee changes its auditor, the licensee shall, when required by the Authority, authorise the former auditor to disclose the circumstances that gave rise to the change and, when so

authorised, the auditor shall disclose the circumstances.

**Certain approvals
required**

16. A licensee shall not, without the prior written approval of the Authority, -

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

**Number and
approval of
directors**

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

(2) **Unless** exempted by the Authority pursuant to subsection (3), a licensee shall, prior to the appointment of a director or other senior officer, apply to the Authority for its written approval of the appointment.

(3) The **Authority** may exempt a licensee from the requirements specified in subsection (2), but an **exemption-**

- (a) ipso facto lapses if the director or senior officer becomes **bankrupt**, makes an arrangement or composition **with his** creditors, or is convicted of an **offence** involving dishonesty; and
- (b) **may** be revoked in writing by the Authority at any **time**.

**Specific powers
of the Authority**

18. (1) Where the Authority is satisfied that a **licensee-**

- (a) has ceased to carry on offshore banking business;
- (b) has gone into **liquidation**, is wound up or is in **the process of being** wound up, or **is otherwise dissolved**;
- (c) **has made** any arrangement or composition with its **creditors**;
- (d) is unable or appears **likely** to become unable to meet its obligations as they **fall** due;
- (e) is **carrying** on business in a manner detrimental to the **public** interest, the interests of its depositors, or the interests **of other creditors**;
- (f) has contravened any provision of this Act; or

(g) has failed to comply with a condition of its licence, it may, with the advice of the Minister, take any of the actions set forth in subsection (2).

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

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

(3) Before ordering any of the actions **authorised** in subsection (2), the Authority shall give the opportunity to the holder of the licence to show cause either in person or by representative **against** the action, **and** a licensee may appeal any action ordered thereunder to the court pursuant to section 24.

(4) A person appointed under paragraphs (d) or (e) of subsection (2) or whose appointment has been extended under subsection (5)(b) shall from time to time and in any case within 3 months from the date of his appointment or of the extension of his appointment, as the case may be, prepare and furnish a report to the Authority of the affairs of the licensee and may make recommendations thereon.

(5) The Authority may, on receipt of a report under subsection (4)—

- (a) **revoke** the **appointment** of the person appointed under **paragraphs (d) or (e)** of **subsection (2)**;
- (b) extend the period of appointment of the person

appointed under paragraphs (d) or (e) of subsection (2);

- (c) subject to any conditions which the Authority may impose, allow the licensee to reorganise its affairs in a manner as the Authority approves; or
- (d) revoke the licence and request the Attorney-General to apply to the court for an order that the licensee be wound up by the court pursuant to the provisions of the International Business Companies Act or the Companies Act, as the case may be.

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

Attorney-General
may apply to
court

19. Where a current or former licensee is being wound up voluntarily, the Attorney-General may, upon request of the Authority, apply to the court for leave to intervene on behalf of any interested party if he considers that the winding up is not being conducted in the best interests of its depositors or other creditors, and the court may make such order as it shall consider appropriate.

PART V

Exemption from Taxation and Duties

Exemption from
taxation and
duties and
certificate

20. (1) No income tax, capital gains tax or other direct tax shall be levied by the State or any political subdivision thereof upon the profits or gains or earnings of a licensee in respect of its offshore banking business.

(2) No income tax, capital gains tax or other direct tax shall be levied by the State or any political subdivision thereof in respect of any dividends or earnings attributable to the shares, debt or securities of a licensee that are beneficially owned by another licensee or by a person who is not a Resident.

(3) No estate, inheritance, succession or similar tax or impost shall be levied by the State or any political subdivision thereof in respect of any shares, securities or assets of a licensee that are beneficially owned by a person who is not a Resident, and the transfer of such shares, securities or assets shall likewise be exempt from such tax if the transferee is a licensee or otherwise not a Resident.

(4) No income tax, capital gain tax, or other direct tax or impost shall be levied withheld or collected in or by the State or any political subdivision thereof in respect of any dividends, interest, or other returns from any shares, securities, deposits, or other borrowings of a licensee or any assets managed by the licensee if the dividends, interest, or other returns are in respect of shares, securities, deposits or other borrowings or assets beneficially owned by a person who is not a Resident; but the burden of establishing such ownership lies upon the licensee.

(5) Notwithstanding any provision of the Stamp Act to the contrary-

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

are exempt from the payment of stamp duty .

(6) The exemption from taxes and duties conferred by the foregoing provisions of this Part may, at no extra charge to the licensee, be evidenced by a certificate issued by the Authority in behalf of the State confirming that the licensee shall be exempt from the taxes described in this section for a minimum period of ten (10) years from the date a licence is first granted under this Act to the licensee; provided that the provisions of this Part shall not be construed or apply so as to provide any guarantee or assurance that such licence will be renewed as provided herein so as to exempt a licensee under this Act from increases in fees charged under or pursuant to this Act or to exempt any Resident from the provisions of any law of the State imposing any tax whatsoever.

(7) The Minister may by order exempt a licensee from all or so much of any duty payable under the Customs Act in respect of goods imported by the licensee as the Minister deems expedient, if the licensee satisfies the Minister that the goods are not being made or manufactured in the State, are essential as equipment or fixtures for conducting offshore banking business in the State, that they will be exclusively used for such purposes in the State, and that the licensee will be bound to notify the Minister prior to the sale, transfer or disposal of the goods either in or out of the State following the importation of such goods into the State.

PART VI

Miscellaneous

**Power of the
Authority to
require insurance**

21. The Authority may require a licensee to effect a policy of insurance with a reputable insurance company against-

- (a) **losses arising** out of claims of negligence or breach of duty by the licensee or any of its directors or employees;
- (b) the dishonesty of employees of the licensee;
- (c) loss of documents; and
- (d) such other risks as the Authority may from time to time stipulate,

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

**Preservation of
confidentiality**

22. (1) Subject to subsection (2), neither the **Minister** nor the **Authority nor any person** or entity **acting** under the **authority** of either, **including the Offshore Finance** Inspector, shall disclose, or in any way **remove from or transmit** out of the State, any information relating to-

- (a) **any application** made to him **for** license under this **Act**;
- (b) the **affairs** of a licensee; no matter how such information is gained; or
- (c) **the** identity or affairs of a customer of a licensee,

which the Authority or any person or entity acting under the authority of the **Authority** has **acquired** in the course of his or its duties or the exercise of his or its **functions** under this Act,

(2) **Subsection** (1) does not **limit** the **restrictions** on disclosure set forth in the Confidential Relationships **Preservation** (International Finance) Act, 1996.

3) Any **person** who **contravenes** this section shall **be** guilty of an **offence** and liable on summary conviction to a **fine** not exceeding ten thousand dollars and to **imprisonment** for **two years**. **Prosecution** under this section shall not **preclude** prosecution **under** the

Confidential Relationships Preservation (International Finance) Act, 1996.

23. (1) A licensee or applicant for a licence under this Act, or any director or officer of a licensee or applicant who knowingly or wilfully supplies false or misleading information to the Authority, shall be guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years or to both.

Offences

(2) Any licensee who advertises inviting either directly or indirectly other parties to commit breaches of the laws of the country in which the advertisement appears or to which such advertisement is directed shall be guilty of an offence and liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding six months or to both.

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

(4) Any person who

- (a) fails to comply with a request made of him by the Authority;
- (b) assaults or wilfully obstructs the Authority in the performance of its duties under this Act;
- (c) by the offer of any gratuity, bribe or any other inducement prevents or attempts to prevent the Authority, the Minister or the Offshore Finance Inspector from performing his or its duties under this Act; or
- (d) contravenes any provision of this Act, or any regulations made under this Act for which no punishment is specifically provided:

shall be guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

24. (1) An appeal lies directly to the court by summons or motion from any decision of the Authority—

Appeals

- (a) to not renew or continue a licence under section 5;

- (b) revoking a **licence** under subsection (5) of section 14, or under subsection (2)(a) or **subsection** (5)(d) of section 18;
- (c) withdrawing an approval under section **14(4)**; or
- (d) requiring a licensee to take certain steps which the Authority may specify under section 18.
- (2) An **appeal** against the decision of the Authority shall be by motion to the **Court**.
- (3) The following procedure applies to appeals from the Authority;
- (a) the **appellant** within twenty-one days after the day on which the Authority has given its decision shall serve a notice in writing, signed by the appellant or his solicitor, on the Authority and the **Attorney-General** of his intention to appeal and of the general grounds of his **appeal**, and may apply to the court within fourteen **days** after the day on which the Authority has given its decision for leave to extend the time within which notice of **appeal** prescribed by this section may be served, and the court upon **hearin** of the application may extend the **time** presen%ed by this section as it deems fit;
- (b) the Authority shall, within fourteen days of receiving the notice of appeal, transmit a copy of its decision to the registrar of the court and to the Attorney-General together with all papers relating to the **appeal**, except that the Authority shall not be **obliged** to disclose any information if the Minister **considers** that the **public** interest would suffer by such disclosure;
- (c) where the appeal is **by** motion, the registrar of the court shall set down **the appeal** for hearing on such day as is convenient and shall cause **notice** of the hearing to be **published** in such manner as the court may **direct**; and
- (d) the court may, upon the **hearing** of the **appeal**, **confirm**, reverse, vary, or modify **the decision** of the Authority or **remit** the matter with the **opinion** and directions of the court thereon to the Authority.
- (4) An appeal against a decision of **the Authority** shall not operate as a **suspension of** the decision of the Authority.

25. No liability attaches to the Minister, the Authority, the members or employees of the Authority the Offshore **Finance Inspector**, or any other person **acting** under the authority of the **Authority for an act done in good faith** in the proper discharge of an **official function described** under the Act. **Immunity**

26. The Minister, acting on the advice and recommendation of the Authority, may make **regulations** generally for **carrying** the **purpose** and provisions of this **Act** into effect and, specifically, for the following purposes- **Regulations**

- (a) prescribing anything by this Act authorised or required to be prescribed;
- (b) controlling the form of advertising by licensees; and
- (c) **exempting** any person or business, or class of person or business **from** any provision of **this** Act.

27. Without **limiting** or affecting section 26, the Authority may, from time to time, issue **by** publication in the Gazette **directions** with relation to such matters as it may think fit and appropriate. **Directions**

28. (1) **Except as expressly provided herein, the Banking Act Cap 63 shall not apply to any company carrying on an offshore banking business, and this Act shall have no application to companies licensed to carry on a banking business under the Banking Act Cap 63.** **Non-application of Banking Act, Exchange Control Act and Interest Rate Act**

(2) Neither a company licensed under this Act, nor the dividends, royalties, interest, foreign securities, **funds**, gains, or assets **generated** or **managed** by a licensee in the course of its offshore **banking** business **shall** be **subject** to the provisions of the Exchange **Control** Act Cap 322 or any order or regulation made thereunder, or to any other exchange or currency control legislation or regulations of the State from time to time.

(3) Neither the Rate of Interest Act **any** other law of the State regulating the **charging** of interest on **loans** by financial institutions or banks shall **apply** to a licensee or its offshore banking business.

29. Notwithstanding any other **provision** of this Act to the contrary, a **company which** on the **effective** date of **this** Act holds a licence granted **under** the International Companies Act to undertake offshore **banking** business, or equivalent activities under such Act **shall** automatically **and without** further application or review be issued and hold a licence under this Act to conduct its offshore banking business as it is being conducted as of the effective date of this Act, for the remaining period of the current licence held by such company. **Savings for certain existing operations**

under the International Companies Act, and any such licensee may renew the licence to be automatically granted under this Act upon its expiration in **the** same manner as prescribed under section **5(1)**; provided that such licensee shall at the first applicable licence renewal date, amend its original **offshore** bank licence application to include and update the information to conform to the **requirements** of the Schedule.

**Savings for
Caribbean
Development
Bank**

30. Nothing in this Act shall apply to the Caribbean Development Bank.

Commencement

31. This Act **shall** be effective on the date published by the Governor-General by proclamation in the Gazette.

SCHEDULE

PARTICULARS TO BE SPECIFIED IN APPLICATIONS

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

- (1) Name of applicant.
- (2) Address in the State of its place of business, and the name and address of the registered agent in the State.
- (3) The names, addresses, citizenship and residency of all directors.
- (4) The names and addresses of all shareholders.
- (5) The **names** and addresses of **all** officers and managers.
- (6) Names and addresses of solicitors, if any, to the applicant together with a letter **from** the solicitors **confirming** that they act for the applicant.
- (7) Names and addresses of auditors of the applicant, together with a letter from the auditors confirming that they act for the applicant.
- (8) **Evidence** of a proper application for incorporation of the **company** in the State and that **the company** is an "eligible company."

- (9) Evidence in **writing** that the applicant itself or some person directly or indirectly **connected** with the applicant is possessed of solid and practical experience in banking business, as the case may be.
- (10) The following:
- (a) an undertaking in writing to provide and set apart a fully paid-up capital fund before or at the time it commences business, such as the **Authority** may in its determine based upon the class of licence for which application is **being** made, or by a guarantee under seal of such sum given by a holding or parent or other company approved by the Authority; and
 - (b) the guarantee referred to in **paragraph** (a) shall expressly provide that its formal validity, its essential **validity**, its **interepretation** and effect and the rights and obligations of the parties to it are governed exclusively by the laws of the State and that the courts of the State only shall be the **forum** for these purposes.
- (11) **Character** references in **writing**, together with such other evidence as the Authority may require, that **neither** the applicant nor any director or officer of the applicant has a criminal record either in the State or elsewhere.
- (12) Annual accounts of its holding **company**, if any, for the preceding three years and thereafter annually duly audited and certified by an independent auditor.
- (13) Names of all subsidiary companies of the **applicant** with addresses of their registered offices
- (14) A **copy** of the articles of **incorporation** and by-laws of the applicant company, **verified** by an affidavit sworn **by** the Resident director of the applicant.
- (15) References, including one from a bank.
- (16) **Statement** of assets and liabilities at the end of the month prior to the submission of the application certified by a director or senior officer.
- (17) Statement of capital of any other company held, directly or through a subsidiary, as an **asset** of the applicant.
- (18) If application is being made for a Class II licence, the list or **description** of the proposed customers of the licensee, as required by section 8 of **the Act**.

Passed in the House **of** Assembly this 27th day of June, 1996.

J. THERESA ADAMS
Clerk of the House of Assembly.

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