

FINANCIAL INSTITUTIONS ACT, 2004**ARRANGEMENT OF SECTIONS**

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FINANCIAL INSTITUTIONS ACT, 2004

(Act 14 of 2004)

I assent



J. A. Michel
President

29th December, 2004

AN ACT to repeal and replace the Financial Institutions Act, 1984.

ENACTED by the President and the National Assembly.

1. This Act may be cited as the Financial Institutions Act, 2004.

Short title

Interpretation

- 2.** In this Act, unless the context otherwise requires –
- “abandoned property” has the meaning given in section 59;
- “administrator”, in relation to a financial institution, means any person who is a director, managing director or manager of such institution, or in the case of a branch of a foreign financial institution, the person designated as managing agent pursuant to section 313(1) of the Companies Act;
- “assigned capital”, in relation to a branch of a foreign financial institution, means unimpaired capital assigned to the branch by its head office;
- “automated teller machine” means a terminal device, whether installed by a financial institution or other person, which is linked directly or indirectly to a computer system used by a financial institution and which provides facilities to the customers of the financial institution;
- “bank” means any person licensed under this Act to conduct banking business;
- “banking activities” means the activities that are listed in section 4;
- “banking business” means the business of receiving deposits of money or other repayable funds from the public and extending credits for its own account;
- “banking licence” means a licence to conduct banking business granted under section 6;
- “Board” means the Board of the Central Bank;

“branch” means a place of business that forms a legally dependent part of a financial institution and conducts directly all or some of its licensed activities;

“Bureau de Change” means any person authorised under the Exchange Control Act to buy and sell foreign currency and licensed under this Act to carry on foreign exchange business;

“capital funds” means the paid-up or assigned capital, as the case may be, of a financial institution plus the reserve fund referred to in section 24;

“Central Bank” means the Central Bank of Seychelles established by section 3 of the Central Bank of Seychelles Act;

“close relation”, in relation to an administrator or a natural person holding a substantial interest in a financial institution, means spouse, parents, children or dependent relatives;

“control”, in relation to a financial institution, means the relationship between the financial institution and any body corporate in which the financial institution –

- (a) directly, indirectly or acting through one or more persons owns, controls or has the right to vote 20 percent or more of its voting shares or has the right to elect a majority of its directors; or
- (b) exercises such a controlling influence as the Central Bank may determine;

“credit” means any commitment to disburse a sum of money in exchange for a right to repayment of the amount disbursed and outstanding and to payment of interest or other charges on such amount, any

extension of the due date of a monetary claim, any guarantee issued, and any commitment to acquire a debt security or other instrument stipulating the payment of a sum of money;

“debt security” means any negotiable instrument of indebtedness and any other instrument equivalent to such instrument of indebtedness, and any negotiable instrument giving the right to acquire another negotiable debt security (which may be in certificated or in book entry form) by subscription or exchange;

“deposit” means a sum of money paid on terms –

- (a) that it is to be repaid in full, with or without interest or premium of any kind, and either on demand or at a time agreed by or on behalf of the person making the payment and the person receiving it; and
- (b) that is not referable to the provision of property or service or the giving of security,

whether or not evidenced by any entry in a record of the person receiving the sum, or by any receipt, certificate, note or other document. A sum of money paid to a body corporate in exchange for the issuance of corporate debentures or corporate bonds is not deemed to constitute receipt of a deposit or repayable funds under the meaning of this Act, unless such activity is done on a frequent basis as determined by the Central Bank;

“director” has the meaning given in section 2(1) of the Companies Act, and in relation to a branch of a foreign financial institution includes the person designated as managing agent pursuant to section 313(1) of the Companies Act;

“financial institution” means –

- (a) any bank; or
- (b) any Bureau de Change,

and, for the purposes of this Act, all branches and agencies of a financial institution in Seychelles are deemed to be one financial institution;

“foreign exchange business” means the business of buying and selling of foreign currency;

“foreign exchange licence” means a licence to conduct foreign exchange business granted under section 6;

“foreign financial institution” means a financial institution established under the laws of a country other than Seychelles;

“group of closely-related customers” means –

- (a) two or more persons who, unless it is shown otherwise, constitute a single risk because one of them, directly or indirectly, has control as defined in this section above, over the other or others;
- (b) two or more persons between whom there is no relationship of control as defined in paragraph (a) but who are to be regarded as constituting a single risk because they are so interconnected that if one of them were to experience financial problems the other or all of the others would be likely to encounter repayment difficulties;

“local financial institution” means a financial institution established under the law of Seychelles;

“Minister” means the Minister for the time being responsible for finance;

“net profits” means profits after providing for management charges and taxation;

“offshore banking business” means banking business solely conducted with non-residents in currencies other than the Seychelles Rupee;

“place of business” means any branch, agency or mobile office of a financial institution in Seychelles which is open to the public;

“rupees” means rupees in Seychelles currency;

“sell” includes –

- (a) to sell by auction;
- (b) to offer or attempt to sell;
- (c) to expose, display or advertise for sale;
- (d) to sell or hire under a hire-purchase or installment sale agreement; or
- (e) to exchange or dispose of goods or services for any valuable consideration,

and the expressions “to purchase” and “to buy” shall be construed accordingly;

“substantial interest” means holding individually or together with a close relation, directly or indirectly,

10 percent or more of the capital or of the voting rights of a company or undertaking or, directly or indirectly, exercising such significant influence over the management of the company or undertaking as the Central Bank may determine;

“subsidiary” means any body corporate in which another person or group of persons acting in concert holds –

- (a) the equivalent of fifty percent or more of the voting shares; or
- (b) a substantial interest that permits such other person or group of persons to exercise effective control over the management or policies of the subsidiary;

“unsecured” –

- (a) in relation to credits, means credits granted without security;
- (b) in relation to credits against security, means any part of those credits which at any given time exceeds the market value of the assets comprising the security given, or which exceeds the valuation approved by the Central Bank at any time when it considers that no market value exists for those assets.

PART II - LICENCES

3. (1) No person in Seychelles shall advertise for or engage in banking business or offshore banking business without a banking licence or an offshore banking licence as the case may be issued by the Central Bank. A person holding funds which were obtained

Licences

by doing banking business or offshore banking business without a valid licence shall repay those funds in accordance with the directions of the Central Bank.

(2) No person in Seychelles shall advertise for or engage in foreign exchange business without a licence to conduct foreign exchange business issued by the Central Bank under this Act.

(3) A licence granted under this Act is granted in writing for an indefinite period of time and shall not be transferable. The licence shall specify the activities which the holder of the licence is authorised to undertake and the terms and conditions under which it has been issued.

(4) No person other than a company incorporated under the Companies Act or an overseas company registered under section 310 of the Companies Act shall be issued a licence under this Act. A banking licence for a branch in Seychelles shall only be issued to a financial institution incorporated outside Seychelles authorised to engage in the business of receiving money deposits or other repayable funds from the public in the country where its head office is located.

Activities

4.(1) Banks may engage only in the following activities –

- (a) receiving money deposits (in the form of demand deposits, time deposits or other forms of deposit) or other repayable funds, bearing interest or not;
- (b) extending credits, including but not limited to consumer and mortgage credit; factoring, with or without recourse; forfeiting; financing of commercial transactions; and issuing credit cards;
- (c) financial leasing;

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- (d) buying and selling for its own account or for the account of customers (including underwriting) of money market instruments (including inter alia cheques, bills of exchange and certificates of deposit); futures and options relating to debt securities or interest rates; exchange and interest rate instruments; and debt securities;
 - (e) providing money transmission services;
 - (f) buying and selling foreign currencies, including contracts for the future sale of foreign currencies;
 - (g) issuing and administering means of payment (including payment cards, travellers' cheques and bankers' drafts);
 - (h) money broking;
 - (i) safekeeping and administration of valuables, including securities;
 - (j) providing services as a portfolio manager or adviser;
 - (k) providing credit reference services;
 - (l) offshore banking; and
 - (m) anything that shall be incidental to the foregoing.
- (2) Bureaux de Change may engage only in the following activities –
- (a) buying and selling of foreign currency in the form of notes, coins and travellers' cheques; and

- (b) anything that shall be incidental to the foregoing.

(3) Financial institutions may be authorised in writing by the Central Bank to own subsidiaries that engage in other activities. Such authorisation shall for each subsidiary list the activities that it may engage in and the activities of the subsidiary shall be restricted to those listed in the authorisation.

Application
for licences

5. (1) Any company incorporated under the Companies Act or financial institution incorporated outside Seychelles seeking to establish a branch in Seychelles may apply for a licence; such application shall state the type of licence requested and be made in writing to the Central Bank in such manner as the Central Bank may specify and shall include –

- (a) an authenticated copy of the instrument of incorporation under which the applicant is formed, together with the memorandum of association or bylaws, if any, and the address of its head office;
- (b) the amounts of the authorised and subscribed capital of the applicant, including the amounts that have been paid in, or the assigned capital in the case of a branch of a financial institution incorporated outside Seychelles;
- (c) the name, nationality, residence and business or profession of every administrator, together with a statement detailing the qualifications and professional experience and at least three references. For a proposed bank, at least one reference must be provided from an internationally reputable bank other than the applicant;

- (d) the name, nationality, residence and business or profession of every person holding a substantial interest, together with at least two references verifying good financial standing, and, where the person holding a substantial interest is a body corporate, copies of the latest three audited annual balance sheets and profit and loss accounts where applicable;
- (e) a list of all shareholders and ultimate beneficial owners of shares stating the name, address and respective shareholding;
- (f) for each administrator and person holding a substantial interest an affidavit duly signed by the individual stating convictions for crimes, past or present involvement in a managerial function in a body corporate or other undertaking subject to insolvency proceedings or personal bankruptcy filings, if any;
- (g) copies of the latest three audited annual balance sheets and profit and loss accounts of the applicant, and in the case of a newly formed company, financial projections for the next 3 years;
- (h) a business plan setting out the business objectives and types of activities of the proposed financial institution, including a description of its organisational structure and internal controls together with projected balance sheets, profit and loss accounts and cash flow statements for the next three financial years;

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- (i) a statement by the auditor selected to be appointed indicating the auditor's willingness to take on this task;
 - (j) a list of companies in which the applicant holds shares, specifying the number of shares and the registered addresses of those companies;
 - (k) the location of the principal and other places in or outside Seychelles where it proposes to conduct business, and in the case of a mobile office, the area to be served;
 - (l) in the case of an application by a financial institution incorporated outside Seychelles, in addition,
 - (i) a certificate of designation specifying the name, nationality, residence and business or profession of its managing agent, being the officer, agent or other person in Seychelles responsible for carrying out the functions of the financial institution and on whom any process may be served;
 - (ii) a statement that the foreign supervisory authority responsible for the supervision of the applicant in the country of incorporation is aware of the application and exercises consolidated supervision;
 - (m) in the case of an application by a bank incorporated outside Seychelles seeking to establish a branch, in addition, a sworn undertaking of its head office through its principal officer, supported by an appropriate

resolution of its board of directors, that it will, on demand of the Central Bank, make available, in such currency and at such place as may be specified by the Central Bank, funds necessary to cover all obligations and liabilities incurred in the conduct of banking business authorised under the banking licence;

- (n) proof of payment of the application fee as prescribed by the Central Bank;
- (o) such other information as the Central Bank may require.

(2) An application for a licence to solely conduct foreign exchange business does not require the information or documents specified under subsection (1)(i), (j) and (1)(ii) above.

(3) The application and every document submitted in accordance with subsection (1) shall be signed by the directors of the applicant, or by a principal officer of the applicant duly authorised so to do. Where documents are not executed in the English language, certified translations in English must be submitted as well.

(4) For the purpose of subsection (1)(k), an automated teller machine by itself shall not constitute a place of business.

6. (1) In considering an application for a licence received under section 5, the Central Bank shall conduct such investigation as it may deem necessary and shall grant a licence to the applicant on being satisfied as to –

Granting of
licence

- (a) the validity of the documents submitted under section 5(1);
- (b) the financial status and history of the applicant;

- (c) the character and professional experience of its administrators;
- (d) the identity and character of its owners, in particular persons holding a substantial interest;
- (e) the adequacy of its capital structure;
- (f) its ability to cover all obligations and liabilities incurred in the conduct of the proposed business to be authorised under the licence;
- (g) the soundness of its proposed operations;
- (h) the viability of the business plan; and
- (i) in the case of a branch or subsidiary of a financial institution incorporated outside Seychelles, the adequacy of supervision exercised on a consolidated basis by the foreign supervisory authority:

Provided that, in the case of an application for an offshore banking licence, the applicant shall satisfy the Central Bank that it is of international repute and good standing.

(2) Within 30 days after the receipt of an application, the Central Bank shall inform the applicant whether the application is deemed complete or specify the additional information required to make the application complete.

(3) Within 90 days after the receipt of a complete application, the Central Bank shall –

- (a) grant a licence; or
- (b) inform the applicant that it has refused to grant a licence giving the reasons for the refusal.

(4) Where a licence is granted under this Act, the Central Bank shall publish in the *Gazette* and in a local newspaper a notice to that effect specifying the name of the financial institution and the activities authorised by the licence.

7. (1) In granting a licence, the Central Bank may specify the terms and conditions which shall be complied with by the financial institution.

Terms and conditions of licence

(2) The financial institution may only start its operations once the annual fee for its first year of operation has been paid to the Central Bank.

(3) A financial institution holding a licence shall not engage in any business other than the activities specified therein.

8. A financial institution holding a licence shall display a copy of that licence conspicuously in a public part of each place of its business in Seychelles and shall continue to keep that copy so displayed.

Display of licence

9. (1) The operations of a financial institution are subject to statutory directions and instruments made under this Act and to any determination, notice or other requirement that may be made or issued by the Central Bank from time to time under or in accordance with this Act, the Central Bank of Seychelles Act or any other written law.

Licensee to comply with rules, directions, etc.

(2) Without prejudice to the Companies Act, no local financial institution shall, without the prior written approval of the Central Bank, alter the instrument under which it is formed.

(3) The Central Bank shall approve no alteration which conflicts with this Act, the Companies Act or other laws.

(4) Without prejudice to section 312 or any other relevant provision of the Companies Act, every foreign financial institution

shall notify the Central Bank of any alteration in the instrument under which it is formed within 30 days of the alteration.

Licence fee

10. (1) Every financial institution shall pay to the Central Bank such annual fee for its licence as may be prescribed by the Central Bank having regard to the costs of the Central Bank directly caused by its supervisory functions in relation to financial institutions.

(2) The Central Bank may prescribe different annual fees for different classes of financial institutions which shall apply uniformly to financial institutions within each class.

(3) With the exception of the year in which a licence is granted, where the holder of a licence fails to pay the annual fee prescribed under subsection (1) before the beginning of the year for which the licence fee is due, the licence shall cease to be valid at the beginning of the year for which the fee is due.

Approval for
branches

11. (1) The prior written approval of the Central Bank is required –

- (a) for a financial institution to open or close a branch or agency in any part of Seychelles, or to change the location of any existing place of business in Seychelles;
- (b) for a local financial institution to open or close a branch, agency or office outside Seychelles.

(2) An approval under subsection (1) may be given subject to such conditions as the Central Bank may prescribe by regulations or specify in the written approval.

(3) Every financial institution shall notify the Central Bank before installing and operating an automated teller machine.

12. (1) No person other than a bank shall, without the prior written approval of the Central Bank –

Restriction on
use of words

- (a) use the words “bank”, “savings” or, “savings and loan” or any of their derivatives in any language, or any other word indicating or likely to indicate the transaction of banking business, in the name, description or title under which that person is doing business in Seychelles; or
- (b) make any representation to the effect that it carries on banking business in any billhead, letter paper, notice or advertisement.

(2) No person other than a financial institution shall, without the prior written approval of the Central Bank, use the words “financial institution” or any of their derivatives in any language in the name, description or title under which that person is doing business in Seychelles.

(3) Nothing in subsections (1) or (2) prevents the use of the words there specified or any of their derivatives in any language when it is for the sole purpose of organising a company for the purpose of applying for a licence under this Act.

(4) No person shall be granted or shall continue to hold a licence under a name which so closely resembles the name of an existing financial institution as would be likely, in the opinion of the Central Bank, to mislead the public.

(5) Except with the prior written approval of the Central Bank, no financial institution shall use, or refer to itself by, a name other than that under which it is licensed under this Act.

(6) Where the Central Bank approves a change of name under subsection (5), the Central Bank shall publish in the *Gazette* and in a local newspaper a notice to that effect specifying such name.

Revocation
of licence

13.(1) The Central Bank may revoke or vary the terms and conditions of a licence if the licensee –

- (a) has obtained the licence on the grounds of false or fraudulent statements or other material irregularities connected with the licence application;
- (b) fails to commence operations within a period of 6 months or such longer period as has been allowed in writing by the Central Bank;
- (c) fails to comply with the terms and conditions of the licence or any corrective measures required by the Central Bank in accordance with section 53 (Central Bank's power over unsafe practices);
- (d) no longer possesses the minimum amount of capital and reserves required by regulations under this Act or can no longer be relied upon to fulfil its obligations towards its creditors, and in particular no longer provides security for the assets entrusted to it;
- (e) has failed to obtain prior approval of the Central Bank for the transfer of a substantial interest held in the financial institution;
- (f) is insolvent or apparently insolvent; for the purpose of this paragraph a financial institution is apparently insolvent when the financial institution is not paying its financial obligations as they fall due or the Central Bank has determined that the capital of the financial institution is less than 25 percent of the minimum capital required pursuant to section

23(1) or (2) or that the capital funds of the financial institution are 8 percent or below 8 percent of the total value of its assets determined on a risk adjusted basis;

- (g) undergoes a merger, consolidation, amalgamation or division;
- (h) is in breach of any material provision of this Act or of regulations, rules, orders or directions which are applicable to the licence or the licensee; or
- (i) being a bank, has ceased for more than 3 months to engage in the business of receiving money deposits or other repayable funds from the public or extending credits for its own account.

(2) The Central Bank shall give reasons for its decision under subsection (1).

(3) Subject to subsection (5), the revocation or variation of a licence under subsection (1) takes effect 30 days after the date on which the Central Bank gives notice of it to the licensee.

(4) The licensee may, within 15 days after receipt of notice under subsection (3), submit to the Central Bank reasons why, in the opinion of the licensee, the licence should not be revoked or the terms and conditions of the licence should not be varied.

(5) At the latest 3 days before the revocation or variation of a licence is to take effect pursuant to subsection (3), the Central Bank shall –

- (a) confirm the revocation or the variation with or without modification; or

- (b) withdraw the revocation or the variation unconditionally.

(6) A notice of any action taken under subsection (5) shall be published by the Central Bank in the *Gazette* and in at least one local newspaper.

Power of the Central Bank to prohibit operations of licensee

14. (1) Where the Central Bank has given notice of revocation under section 13(3) it may give a direction to the licensee –

- (a) prohibiting it from receiving money deposits or other repayable funds from the public;
- (b) prohibiting it from dealing with or disposing of its assets in any manner specified in the direction;
- (c) prohibiting it from entering into any transaction or class of transactions specified in the direction;
- (d) prohibiting it from soliciting deposits;
- (e) requiring it to take certain steps or pursue a particular course of action,

and the licensee shall comply with that direction notwithstanding the notice of revocation.

Urgent action

15. (1) In an emergency situation requiring urgent action, the Central Bank may revoke a licence pursuant to section 13(1) and (2) to take effect immediately and direct the financial institution to immediately suspend all business operations.

(2) The Central Bank shall give notice of the revocation to the licensee as soon as practicable. The notice shall state the

reasons requiring urgent action. The filing of an appeal pursuant to section 16 does not effect a suspension of any measures imposed by the Central Bank.

16. (1) Where the Central Bank takes a decision –

Appeals

- (a) to refuse to grant a licence under section 6;
- (b) to refuse to grant an approval for the opening or closure of a branch or agency of a financial institution under section 11;
- (c) under section 19, to revoke or vary the terms or conditions of an approval granted under section 11;
- (d) to confirm a revocation of, or variation of the terms or conditions of a licence under section 13(5).

the aggrieved party may appeal to the Central Bank within 15 days from the date on which the aggrieved party receives notification of the decision of the Central Bank to reconsider its decision. The filing of an appeal does not effect a suspension of any measures imposed by the Central Bank.

(2) The Central Bank shall afford to the aggrieved party an opportunity of submitting a written statement of its case and, at the request of the aggrieved party, provide for a hearing before the Board. The Central Bank shall take a final decision within 90 days after considering the case.

(3) If an aggrieved party is not satisfied with the final decision of the Central Bank under this section, the aggrieved party may appeal to the Supreme Court within the time and in accordance with the procedures applicable to civil appeals to that Court.

(4) Notwithstanding anything in any other law, no action or proceeding may be instituted in any court in respect of loss or damage actually incurred, or likely to be or alleged to be incurred by reason of the application of section 13(1), section 14(1) or section 15(1).

Suspension of
business on
revocation of
licence

17. (1) Where the revocation of a licence is made final by the Central Bank under section 16(2), the Central Bank shall –

- (a) direct the financial institution immediately to suspend business authorised under the licence;
- (b) take charge of all its books, records and assets; and
- (c) take such measures as may be necessary to prevent the continuance of the business of that institution.

(2) Where the revocation of a licence has been made final in respect of a local financial institution, the Central Bank shall immediately take appropriate steps for the winding up of that institution in accordance with Schedule 2.

(3) Where the revocation of a licence has been made final in respect of a foreign financial institution, without prejudice to Schedule 5, the Central Bank shall direct the head office of that institution immediately to cover all obligations and liabilities incurred in the conduct of the business of the institution under the banking licence in accordance with the undertaking of the head office given under section 5(1)(m).

(4) The Central Bank may, in substitution for the procedures laid down in subsections (1), (2) and (3), take such other action as it considers fit, including arranging for the amalgamation of the financial institution with any other financial institution which is agreeable to such amalgamation.

18. (1) Subject to this section, a financial institution may, with the prior written approval of the Central Bank, surrender its licence to the Central Bank.

Surrender of
licence

(2) The Central Bank shall grant its approval to an application for the surrender by a financial institution of a licence under subsection (1) where it is satisfied that the financial institution has made adequate provision in respect of all its liabilities in relation to its business.

(3) In granting its approval under subsection (2), the Central Bank shall appoint a date on which the surrender shall take effect.

(4) Where approval has been granted to a financial institution under subsection (2), the financial institution shall, not later than 30 days before the date appointed under subsection (3), publish in a local newspaper and an international financial newspaper approved by the Central Bank a notice of the proposed surrender of the licence and specifying the date on which the surrender shall take effect.

(5) A surrender of a licence under this section shall have effect as a revocation of a licence under this Act.

(6) The Central Bank shall, as soon as is practicable, publish in the *Gazette* a notice of every surrender of a licence under this section but any delay in publishing, or failure to publish, the notice shall not affect the validity of the surrender or its effect.

19. (1) The Central Bank may, for exceptional reasons, revoke or vary the terms or conditions of an approval given under section 11, including ordering the closure of a branch or agency of a financial institution.

Revocation
and variation
of approval for
branch business

(2) Any action under subsection (1) shall be communicated by the Central Bank to that financial institution,

which shall carry out all the obligations and meet all the liabilities of the branch, agency or office.

(3) The Central Bank shall give reasons for its decision under subsection (1).

(4) Where an order of closure has been made under subsection (1), the Central Bank shall take all necessary steps to ensure that –

- (a) all persons who have deposited monies in that branch or agency are given the opportunity to withdraw those monies within a reasonable period of time; and
- (b) such measures are taken as will safeguard the interests of those depositors.

Investigation
of unlicensed
banking

20. (1) If at any time the Central Bank has reason to believe that any person is doing banking business or foreign exchange business without a valid licence, it shall investigate the matter.

(2) Concerning persons who violate this Act by engaging, without a licence, in activities for which a licence is required under this Act, the Central Bank shall be empowered to liquidate the business of such person, the net proceeds of which shall be transferred to the Consolidated Fund.

Central Bank's
powers of
investigation

21. For the purpose of section 20, the Central Bank may in accordance with section 36 of the Central Bank of Seychelles Act, examine the books, accounts and records of the person suspected to be doing banking business without a licence to ascertain whether that is the case.

PART III-CAPITAL AND PRUDENTIAL REQUIREMENTS

Prudential
requirements

22. Notwithstanding any other written law, every financial institution shall comply with the requirements of this Part, provided that for Bureaux de Change section 74 applies.

23. (1) Every bank shall at all times maintain in Seychelles unimpaired paid-up capital or assigned capital, as the case may be, of not less than R10,000,000:

Minimum
required capital

Provided that banks licensed to solely conduct offshore banking business shall at all times maintain in Seychelles paid-up capital or assigned capital, as the case may be, of 2,000,000 United States dollars or its equivalent in any freely convertible currency:

Provided also that the Central Bank may make regulations requiring a higher amount as paid-up capital or assigned capital.

(2) Every Bureau de Change shall at all times maintain in Seychelles unimpaired paid-up capital or assigned capital, as the case may be, of not less than R500,000 or such higher amount as prescribed by regulations, and its authorised capital shall not be less than R1,000,000.

(3) A financial institution shall not reduce its paid-up capital or its assigned capital, as the case may be, without the prior written approval of the Central Bank.

(4) Every bank shall at all times maintain capital, including its capital funds, in Seychelles of not less than 12 percent, or such higher percentage as may be prescribed by regulations, of the total value of its assets determined on a risk-adjusted basis, whereby not less than one-half of such capital shall consist of core capital. The definitions of capital, core capital and categories of risk assets shall also be prescribed by regulation.

(5) Where the capital funds of a bank have become deficient in terms of subsection (4) but remain above 8 percent of the total value of its assets determined on a risk-adjusted basis, the Central Bank may grant the institution such period of time of up to one year as, in the circumstances, it considers reasonable to enable the institution to make good the deficiency.

Reserve fund

24. (1) Every financial institution shall maintain a reserve fund and shall, out of the net profits of each year, before any dividend is declared or any profits are transferred to the head office or elsewhere, transfer to that reserve fund a sum equivalent to not less than 20 percent of those profits until the amount of the reserve fund is equal to the paid-up or assigned capital, as the case may be.

(2) The Central Bank shall from time to time determine the method of computing the amount and form of the reserve fund.

(3) The reserve fund shall neither be reduced nor impaired, except that the Central Bank may, by regulations, specify circumstances in which it may be reduced.

Liquid assets

25. (1) Every financial institution shall maintain liquid assets of an amount which shall not, as a daily average each month, be less than such percentage of the total of its liabilities as may from time to time be prescribed by the Central Bank.

(2) The Central Bank may, by notice in writing, require of any financial institution such reports as the Central Bank considers necessary for the purpose of ensuring compliance with subsection (1).

(3) Any financial institution which contravenes subsection (1) shall, within such time as may be determined by the Central Bank, pay to the Central Bank a charge at an annual rate determined by the Central Bank not exceeding twice the rate which the Central Bank considers to be the highest effective rate of interest charged by that financial institution to any of its customers during the period of the deficiency.

(4) A charge under subsection (3) shall be imposed for each day on which the deficiency occurs.

26. (1) Every financial institution shall maintain assets consisting of claims payable in Seychelles rupees and other assets situated in Seychelles in such minimum proportion of its deposits and similar liabilities payable in Seychelles as the Central Bank may prescribe by regulation.

Local assets

(2) The Central Bank may impose a charge on any financial institution which fails to comply with the requirements of subsection (1) within such reasonable time as the Central Bank may determine, not exceeding twice the highest effective annual rate of interest charged by that financial institution to any of its customers during the period of the deficiency.

(3) The charge mentioned in subsection (2) shall be imposed for each day on which the deficiency occurs.

27. The Central Bank may prescribe by regulation the maximum net open position which financial institutions may hold in any specified foreign currency or currencies.

Foreign
currency
exposure

28. The Central Bank may prescribe by regulation the requirements concerning the classification and evaluation of assets and provisions to be made on the basis of such classification and evaluation against doubtful and non-performing loans, and the time when earnings on non-performing loans may no longer be accounted for as income except as received in cash.

Loan
classification

29. (1) No financial institution shall without the prior written approval of the Central Bank extend one or more credits to any one customer or group of closely-related customers for amounts aggregating more than 25 percent of such financial institution's capital funds, or such lower percentage as the Central Bank may prescribe.

Large exposures

(2) The aggregate amount of such large exposures under subsection (1) may not exceed 600 percent of the financial institution's capital funds, or such lower percentage as the Central Bank may determine.

(3) The Central Bank may issue guidelines to financial institutions clarifying who is deemed a customer and group of closely-related customers for the purposes of this section.

(4) This section does not apply to –

- (a) a transaction with, or guaranteed by, the Government or a foreign Government;
- (b) a transaction with a public authority;
- (c) a transaction between financial institutions with a maturity of one year or less;
- (d) the purchase of telegraphic transfers or accommodation granted against telegraphic transfers;
- (e) the purchase of bills of exchange or documents of title to goods where the holder of those bills or documents is entitled to payment outside Seychelles for exports from Seychelles with a maturity of one year or less bearing the signature of another financial institution, or an accommodation granted against those bills or documents.

Connected
lending

30. (1) No financial institution shall extend credits to –

- (a) an administrator of such institution or its close relation; or
- (b) any company or undertaking in which an administrator of the financial institution [or its close relation] has a substantial interest, unless such credit is granted on market terms, adequately secured and approved at a meeting of the directors of the financial institution with not less than two-thirds of the total number of

directors, other than a director concerned, voting in favour.

(2) The aggregate of all credits made pursuant to subsection (1) shall not exceed 10 percent of the financial institution's capital funds, subject to the limit specified in subsection (5).

(3) No financial institution shall extend credits to –

- (a) a person holding a substantial interest in such institution or that person's close relation; or
- (b) any company or undertaking in which a person referred to in paragraph (a) or that person's close relation has a substantial interest,

unless such credit is granted on market terms, adequately secured and approved at a meeting of the directors of the financial institution with not less than two-thirds of the total number of directors, other than a director concerned, voting in favour.

(4) The aggregate of all credits made pursuant to subsection (3) shall not exceed 20 percent of the financial institution's capital funds, subject to the limit specified in subsection (5).

(5) The aggregate of all credits made pursuant to subsections (1) and (3) shall not exceed 25 percent of the financial institution's capital funds.

(6) The financial institution shall regularly submit to the Central Bank a statement detailing the credits made pursuant to subsections (1) and (3).

(7) This section does not apply to –

- (a) a transaction guaranteed by the Government or a foreign Government;

- (b) a transaction with a public authority;
- (c) a transaction between financial institutions with a maturity of one year or less.

Capitalised expenses

31. Until all its capitalised expenses, including preliminary expenses and other items of expenditure not represented by tangible assets, have been completely written off —

- (a) no local financial institution shall pay any dividend on its shares; and
- (b) no foreign financial institution shall transfer abroad any profit earned in Seychelles.

Other prudential requirements

32. The Central Bank may prescribe by regulation other prudential requirements regarding credits, investments, matching as to maturity and interest, maximum ratios and exposures concerning the assets, risk-weighted assets and off-balance sheet items and various categories of capital and reserves to be maintained by financial institutions.

Application on consolidated basis

33. The Central Bank may prescribe by regulation the rules for the application of the prudential requirements set out in this Part to a financial institution and its subsidiaries on a consolidated basis.

Other duties

34. It shall be the duty of every financial institution to ensure that —

- (a) the systems of loan classification and provisioning as prescribed by the Central Bank are applied properly;
- (b) adequate measures to prevent money laundering and terrorist financing are adopted and implemented according to the law.

**PART IV - ACCOUNTS, AUDIT, INFORMATION
AND INSPECTION**

- 35.** (1) At the expiration of each calendar year – Annual balance
sheet, etc
- (a) every local financial institution in respect of all business transacted by it in or outside Seychelles; and
 - (b) every foreign financial institution in respect of all business transacted by or through its branches in Seychelles,

shall prepare, with reference to that year, in accordance with the International Accounting Standards, a balance sheet as of the last working day of that year and a profit and loss account and cash flow statement in respect of that year.

(2) The balance sheet, profit and loss account and cash flow statement of every financial institution shall give a true and fair view of the state of affairs of that institution as at the end of the calendar year to which the accounts relate.

(3) The Central Bank may prescribe accounting rules for the preparation of accounts of financial institutions.

(4) The Central Bank may give directions as to the matters to be shown in the balance sheet, profit and loss account and cash flow statement –

- (a) by way of a note;
- (b) in a statement or report to be annexed.

36. (1) Every financial institution shall appoint annually an auditor to audit its accounts and such appointment shall be subject to the approval of the Central Bank. The auditor shall be Audit

independent, experienced in the audit of financial institutions, a member of a body of accountants (whether established in or outside Seychelles), and have the necessary resources to undertake audits of financial institutions on a consolidated basis as determined by the Central Bank.

(2) No financial institution shall appoint the same auditor continuously for a period of more than 5 years without an exemption granted by the Central Bank.

(3) If a financial institution fails to appoint an auditor satisfactory to the Central Bank, the Central Bank shall have the power to appoint such an auditor.

(4) The remuneration of the auditor, whether appointed by the financial institution or by the Central Bank, shall be paid by the financial institution concerned, and in the case of an auditor appointed by the Central Bank in terms of subsection (3) or (9), shall be of such amount as the Central Bank may determine.

(5) The auditor shall –

- (a) in the case of a local financial institution, make a report to its shareholders; or
- (b) in the case of a foreign financial institution, make a report to its head office, on the financial statements, annual balance sheet, profit and loss account and accounts.

(6) In the auditor's report, which shall be completed not more than 3 months after the end of the financial year, the auditor shall state –

- (a) whether in the auditor's opinion the balance sheet, profit and loss account and cash flow statement are complete and fair and properly drawn up;

- (b) whether they exhibit a true and fair view of the financial institution's affairs;
- (c) whether fiduciary duties are being administered in accordance with the law; and
- (d) if the auditor has called for explanation or information from the administrators, employees or agents of the institution, whether that explanation or information is satisfactory.

(7) The report of the auditor –

- (a) in the case of a local financial institution, shall be read, together with the report of the directors of the financial institution, at the annual meeting of shareholders;
- (b) in the case of a foreign financial institution, shall be transmitted to the head office.

(8) A copy of the auditor's report shall be sent to the Central Bank by the financial institution not later than 30 days after it becomes available, and within 5 months after the end of the financial year at the latest.

(9) Where the Central Bank is not satisfied with the auditor's report it may require the appointment within a specified time of another auditor who shall make a new report.

(10) The Central Bank may impose on an auditor, in addition to any duty specified in subsection (6), a duty to –

- (a) submit to the Central Bank such additional information in relation to the audit as the Central Bank considers necessary;

- (b) submit a report, carry out any other examination or establish any procedure if required by the Central Bank;
- (c) submit to the Central Bank a report on the financial and accounting systems and internal controls of the financial institution.

(11) Where in the course of performing functions under this Act an auditor becomes aware of transactions or conditions in a financial institution that may affect its safe and sound operations and the auditor has reasons to believe that –

- (a) there has been a material change in the risks inherent in the business of the financial institution with the potential to affect its ability to continue safe and sound operations;
- (b) there has been a serious violation of any of the provisions of this Act, in particular with regard to the protection of depositors' and creditors' interests;
- (c) a serious criminal offence involving fraud or other dishonesty has been or is likely to be committed;
- (d) measures to prevent money laundering or terrorist financing are not being properly implemented; and
- (e) the paid-up capital or assigned capital, as the case may be, of the financial institution has been reduced by 50 percent or more,

the auditor shall immediately report the matter in writing to the Central Bank. Such report shall not be construed as a breach of professional confidentiality obligations.

37. (1) Every local financial institution licensed to conduct banking business shall establish an audit committee. The audit committee shall consist of not less than 2 members one of whom shall be a non-executive director of the financial institution. No member of the audit committee shall be a director exercising an executive function or a managing director or manager in the bank. For a foreign financial institution, a similar representative organ may carry out the functions of an audit committee and report to the managing agent in Seychelles.

Audit
committee

(2) The audit committee shall report to the directors particularly on the –

- (a) review of the auditor's report and the financial statements before they are approved by the directors;
- (b) review and evaluation of the appropriateness of accounting, internal control and financial disclosure procedures;
- (c) review of such investments and transactions that could adversely affect the sound financial condition of the bank as brought to the attention of the audit committee;
- (d) review of the compliance with applicable laws, regulations and guidelines;
- (e) other matters as may be prescribed by the Central Bank.

(3) The officer in charge of internal auditing shall attend meetings of the audit committee. The external auditor shall attend such meetings upon the request of the audit committee.

(4) Every member of the audit committee shall keep confidential and not disclose any information obtained in the course

of its functions to third parties, save as otherwise provided for under this Act.

Publication and display of balance sheet, etc.

38. (1) Every local financial institution in respect of all of its business and every foreign financial institution in respect of its business transactions by or through its operations in Seychelles shall transmit to the Central Bank its audited financial statements, namely the balance sheet, profit and loss account and cash flow statement, not later than 30 days after becoming available, and within 5 months after the end of the financial year at the latest. In addition, every foreign financial institution shall transmit to the Central Bank its audited annual financial statements in respect of its total business throughout the world on a consolidated basis not later than 30 days after becoming available.

(2) Every financial institution shall publish in the *Gazette* within 5 months after the end of the calendar year the balance sheet and profit and loss account required to be submitted under subsection (1) and any report made by the auditor under section 36.

(3) Every financial institution shall exhibit throughout the following year, in a public part of each of its places of business, copies of the balance sheets and profit and loss accounts required to be submitted under subsection (1).

Records

39. (1) Every financial institution shall maintain in Seychelles for a period of at least 7 years such records as are necessary to exhibit, clearly and correctly, the state of its business affairs and to explain its transactions and financial position so as to enable the Central Bank to determine whether the financial institution is complying with this Act and in particular:

- (a) customer identification records (during and after termination of the customer relationship);
- (b) transaction records showing, for each customer, at least on a daily basis, particulars

of its transactions with or for the account of that customer, and the balance owing to or by that customer;

- (c) application and contract documents pertaining to a transaction, (including credit, guarantee and collateral agreements) and a signed written record of the decision approving the transaction;
- (d) financial records concerning counterparties (including borrowers and guarantors) and any other documentary evidence on which the financial institution relied in approving the transaction;
- (e) such other documents as the Central Bank may specify by regulation.

(2) Every record shall be kept in written form or kept on microfilm, magnetic tape, optical disk, or any other form of mechanical or electronic data storage and retrieval mechanism as the Central Bank may specify. Records may be kept in electronic form to the extent that adequate data recovery systems and procedures are in place.

40. Every financial institution shall submit to the Central Bank in such form as the Central Bank may determine –

Periodic
statements

- (a) not later than 14 days after the last day of each month a statement showing its assets and liabilities at the close of business on the last business day of the month;
- (b) not later than 14 days after the last day of each calendar quarter, an analysis of its deposit liabilities and an analysis of its loans,

guarantees, advances and discounts at the close of business of the day of that quarter; and

- (c) such other statements or information as the Central Bank may require,

provided that a Bureau de Change is only required to submit a report pursuant to subsection (1)(a) together with a statement on the monthly turnover, broken down for each currency.

Disclosure requirements

41.(1) Each financial institution not being a Bureau de Change shall regularly notify its customers of the terms and conditions associated with transactions and the deposits made and credits received by them, including the annual rate of interest, fees and other costs in clear and easily understood language, and any guidelines the Central Bank may issue in this regard.

(2) Each Bureau de Change shall make such notification to its customers by conspicuously displaying in a public part of the business the terms and conditions associated with its transactions.

Inspection of financial institutions

42.(1) The Central Bank may, if it considers that an inspection of a financial institution is necessary or desirable to ascertain whether that institution is complying with this Act, cause an inspection of that institution to be made by an officer of the Central Bank or by any other person appointed by the Central Bank for the purpose.

(2) Such inspection may include officers or employees of the authority of another country that is charged with the monetary or prudential supervision of activities of financial institutions in that country if it concerns the inspection of a branch or a subsidiary of a foreign financial institution in Seychelles having its head office in that country, or the inspection of a local financial institution that holds a substantial interest in such foreign financial institution, or the inspection of a financial institution in Seychelles in which such foreign financial institution has a substantial interest.

(3) The Central Bank and any person authorised under this section to inspect a financial institution shall be subject to section 11 (Confidentiality) of the Central Bank of Seychelles Act in respect of information acquired in the course of performing functions under this section and may –

- (a) require any administrator, officer, employee or agent of a financial institution to furnish such information as deemed necessary for the purpose of the inspection; or
- (b) require any such administrator, officer, employee or agent to produce for inspection any books, records or other documents in his or her possession containing or likely to contain any such information.

PART V-CONTROL OVER MANAGEMENT OF FINANCIAL INSTITUTIONS

43. (1) A financial institution shall obtain the written approval of the Central Bank before appointing or electing an administrator.

Persons qualified
to be
administrators

(2) No person shall be appointed or elected as an administrator of a financial institution if –

- (a) he or she has been adjudged to be bankrupt, has suspended payment or has entered into a composition with his or her creditors; or
- (b) he or she has been convicted in a court of law of a felony or any offence involving fraud or dishonesty.

(3) No person who has been an administrator of a financial institution which has been wound up by the court or the licence of which has been revoked shall act as an administrator of any financial institution:

Provided that in exceptional circumstances, having been satisfied as to the qualifications, professional experience and conduct of a person, the Central Bank may exempt such person from the foregoing provisions of this subsection no earlier than 6 years following the relevant winding-up or licence revocation.

(4) An administrator of a financial institution shall cease to hold office on –

- (a) becoming subject to any disqualification mentioned in subsection (1);
- (b) becoming permanently incapable of performing his or her duties; or
- (c) having been convicted of any offence if the Central Bank has determined that such conviction is inconsistent with holding such an office.

Administrator to
declare personal
interest

44. (1) Every administrator of a financial institution who is directly or indirectly interested in any credits from that institution shall as soon as possible declare the nature of his or her interest to the directors of the institution or to the head office, as the case may be.

(2) For the purpose of subsection (1) a declaration by an administrator to the effect that he or she is to be regarded as interested in any credits, which may, after the date of the notice, be extended by that institution is deemed to be a sufficient declaration of interest in relation to any credits so extended if –

- (a) it specifies the nature and extent of the interest; and
- (b) the interest is not different in nature from, or greater in extent than, the nature and extent

so specified in the declaration at the time the credit is extended.

(3) Where a declaration is made under subsection (1) to a local financial institution the administrator concerned shall cause it to be brought up and read at the next meeting of the directors after it is made and the directors shall cause the declaration to be recorded in the minutes of the meeting at which it is brought up and read.

(4) Where an administrator of a local financial institution holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as an administrator, the administrator shall, in accordance with subsection (5), make a full declaration to the directors of the institution of the fact, nature, character and extent of the conflict or potential conflict.

(5) A declaration under subsection (4) shall be made by the time the first meeting of the directors is held –

- (a) after he or she becomes an administrator of the financial institution; or
- (b) if already an administrator, after the conflict or potential conflict has become apparent,

and shall be recorded in the minutes of that meeting.

(6) An administrator directly or indirectly interested in any credits from that financial institution shall not take part in any decision regarding such credits.

45. No administrator, officer, employee or agent of a financial institution shall ask for or receive, consent or agree to receive, any gift, commission, emolument, service, gratuity, money, property or thing in value, for his or her own personal benefit or

Ban on receipt
of deposits

advantage or that of any of his or her close relations, for permitting or procuring or endeavoring to permit or procure for any person any credits from the institution.

Acquisition of
substantial
interest

46. (1) Any person, acting directly or indirectly or through or in concert with other persons, who proposes to acquire a substantial interest in a financial institution shall give at least 30 days' prior notice to the Central Bank and obtain prior approval of the Central Bank.

- (2) The notice of the proposed acquisition shall include—
- (a) the name, nationality, residence, and business or profession of each proposed person holding a substantial interest or its ultimate beneficial owner, together with at least two references verifying the good financial standing of such person;
 - (b) for each proposed person holding a substantial interest or its beneficial owner, an affidavit in accordance with section 5(1)(f);
 - (c) in case a proposed person holding a substantial interest or its ultimate beneficial owner is a body corporate, copies of the latest three audited annual balance sheets and profit and loss accounts where applicable;
 - (d) the terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;
 - (e) the identity, source and amount of the funds to be used in making the acquisition;
 - (f) any plans or proposals regarding a major change in the financial institution's business, corporate structure or management; and

- (g) such other information as the Central Bank may require.

(3) The Central Bank shall assess the expected effects on the financial stability of the financial institution and be satisfied as to the identity and character of the proposed owners, in particular persons holding a substantial interest. The Central Bank shall not approve a proposed acquisition referred to in subsection (1) if it would substantially lessen competition, jeopardise the financial stability of the financial institution or prejudice the interests of its depositors.

(4) Any financial institution becoming aware of a proposed acquisition of a substantial interest in the financial institution shall give at least 30 days' prior notice to the Central Bank, or once it becomes aware of such proposal, whichever is earlier.

47. (1) No financial institution shall merge or consolidate with any other financial institution or acquire, either directly or indirectly, the assets of, or assume liability to pay any deposits made in, any other financial institution except with the prior approval of the Central Bank.

Merger

(2) Any financial institution which intends to engage in any merger, consolidation, acquisition or assumption of liability under subsection (1) shall give at least 30 days' prior notice to the Central Bank, and provide the Central Bank with such information as the Central Bank may require.

(3) The Central Bank shall assess the financial and managerial resources and future prospects of the existing and proposed financial institutions. The Central Bank shall not approve a proposed transaction referred to in subsection (2) which would substantially lessen competition unless any anti-competitive effects are clearly outweighed by its expected positive effects.

48. (1) No bank shall receive any deposit while it is insolvent or apparently insolvent.

Ban on receipt of deposits

(2) No administrator, officer, employee or agent of a bank who knows, or in the proper performance of his duty should know, that the bank is insolvent or apparently insolvent shall receive or authorise the acceptance of any deposit while the institution is insolvent or apparently insolvent.

Disclosure of
information
restricted

49. (1) No person who has acquired knowledge in a capacity as –

- (a) administrator, officer, employee or agent of a financial institution; or
- (b) auditor, member of the audit committee, reorganising agent, liquidator or supervising agent of a financial institution,

shall disclose to any person or governmental authority the identity, assets, liabilities, transactions or other information in respect of a customer except –

- (i) with the written authorisation of the customer or other beneficiary, or of his or her heir or legal representative;
- (ii) for the purpose of the performance of his or her duties within the scope of employment or appointment in compliance with this Act;
- (iii) in the case of a foreign financial institution, to its head office;
- (iv) when required to make disclosure by any court of competent jurisdiction in Seychelles;
- (v) to the Central Bank;
- (vi) to a police officer when authorised under the Evidence (Bankers' Books) Act;

- (vii) pursuant to the provisions of the Anti-Money Laundering Act;
- (viii) pursuant to section 51; or
- (ix) notwithstanding anything in the Business Tax Act or the Social Security Act, to the Commissioner of Taxes or the Director of Social Security when authorised by a judge on proof on oath to the satisfaction of the judge that the information is required for any investigation under the Business Tax Act or the Social Security Act, as the case may be.

(2) Nothing in subsection (1) prevents a financial institution from providing to a person on a legitimate business request a general credit rating.

(3) Subject to any express requirement of this Act, every administrator, officer, employee or agent of a financial institution shall preserve and aid in preserving confidentiality with regard to all matters relating to the affairs of the financial institution and of every customer of the institution that may come to his or her knowledge in the performance of his or her duties.

(4) Every administrator, officer, employee or agent of a financial institution shall, before entering on his or her duties, sign a declaration pledging himself or herself to observe strict confidentiality in respect of the matters specified in subsection (3) and not to reveal those matters except as otherwise permitted or required under subsection (1).

50. (1) The Central Bank and every officer or employee of the Central Bank shall deal with all documents, records of bank accounts, statements and other information in the possession or under the control of the Central Bank, its officers or employees

and relating to the business of financial institutions conducted under this Act as confidential.

(2) Except where ordered by the Supreme Court under subsection (3), the Central Bank, its officers and employees shall not be required to produce or disclose to any court, tribunal, committee of inquiry or other authority in Seychelles or elsewhere any information required to be dealt with as confidential under subsection (1).

(3) The Supreme Court shall not make an order for the production or disclosure of any information referred to in subsection (1) except on the application of the Attorney General and on proof to the satisfaction of the Court that the information is bona fide required for the purposes of any inquiry or trial into or relating to the trafficking of narcotics and dangerous drugs, arms trafficking, money laundering or terrorist financing.

(4) This section shall be without prejudice to –

- (a) the obligations of Seychelles under any international treaty, convention, agreement or the Mutual Assistance in Criminal Matters Act, 1995;
- (b) the obligations of the Central Bank under any agreement with a Central Bank or any other monetary authority or supervisory authority of a foreign country.

Exchange of
Information

51. (1) The Central Bank may, on a reciprocal basis, exchange information on supervisory matters, whether based on a Memorandum of Understanding or not, with supervisory authorities in other countries. The exchange of such information may include confidential information, provided that the Central Bank has satisfied itself that the information submitted shall remain confidential at the foreign supervisory authority. In this subsection,

“supervisory matters” includes matters relating to money laundering and terrorist financing.

(2) The Central Bank may enter into Memoranda of Understanding with foreign supervisory authorities setting out the scope, procedures and further details for the exchange of information on a reciprocal basis.

52. The Central Bank may publish in whole or in part at such time as it may determine any information or data furnished under this Act, except that no information or data shall be published which might disclose the individual affairs of a financial institution or of a person whose interests are protected under section 49 unless the consent of every such person has been obtained in writing prior to that publication or the data is already in the public domain.

Publication of
information by
Central Bank

53. (1) Where the Central Bank determines that a financial institution or any of its owners or administrators has –

Central Bank's
power over
unsafe practices

- (i) violated a provision of this Act or of any regulation, direction or order of the Central Bank;
- (ii) violated a provision of any agreement between the Central Bank and the financial institution on remedial measures to be taken by the financial institution;
- (iii) violated any term or condition attached to the licence of the financial institution or to an authorisation issued to the financial institution by the Central Bank; or
- (iv) conducted an unsafe or unsound operation of the financial institution,

it may take the following actions with respect to the financial institution–

-
- (a) issue written warnings;
 - (b) call a meeting of the shareholders or other owners and the administrators of the financial institution to discuss and to agree on remedial measures to be taken;
 - (c) issue written orders to cease and desist from such infractions and to undertake remedial action, or written orders to impose special prudential requirements that differ from those normally applicable to such financial institution;
 - (d) issue written orders concerning the rate of interest, maturity or other conditions applicable to any financing extended or received (including deposits) by a bank, or to contingent liabilities of the bank;
 - (e) issue written orders to the financial institution to suspend the payment of dividends or the distribution of profits in any other form;
 - (f) appoint an adviser for the financial institution;
 - (g) appoint an external auditor at the expense of the financial institution to perform a financial or operational audit under terms of reference determined by the Central Bank;
 - (h) suspend temporarily or permanently one or more administrators from performing duties in the financial institution;
 - (i) issue written orders that one or more persons holding a substantial interest in the financial institution sell or otherwise dispose of such

interest in accordance with the law and within 30 days immediately following the receipt of the order;

- (j) attach conditions to the licence of the financial institution to the extent required to remedy such infraction;
- (k) appoint a reorganising agent in accordance with the provisions of section 66 of this Act;
- (1) revoke the licence of the financial institution in accordance with the provisions of section 13 of this Act.

(2) The remedial actions described in this section shall be determined in particular cases by the Central Bank. Remedial actions shall be applied in proportion to the seriousness of the infraction and the impact of the infraction on the financial institution's assets.

(3) An order under subsection (1) becomes effective as specified in the order, and remains effective unless and to the extent that the Central Bank informs the financial institution that it is not so effective, and the Central Bank may so inform the financial institution either before or after the effective date of the order.

(4) Before the expiry of 30 days after the issue of an order under subsection (1), the financial institution may appeal to the Central Bank to reconsider the order and the Central Bank shall give a final decision within 15 days after the appeal.

54. The filing of an appeal under section 53 (4) shall not effect a suspension of any measures imposed by the Central Bank.

Suspension
unaffected
by appeal

Ban on credits
against financial
institution's own
shares etc

55.(1) No financial institution shall extend credits against the security of –

- (a) its own shares;
- (b) shares of companies which hold a substantial interest in it;
- (c) shares of companies in which the companies specified in paragraph (b) have a substantial interest; or
- (d) shares of companies in which any of its administrators has a substantial interest.

(2) Without prejudice to section 44 (Administrator to declare personal interest), no credit or any part of a credit extended to a person specified in section 30(1) or (3) shall be written-off without the prior approval of the Central Bank.

(3) Any write-off of any credits which contravenes subsection (2) is void.

Prohibition
of
operations

56.(1) Notwithstanding any other written law or any contract, no financial institution shall directly or indirectly –

- (a) deal in the buying or selling or bartering of goods, except in the course of conducting licensed activities under this Act or in connection with the realisation of security given to or held by it;
- (b) engage in any trade; or
- (c) buy, sell or barter goods for others except in the course of conducting licensed activities under this Act.

(2) Subject to subsection (3), no financial institution shall own, to an aggregate value exceeding 25 percent of the sum of

the paid-up or assigned capital and reserves of that institution, the share capital of any company, firm or other undertaking except such shareholding as the financial institution may acquire in the course of satisfaction of debts due to it.

(3) Subsection (2) does not apply to any shareholding approved in writing by the Central Bank pursuant to section 4(3) in a subsidiary company, firm, or other undertaking formed by a financial institution for the execution of leasing, nominee, executor, fiduciary or trustee functions or other functions incidental to the financial institution's business or to conduct offshore banking business, provided that the Central Bank shall carry out supervision of the financial institution on a consolidated basis.

(4) Where a shareholding acquired by a financial institution in satisfaction of debts due to it exceeds the maximum specified in subsection (2), the institution shall dispose of that excess at the earliest suitable opportunity.

(5) No financial institution shall hold an interest in immovable property or any right therein other than for the purpose of conducting its operations, including offices or employee housing. This provision does not apply to immovable property or any right therein obtained in connection with the realisation of any security given in the course of its operations, provided that such immovable property or any right therein is disposed of without undue delay.

57. No financial institution shall –

- (a) without the prior written approval of the Central Bank, sell, transfer, assign or dispose of any of its immovable assets below the market value of the assets; or
- (b) increase the valuation of the assets as recorded in the books of the institution above the market value of the assets.

Approval
for transfer
of assets

Transactions
and dealing of
offshore banking
business

58. (1) In the conduct of its banking business under this Act, a bank licensed to solely conduct offshore banking business shall not transact any business, or deal, in rupees.

(2) For the purposes of subsection (1), a bank licensed to solely conduct offshore banking business shall not be treated as transacting banking business or dealing in rupees by reason only that –

- (a) it opens or maintains accounts in rupees for the discharge of its liabilities in Seychelles with a bank other than itself;
- (b) it makes or maintains professional contact with counsel and attorneys, accountants, bookkeepers, trust companies, management companies, investment advisers or other similar persons carrying on business within Seychelles;
- (c) it holds a lease of property for use as an office from which to communicate with members or where books and records of the bank are prepared or maintained;
- (d) it holds shares, debt obligations or other securities in a company incorporated or registered under the International Business Companies Act 1994 or under the Companies Act;
- (e) it holds bonds, treasury bills and other securities issued by the Government of Seychelles or the Central Bank.

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1994

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(3) A bank licensed to solely conduct offshore banking business under this Act shall not, in the conduct of its business

operations, open an account for a person whose identity has not been properly established.

PART VI - ABANDONED PROPERTY

59. (1) Any unclaimed funds or property held by a financial institution for the account or on behalf of any depositor, creditor or other person are presumed to be abandoned property if for 10 years the depositor, creditor or other person has not evidenced an interest in the funds or property by recorded transaction or written correspondence with the financial institution or otherwise.

Abandoned
property

(2) Funds or property referred to in –

- (a) paragraphs 5(2)(c), 21(3) or 22(2) of Schedule 2 (Winding up of local financial institution); or
- (b) paragraph 7(3) or 8(2) of Schedule 5 (Closure of foreign financial institution),

are also presumed to be abandoned property.

60. A financial institution shall publish in at least one local newspaper the name of the owner and particulars of abandoned property and shall dispatch by registered post a notice to the owner at his last known address containing particulars of the property.

Publication
and notice of
particulars

61. (1) Not less than 30 days after complying with section 60 a financial institution holding abandoned property shall make a report to the Central Bank on the amount and nature of that property in such form as the Central Bank may determine.

Reports of
abandoned
property

(2) Any funds included in a report under this section shall, if the Central Bank so directs, be transferred, notwithstanding any other law, by the institution to a special account with the Central Bank and may be used by the Central Bank for such purposes as it may determine after consultation with the Minister.

(3) Other property not falling under subsection (2) included in a report under this section shall be referred by the Central Bank to the Minister for such action as he may direct.

Right to claim

62. Any owner who, to the satisfaction of the Central Bank, furnishes proof of ownership of abandoned property dealt with in accordance with sections 60 and 61, is, subject to any terms, conditions or restrictions imposed in respect of that abandoned property by or under any written law, entitled to the repayment of the funds by the Central Bank, or to the return of other property or the proceeds from the sale of that other property, as the case may be.

PART VII - OFFENCES AND PENALTIES

Offences and penalties

63. (1) A person who –

- (a) conducts banking business without a valid banking licence commits an offence punishable on conviction with a fine of R200,000 and where the offence is continued after the conviction with a further fine of R10,000 for every day or part of a day on which the offence is continued;
- (b) fails to repay funds obtained by doing banking business without a valid banking licence as required under section 3(1) commits an offence punishable on conviction with the fine or fines specified in paragraph (a);
- (c) conducts foreign exchange business without a valid licence under this Act commits an offence punishable on conviction with the fine or fines specified in paragraph (a);
- (d) knowingly or recklessly furnishes any information which is materially false or

- misleading in connection with an application for a licence commits an offence punishable on conviction with a fine of R200,000;
- (e) refuses to make available for examination its books, accounts or records under section 21 commits an offence punishable on conviction with a fine or fines specified in paragraph (a);
 - (f) fails, refuses or unreasonably delays to comply with any requirement of the Central Bank or of an authorised person made under section 42 commits an offence punishable on conviction with imprisonment for a term of 6 months or a fine of R20,000;
 - (g) in complying with a requirement under section 42, wilfully furnishes any information or produces any book, record or other document known to be false, or recklessly furnishes any information or produces any book, record or other document which is false in a material particular commits an offence punishable on conviction with imprisonment for a term of 6 months or a fine of R20,000;
 - (h) contravenes or fails to comply with section 43 commits an offence punishable on conviction with imprisonment for a term of 1 year or a fine of R20,000;
 - (i) being an administrator, contravenes section 44(1) or (4) commits an offence punishable on conviction with imprisonment for a term of 1 year or a fine of R20,000;
 - (j) contravenes confidentiality requirements set out in section 49 commits an offence punishable

- on conviction with imprisonment for a term of 1 year or a fine of R20,000;
- (k) contravenes the provisions set out in Schedule 2, Part I, paragraph 1 commits an offence punishable on conviction with imprisonment for a term of 1 year or a fine of R200,000;
 - (l) contravenes the provisions set out in Schedule 5, paragraph 6(1) commits an offence punishable on conviction with imprisonment for a term of 1 year or a fine of R200,000.
- (2) Any financial institution which –
- (a) contravenes a direction given under section 14(1) commits an offence punishable on conviction with a fine of R200,000;
 - (b) contravenes section 38 commits an offence punishable on conviction with a fine of R200,000;
 - (c) fails to pay the charge within the time determined by the Central Bank pursuant to section 25 commits an offence punishable on conviction with a fine of R20,000;
 - (d) fails, refuses or unreasonably delays to submit a statement or report to the Central Bank pursuant to section 25 or section 40 commits an offence punishable on conviction with a fine of R200,000;
 - (e) wilfully submits a statement or report pursuant to section 25 or section 40 known to be false, or recklessly makes a statement or gives

information which is false in a material particular commits an offence punishable on conviction with a fine of R200,000;

- (f) receives any deposit in contravention of section 48 commits an offence punishable on conviction with a fine of R20,000;
- (g) wilfully fails to notify the owner or publish a notice pursuant to section 60 commits an offence punishable on conviction with a fine of R20,000;
- (h) wilfully fails to submit a report to the Central Bank pursuant to section 61 commits an offence punishable on conviction with a fine of R20,000;
- (i) in the case of a local financial institution, contravenes the provisions set out in Schedule 2, Part I, paragraph 5 commits an offence punishable on conviction with a fine of R200,000;
- (j) in the case of a foreign financial institution, contravenes the provisions set out in Schedule 5, paragraph 1, commits an offence punishable on conviction with a fine of R200,000.

(3) Any administrator, officer, employee or agent of a financial institution who —

- (a) with intent to deceive —
 - (i) makes or causes to be made any false or misleading statement or entry;
 - (ii) omits or causes to be omitted any statement or entry that should be made;or

- (iii) alters, abstracts, conceals or destroys any statement or entry,

in any book, record, account, document, report or statement of the institution commits an offence punishable on conviction with imprisonment for a term of 1 year or a fine R20,000;

- (b) obstructs or endeavors to obstruct –
 - (i) the proper performance by any auditor of duties in accordance with this Act; or
 - (ii) an inspection of the institution by any officer of, or other person appointed by, the Central Bank commits an offence punishable on conviction with imprisonment for a term of 1 year or a fine R20,000;
- (c) contravenes the provisions of section 45 commits an offence punishable on conviction with imprisonment for a term of 1 year or a fine R20,000;
- (d) knows, or in the proper performance of his or her duties should have known, that the financial institution is apparently insolvent and receives or authorises the acceptance of any deposit in contravention of section 48 commits an offence punishable on conviction with imprisonment for a term of 1 year or a fine R20,000.

PART VIII - MISCELLANEOUS

Bank holidays

64.(1) With the approval of the Minister, the Central Bank may, by notice published in the *Gazette* and in at least one local newspaper, declare any day to be a bank holiday.

(2) No financial institution shall transact any business with the public on any public holiday or a bank holiday without the approval of the Central Bank.

(3) A bank holiday declared under this section is not a public holiday unless the date so declared is also a public holiday by virtue of the Public Holidays Act, and, except for subsection (2), nothing in this section affects the provisions of that Act relating to public holidays.

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65. Except where expressly stated in this Act, nothing in this Act shall affect the operation of the Companies Act in respect of the incorporation and winding up of any financial institution to which that Act and this Act apply.

Application of
Companies Act
Cap. 40

66. (1) Schedule 1 applies with respect to the amalgamation and transfer of assets or liabilities of a financial institution.

Amalgamation,
winding up,
closure etc

(2) Schedule 2, Parts I and II apply with respect to the winding up of a local financial institution in place of the provisions of the Companies Act specified in Part III of the Schedule.

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(3) Schedule 3 applies with respect to the seizure by the Central Bank of a financial institution.

(4) Schedule 4, Part I applies with respect to the reorganisation of a local financial institution in place of sections 196 to 198 (compromises, arrangements, reconstructions and amalgamations) of the Companies Act, and Schedule 4 Part II applies with respect to the reorganisation of a foreign financial institution.

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(5) Schedule 5 applies with respect to the closure of a foreign financial institution in place of sections 318 (winding up of overseas companies), 319(2) (investigations) and 320 (orders to cease carrying on business) of the Companies Act.

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(6) If there is any inconsistency between any provision of Schedules 1 to 5 and any other law of Seychelles, that provision prevails to the extent of the inconsistency.

Indemnity for
Central Bank,
etc

67. Neither the Central Bank nor any member of its Board nor any officer, employee or agent of the Central Bank shall be subject to any action, claim or demand by or liability to any person in respect of anything done or omitted to be done in good faith under, or in execution or intended execution or in connection with the execution of, any power or duty conferred on the Central Bank by or under this Act.

Review by
court

68. The acts, directions, orders, determinations or decisions of the Minister or the Central Bank under this Act shall be subject to judicial review.

Regulations

69. The Central Bank may, in consultation with the Minister, make regulations for the better carrying out of the objects and purposes of this Act including –

- (a) prescribing any matter which is to be or may be prescribed under this Act; and
- (b) prescribing fees or charges-
 - (i) for applications, objections, appeals or certificates; or
 - (ii) for or in connection with services provided under this Act.

Rules of court

70.(1) The Chief Justice may make rules of court relating to proceedings in court under this Act, including –

- (a) prescribing the fees and costs payable in any proceedings before a court;

- (b) providing generally for matters of practice and procedure and incidental matters arising in connection with any proceedings.

(2) Subject to any rules of court made under subsection (1), the forms to be used and the practice and procedure to be followed in proceedings in court under this Act shall be as near as practicable to those in ordinary civil cases before the court.

71. (1) Except where it is otherwise expressly stated in this Act or any other written law, the provisions of this Act shall not apply to –

Non-application
of Act

- (a) a cooperative established under the Co-operatives Act;
- (b) a body corporate established directly by an Act of Seychelles;
- (c) the Housing Finance Company Limited;
- (d) the Development Bank of Seychelles;
- (e) a company incorporated under the Companies Act or an overseas company registered under section 310 of that Act registered to carry on insurance business under section 9 of the Insurance Act, 1994.

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(2) Notwithstanding subsection (1), if the President after consultation with the Central Bank is satisfied that prevailing conditions justify such action, the President may, by Order published in the *Gazette*, declare that all or any of the provisions of this Act shall, from the date specified in the Order, apply to all or any of the institutions specified in subsection (1) or to any other person specified in the Order.

Compounding
of offences

72.(1) Where a financial institution or any other person agrees in writing to the compounding of a contravention of this Act which is an offence punishable on conviction only by a fine, the Central Bank, in consultation with the Attorney General, may compound the offence by accepting a sum of money amounting to at least one-third of the maximum fine but not exceeding the maximum fine specified for the offence.

(2) Where an offence is compounded under subsection (1), no proceedings shall be instituted in relation to that offence against the financial institution or the person referred to in subsection (1).

Non-application
of certain laws
(offshore
banking)

73.(1) The laws specified in Schedule 6 shall not apply to a financial institution or to a separate unit of a financial institution solely conducting offshore banking business under this Act.

(2) Subsection (1) shall, in relation to a financial institution referred to in that subsection, continue in force for a period of 20 years from the date of the licence granted to that financial institution under section 6.

(3) Notwithstanding subsection (1), a financial institution referred to in that subsection may, within a period of 3 months or such extended period as may be allowed by the Commissioner of Taxes from the commencement of a year of assessment, elect in the form approved by the Commissioner of Taxes, for the levy of business tax under the Business Tax Act on the taxable income of the offshore banking business of the financial institution for that year of assessment at a rate to be agreed upon between the financial institution and the Commissioner of Taxes.

Non-application
of certain
provisions
(foreign exchange
business)

74. The provisions of sections 24(1), 25, 26, 29(1) to (4), 30, 44, 45, 49(2), 55, 56(2) to (4), 59, 60, 61 and 64(1) shall not apply to a financial institution or a person licensed to solely conduct foreign exchange business under this Act.

75. (1) Any person who is the holder of a banking licence or foreign exchange licence on the date of commencement of this Act may continue to conduct the activities authorised by the licence.

Transitional
provisions

(2) Any additional activities as set out in section 4(1), in particular financial leasing, buying and selling for the account of customers and portfolio management, may only be conducted once an extension of the banking licence to include such activities has been granted by the Central Bank on being satisfied as to the staffing, operational and financial resources, and pursuant to the procedures and requirements specified by the Central Bank.

(3) Notwithstanding section 23(4), the Central Bank may authorise a bank to maintain, for such period of up to one year as the Central Bank may determine, its capital adequacy ratio at the rate which was in existence prior to the date of commencement of this Act.

(4) Notwithstanding section 29(1) and (2), the Central Bank may authorise a bank to maintain with regard to existing credits outstanding on the date of commencement of this Act, for such period of up to two years as the Central Bank may determine, its single large exposure at the rate which was applicable prior to such date of commencement.

(5) Notwithstanding section 30(2), (4) and (5), the Central Bank may authorise a bank to maintain with regard to existing credits outstanding through connected lending on the date of commencement of this Act, for such period not exceeding two years as the Central Bank may determine, its exposures through connected lending at the level existing on such date of commencement.

76. The Banking (Special Provisions) Act is hereby repealed.

Repeal of
Cap 12

77. (1) The Financial Institutions Act, 1984 is hereby repealed.

Repeal of
Cap 79

(2) Notwithstanding subsection (1) regulations made under the Financial Institutions Act, 1984 shall, to the extent that they are not inconsistent with the provisions of this Act, continue to have effect until amended or replaced by regulations made under this Act.

Section 66(1)

SCHEDULE 1

AMALGAMATION AND TRANSFER

Local financial institutions

1. (1) No local financial institution shall, without the prior approval of the Central Bank –

- (a) amalgamate with any other financial institution, whether in Seychelles or elsewhere; or
- (b) transfer to any other financial institution, whether in Seychelles or elsewhere, the whole or any part of its assets or liabilities, whether in Seychelles or elsewhere.

(2) An application for approval of an amalgamation or transfer referred to in subparagraph (1) must be made to the Central Bank in writing and must include –

- (a) a statement of the nature of the amalgamation or transfer; and
- (b) a copy of the proposed agreement, if any, under which the amalgamation or transfer is to be effected.

(3) If the Central Bank is satisfied that the proposed amalgamation or transfer will not be detrimental to the public

interest it may, with the consent of the Minister, approve the amalgamation or transfer.

Foreign financial institutions

2. If a foreign financial institution –
 - (a) amalgamates with any other financial institution, whether in Seychelles or elsewhere; or
 - (b) transfers to any other financial institution, whether in Seychelles or elsewhere, the whole or any part of its assets or liabilities, whether in Seychelles or elsewhere,

and that amalgamation or transfer will have a material effect on the operation of that foreign financial institution in Seychelles, it shall within 1 month of the amalgamation or transfer notify the Central Bank in writing and shall submit to the Central Bank –

- (i) a statement of the nature of the amalgamation or transfer; and
- (ii) a copy of the agreement, if any, by which the amalgamation or transfer was effected.

Effect of amalgamation or transfer

3. (1) This paragraph applies –
 - (a) on a transaction referred to in paragraph 1(1) coming into effect; or
 - (b) with respect to the assets and liabilities in Seychelles of a foreign financial institution on a transaction referred to in paragraph 2 coming into effect.

(2) All the assets and liabilities of the amalgamating financial institutions or, in the case of a transfer of assets or liabilities, those assets and liabilities of the financial institution by which the transfer is effected, shall vest in and become binding on the amalgamated financial institution or, as the case may be, the financial institution taking over those assets or liabilities.

(3) The amalgamated financial institution or, in the case of a transfer of assets or liabilities, the financial institution taking over those assets or liabilities, shall have the same rights and be subject to the same obligations as were, immediately before the amalgamation or transfer, possessed by or binding on the amalgamating financial institutions or, as the case may be, the financial institution by which the transfer has been effected.

(4) All agreements, appointments, transactions and documents made by, with or in favour of any of the amalgamating financial institutions, or as the case may be, the financial institution by which the transfer has been effected, and in force immediately prior to the amalgamation or transfer, shall remain of full force and effect and shall be construed for all purposes as if they had been made by, with or in favour of the amalgamated financial institution or, as the case may be, the financial institution taking over the assets and liabilities in question.

(5) Any mortgage, bond, pledge, guarantee or other instrument to secure future advances, facilities or services by any of the amalgamating financial institutions, or, as the case may be, the financial institution transferring those assets or liabilities, which was in force immediately prior to the amalgamation or transfer, shall remain of full force and effect and shall be construed as a mortgage, bond, pledge, guarantee or instrument given to or in favour of the amalgamated financial institution or, as the case may be, the financial institution taking over those assets or liabilities as security for future advances, facilities or services by that institution.

(6) The Registrar of Companies, the Land Registrar, the Registrar of Deeds and every officer having responsibility for the registration of any title or any property belonging to, or any mortgage, bond or other rights in favour of, or any appointment of or by or in which has been issued any licence to or in favour of any financial institution which has amalgamated with any other financial institution or any financial institution which has transferred any of its assets or liabilities to any other financial institution shall—

- (a) on being satisfied that—
 - (i) in the case of the local financial institution, the Central Bank has, in terms of paragraph 1, approved of the amalgamation or transfer, or
 - (ii) in the case of a foreign financial institution, the Central Bank has been notified in terms of paragraph 2,

and that the amalgamation or transfer has been duly effected; and

- (b) on the production by the financial institution to him of any relevant deed, bond, certificate, letter of appointment, licence or other document,

make such endorsements thereon and effect such alteration thereto as may be necessary to record the transfer of it and of any rights under it to the amalgamated institution, or, as the case may be, the financial institution which has taken over those assets or liabilities, and no transfer fees, stamp duty, registration fees, transcription fees, inscription fees, licence fees, or other charges shall be payable in respect of the transfer or any endorsement or alteration so made to give effect to the transfer.

(7) This paragraph does not affect the rights of any creditor of a financial institution which has amalgamated with or

transferred any assets or liabilities to any other financial institution, except to the extent provided in this paragraph.

Section 66(2)

SCHEDULE 2

**WINDING UP OF LOCAL FINANCIAL
INSTITUTIONS**

PART I

VOLUNTARY WINDING UP

Authorisation

1. (1) No local financial institution shall be voluntarily wound up except with the prior written authorisation of the Central Bank.

(2) Authorisation under subparagraph (1) shall be granted only if it appears to the Central Bank that –

- (a) the financial institution is solvent and has sufficient liquid assets to repay its depositors and other creditors without delay; and
- (b) the winding up has been approved at a general meeting of the financial institution called expressly for the purpose by the affirmative vote of the holders of not less than three quarters of the issued shares entitled to vote:

Provided that if the winding up is to be effected in whole or in part through the sale of any of the assets of the financial institution to, or the assumption of any of its deposit liabilities by, another financial institution, the Central Bank may, if it considers that the institution is in imminent danger of insolvency, waive the requirement in subparagraph (b) for approval at a general meeting.

(3) The voluntary winding up is deemed to commence on authorisation by the Central Bank under this paragraph.

Operations of local financial institution to cease

2. (1) When a local financial institution has received the authorisation of the Central Bank under paragraph 1 it shall –

- (a) immediately cease to do business, except for business necessary to effect an orderly winding up;
- (b) repay its depositors and other creditors;
- (c) return all funds and other property held by it to the persons entitled to the possession of such funds and property; and
- (d) wind up all operations undertaken prior to the receipt of the authorisation.

(2) Notwithstanding anything to the contrary in its memorandum or articles, the financial institution shall continue to be a body corporate under the Companies Act, until it is dissolved under paragraph 5(4).

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Notice of winding up

3. (1) A notice of voluntary winding up, giving such information as the Central Bank may require, shall be –

- (a) published by the local financial institution in the *Gazette* and in a local newspaper;
- (b) given by the financial institution to the Registrar of Companies within 14 days of the authorisation under paragraph 1; and

- (c) sent within 30 days of the authorisation under paragraph 1 by the financial institution by registered post to all customers, depositors, beneficial owners, other creditors, safe deposit box lessees, owners of funds or property held by the financial institution as a fiduciary or on hire, loan, deposit or pledge and to all shareholders.

(2) The Central Bank may exempt the financial institution from sending notice under subparagraph (1)(c) to any specified person if it is satisfied that –

- (a) it is impracticable to do so; and
- (b) the person has otherwise had adequate notice.

(3) A copy of the notice under this paragraph shall be kept displayed in a conspicuous place in the public part of each place of business of the financial institution and shall be given such other publicity as the Central Bank may direct.

Rights of depositors etc.

4.(1) Authorisation for winding up under paragraph 1 shall not prejudice –

- (a) the rights of a depositor, beneficiary owner or other creditor to payment in full of his claim; or
- (b) the right of any person to the return of funds or other property held by the financial institution.

(2) All lawful claims shall be paid promptly and all funds and other property held by the financial institution shall be returned

to the persons entitled to possession within such period of time as the Central Bank may determine.

Discharge of obligations of institution

5. (1) Subject to subparagraphs (2) and (3), where the Central Bank is satisfied that a local financial institution has discharged all the obligations referred to in paragraph 4(2) –

- (a) the banking licence of the institution shall be revoked; and
- (b) the remainder of its assets shall be distributed by the financial institution among the shareholders in proportion to the nominal values of their respective shares.

(2) No distribution under subparagraph (1) shall be made before –

- (a) all claims of depositors, beneficial owners and other creditors have been paid, or, in the case of a disputed claim, before the financial institution has turned over to the Central Bank sufficient funds to meet any liability that may be judicially determined;
- (b) any funds payable to a depositor, beneficial owner or any other creditor who has not claimed them have been turned over to the Central Bank; and
- (c) any other funds and property held by the financial institution which cannot be returned to the persons entitled to their possession in accordance with this paragraph have been dealt with in accordance with section 59 (reports of abandoned property).

(3) All costs, charges and expenses properly incurred in the winding up are payable out of the assets of the financial institution in priority to a distribution under subparagraph (1)(b).

(4) The Central Bank shall inform the Registrar of Companies of the revocation of the banking licence of the financial institution under subparagraph (1) and the Registrar shall –

- (a) strike the name of the financial institution off the register of companies; and
- (b) publish a notice of the striking off in the *Gazette*,

and on the date of publication in the *Gazette* of that notice the financial institution shall be dissolved.

(5) Without prejudice to the generality of section 65 (application of Companies Act), the provisions of the Companies Act, other than those specified in Part III of this Schedule, shall apply to a financial institution struck off under sub-paragraph (4) as they apply to a company struck off under section 305 of that Act and the liability, if any, of every director, officer, member, shareholder and contributory of the company shall continue and may be enforced as if the company had not been dissolved.

(6) When the remainder of the assets of the local financial institution have been distributed in accordance with subparagraph (1)(b), its books and papers shall be disposed of in such way as the Central Bank directs.

Revocation of banking licence if assets insufficient

6. (1) Where a local financial institution is being wound up voluntarily under this Schedule, and, in the opinion of the Central Bank –

- (a) the assets of the financial institution will not be sufficient for the full discharge of its obligations; or
- (b) the completion of the winding up is unduly delayed, the Central Bank shall revoke the banking licence of the financial institution and appoint a liquidator for the compulsory winding up of the financial institution in terms of Part II of this Schedule.

Effective date of revocation

7. Sections 13(2) to (5) (taking effect of revocation) and section 16 (appeals against revocation) do not apply to a revocation under paragraph 5 or 6.

PART II

COMPULSORY WINDING UP

Start of compulsory winding up

8. (1) The date of the start of compulsory winding up of a local financial institution is the date on which the revocation of its banking licence –

- (a) becomes final in terms of section 13(5); or
- (b) is ordered under paragraph 6 of this Schedule, paragraph 5(1) (b) of Schedule 3 or paragraph 8 of Schedule 4.

(2) When the compulsory winding up of a local financial institution starts it shall immediately suspend all business and the liquidator appointed under paragraph 9 shall take charge of all books, records and assets of the financial institution and shall direct the winding up in accordance with this Part of this Schedule.

(3) The liquidator shall without delay make an inventory of the assets of the financial institution and shall give to the Central Bank a copy of that inventory, which shall be available at the office of the Central Bank for examination by any interested person at such times as the Central Bank determines.

Appointment of liquidator

9. (1) At the start of the compulsory winding up of a local financial institution the Central Bank shall appoint a person who, in the opinion of the Central Bank, is suitably qualified to be liquidator of the financial institution.

(2) The liquidator shall give effect to any direction communicated to him by the Central Bank which is not inconsistent with this Act.

(3) In this Part of this Schedule (except in the reference in paragraph 11 to the liquidator in a winding up by the Court under sections 222(1) and (2) of the Companies Act) “liquidator” means a liquidator appointed under this paragraph.

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Notice of liquidator

10. A notice of compulsory winding up, giving such information as the Central Bank may require, shall be –

- (a) published by the liquidator in the *Gazette* and in a local newspaper; and
- (b) given by the liquidator to the Registrar of Companies within 14 days of the start of the compulsory winding up.

Powers of liquidator

11. The liquidator shall have the full and exclusive power of management and control of the financial institution for the purpose

of the winding up, including without prejudice to this generality, the power –

- (a) to wind up its operations;
- (b) wholly or partially to suspend, limit or stop the payment of its obligations;
- (c) to employ any necessary staff;
- (d) to execute any instrument in the name of the financial institution;
- (e) to initiate, defend and conduct in the name of the financial institution any action or any proceedings to which the financial institution may be a party,

and shall have the power of the liquidator in a winding up by the Court under section 222(1) and (2) of the Companies Act, and in the application of those provisions to a winding up under this Part of this Schedule, for the reference to the sanction either of the court or of the committee of inspection there shall be substituted a reference to the sanction of the Central Bank.

Operation of contracts, liens etc.

12. Notwithstanding the Civil Code or any other law to the contrary, under compulsory winding up proceedings, any period, whether statutory, contractual or otherwise, on the expiration of which a claim or right of the financial institution would expire or be extinguished within 6 months of the start of compulsory winding up shall be extended so that it expires or is extinguished on the date of 6 months after the start of compulsory winding up.

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Power to terminate contracts

13.(1) Within 6 months from the start of compulsory winding up the liquidator may, notwithstanding the relevant contract, but subject to any other relevant law, terminate –

- (i) any employment contract;
- (ii) any contract for services to which the financial institution was a party;
- (iii) any obligation of the financial institution as a lessee.

(2) A lessor who receives 90 days' notice that the liquidator is exercising discretionary powers under subparagraph (1) to terminate the lease has no claim for rent (other than rent accrued on the date of termination of the lease) nor for damages by reason of that termination.

Termination of fiduciary functions

14. As soon as possible after the start of compulsory winding up, the liquidator shall take the necessary steps –

- (a) to terminate all fiduciary functions performed by the financial institution and all functions performed by the financial institution on behalf of other persons;
- (b) to deliver any assets or property held by the financial institution as a fiduciary or on behalf of any person to another person as fiduciary or to the person entitled to possession of the assets or property, as may be appropriate; and
- (c) to settle the fiduciary accounts of the financial institution.

Statements of claim

15.(1) As soon as possible after the start of compulsory winding up the liquidator shall send by registered post to all

depositors, beneficial owners, other creditors, safe deposit box lessees, and owners of funds or property held by the financial institution as a fiduciary or on hire, loan, deposit or pledge, a statement setting out the nature and amount in respect of which their claim against the financial institution is shown on its books.

(2) Any person referred to in subparagraph (1) who does not receive a statement under that subparagraph may lodge a claim or objection with the liquidator within 90 days of the start of compulsory winding up.

(3) A statement under subparagraph (1) shall state that any objection concerning the nature or amount of the claim must be filed with the liquidator before a specified date not later than 60 days after the date of the statement and shall ask safe deposit box lessees and owners of property held by the financial institution on hire, loan, deposit or pledge to withdraw their property.

(4) The Central Bank may, before the commencement of the 60-day period, exempt the liquidator from sending statements under subparagraph (1) to any specified person if it is satisfied that –

- (a) it is impracticable to do so; and
- (b) the person is not likely to dispute the nature or amount for which his claim is shown on the financial institution's books.

Rejection of claims and determination of amounts owing

16. (1) Within 3 months after the date specified under paragraph 15(3), or within such longer period as may be determined by the Central Bank, the liquidator shall –

- (a) reject any claim or any objection filed under paragraph 15(3) if he doubts its validity;

- (b) determine the amount, if any, owing to each known depositor or other creditor and the priority class of his claim under paragraph 17;
- (c) notify each person –
 - (i) whose claim has not been allowed in full;
 - (ii) whose claim or objection has been rejected; or
 - (iii) whose claim may not be paid in full.

(2) Any person aggrieved by a notice under subparagraph (1)(c) may, within 21 days of such notification, appeal against the decision of the liquidator to the Supreme Court, who may uphold, vary or reverse the liquidator's decision.

Preferential payment

17. (1) In a compulsory winding up under this Part of this Schedule there shall be paid, in priority to all other debts or claims against the financial institution and in the following order –

- (a) all necessary and reasonable expenses incurred by the liquidator in the application of this Part of this Schedule;
- (b) all wages or salary (whether or not earned wholly or in part by way of commission) of any officer or employee in respect of services rendered to the financial institution during the four months immediately preceding the date on which the banking licence was revoked, being a sum which, in the case of anyone claimant does not exceed R2,000;

- (c) all tax on income and other taxes assessed on the company up to the 31st day of December in the year immediately preceding that in which the banking licence was revoked, but not exceeding in the whole one year's assessment, the year for which priority is claimed being selected by the Commissioner of Taxes;
- (d) any funds deposited with the financial institution with interest accrued thereon, not exceeding in respect of any one account R10,000;
- (e) all other claims lodged timeously;
- (f) other deposits with interest accrued thereon;
- (g) any fees and assessments due to the Central Bank.

(2) If the amount available for any class is insufficient to provide payment in full, the amount shall be distributed rateably among the members of the class.

(3) After payment of all claims specified in subparagraph (1) the liquidator may pay any remaining claims not lodged within the specified time.

Schedule of proposed steps and timetable

18.(1) Within 3 months after the date specified under paragraph 15(2), or within such longer period as may be determined by the Central Bank, the liquidator shall –

- (a) prepare a schedule of the steps proposed to be taken and the timetable proposed to be followed to complete the winding up under this Part of this Schedule; and

- (b) publish once in the *Gazette*, and once a week for 3 consecutive weeks in a local newspaper, a notice of the date and place where the schedule and timetable will be available for inspection, and the date, not earlier than 30 days from the date of the third publication in the local newspaper, on which the liquidator will lodge the schedule and timetable with the Supreme Court for approval.

(2) Within 21 days after the schedule and timetable have been lodged with the Supreme Court under subparagraph (1), any depositor, other creditor, shareholder, or other interested party may file an objection to any step or time proposed.

(3) If an objection is sustained by the Supreme Court, it shall direct that an appropriate modification of the schedule and timetable be made.

Payment of claims

19. (1) Where the schedule and timetable have been approved by the Supreme Court the liquidator may, from time to time, make partial distribution to the holders of the claims which are undisputed or which have been allowed by Court, on condition that a proper reserve is established for the payment of disputed claims.

(2) As soon as possible after all objections have been decided on, the liquidator shall make the final distribution.

Disposal of assets

20. Any assets remaining after all claims have been paid under paragraph 19 shall be distributed among the shareholders in proportion to the nominal values of their respective shares.

Safe deposit boxes and unclaimed property

21. (1) Any safe deposit boxes the contents of which have not been withdrawn before the date specified under paragraph 15(3) shall be opened in the manner determined by the liquidator.

(2) The contents of safe deposit boxes opened under subparagraph (1), or any unclaimed property held by the institution on hire, loan, deposit or m pledge, shall –

- (a) if they are monies, be transferred on the direction of the Central Bank to a special account with the Central Bank;
- (b) if they are not monies, be referred on the direction of the Central Bank to the Minister for such action as he shall determine.

(3) Any items dealt with under subparagraph (2) shall be presumed to be abandoned property, and shall be dealt with in accordance with Part VI (abandoned property) of this Act if within 10 years of the original date of deposit the owner has not evidenced an interest in the items.

Unclaimed funds

22. (1) Unclaimed funds remaining after the final distribution under paragraphs 19 and 20 or which are not subject to other provisions of this Act shall, on the direction of the Central Bank, be transferred to a special account with the Central Bank and may be used by the Central Bank for such purposes as may be determined by the Central Bank after consultation with the Minister.

(2) If within 10 years of the date of the final distribution under paragraphs 19 and 20, as the case may be, the owner has not evidenced an interest in funds transferred under subparagraph (1) they shall be presumed to be abandoned property and shall be dealt with in accordance with Part VI (abandoned property) of this Act.

Audit

23. (1) When all assets have been distributed in accordance with this Part of this Schedule, the liquidator shall, after approval by the Central Bank, submit to the Supreme Court for its approval an audited statement of account of his dealing with the assets of the financial institution together with an auditor's report.

(2) The auditor shall be a person who in the opinion of the Central Bank is suitably qualified to discharge the duties of auditor, and his remuneration shall be paid by the liquidator.

(3) A person shall not be qualified for appointment as auditor of the liquidator's statement unless he is a member of a body of accountants (whether established in or outside Seychelles) for the time being recognised for the purposes of this paragraph by the Central Bank.

(4) In his report the auditor shall state –

- (a) whether in his opinion the liquidator's statement of accounts is full and fair and properly drawn up;
- (b) whether the statement exhibits a true and correct statement of the dealings of the liquidator with the assets of the financial institution; and
- (c) where the auditor has called for any explanation or information from the liquidator and whether that explanation or information is satisfactory.

(5) The approval of that statement of account and report by the Court relieves the liquidator and the Central Bank of any liability in connection with the winding up.

(6) The liquidator shall inform the Registrar of Companies of the approval of statement of account and report by the Court and the Registrar shall –

- (a) strike the name of the financial institution off the register of companies; and
- (b) publish a notice of the striking off in the *Gazette*,

and on the date of publication in the *Gazette* of that notice the financial institution shall be dissolved.

(7) Without prejudice to the generality of section 65 (application of the Companies Act), the provisions of the Companies Act, other than those specified in Part III of this Schedule, shall apply to a financial institution struck off under subparagraph (6) as they apply to a company struck off under section 305 of that Act, and the liability, if any, of every director, officer, member, shareholder and contributory of the company shall continue and may be enforced as if the company had not been dissolved.

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PART III

PROVISIONS OF THE COMPANIES ACT 1972 WHICH DO NOT APPLY

In the table below, the first column indicates the section number of the provision of the Companies Act, the second column indicates the general subject matter of the provision and the third column indicates whether the provision does not apply in relation to the voluntary winding up or compulsory winding up of a financial institution or to both.

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<i>Section</i>	<i>Subject Matter</i>	<i>Mode</i>
202	Modes of winding up	Compulsory
205 -206	Cases in which company may be wound up by the Court	Compulsory
207 -208	Petition for winding up and its effect	Compulsory
209	Commencement of winding up	Compulsory
211	Provisional liquidator	Compulsory
213	Registration of winding up order	Compulsory
214 -216	Official Receiver	Compulsory
217- 223	Liquidators	Compulsory
226 -228	Audit of accounts of and supervision and release of liquidators	Compulsory
229 -231	Committees of inspection	Compulsory
232	Meetings of shareholders and creditors	Compulsory
233	Stay of winding up	Compulsory
234	Settlement of list of contributories etc.	Compulsory
236	Examination of directors, officers, etc.	Compulsory
237(2) - (5)	Power of court to make calls	Compulsory
238	Miscellaneous powers of court	Compulsory
239	Order of payment into a bank	Compulsory
240	Special Manager	Compulsory
241	Public examination of directors etc.	Compulsory
244	Delegation of court's power to liquidator	Compulsory
245	Dissolution of company	Compulsory
247 -250	Resolutions for and commencement of voluntary winding up	Voluntary
251	Effect of voluntary winding up	Voluntary
253 -259	Members voluntary winding up	Voluntary
260 -267	Creditors voluntary winding up	Voluntary
268	Provisions for every voluntary winding up	Voluntary
269(1)	Costs of winding up	Voluntary
270 -272	Liquidators	Voluntary
273(1) and (2)	Powers of court in winding up by court	Voluntary
274	Order for company in voluntary liquidation to be wound up by court	Voluntary

<i>Section</i>	<i>Subject Matter</i>	<i>Mode</i>
275	General meetings of company in voluntary liquidation	Voluntary
277	Application of bankruptcy rules	Voluntary
278	Preferential payment	Voluntary
281	Disclaimer by liquidator	Voluntary
293	Disqualification of body corporate from appointment as liquidator	Both
294	Order against liquidator to make good default	Both
296	Exemption from stamp duty	Both
298(1)	Disposal of books and papers of company	Both
299	Returns by liquidator to Registrar	Both
300	Unclaimed assets	Both
304	Avoidance of dissolution	Both
305	Power of Registrar to strike name of defunct company off register	Both

SCHEDULE 3

Section 66(3)

SEIZURE BY THE CENTRAL BANK

Central Bank taking possession

1. (1) The Central Bank may take possession of any financial institution –
 - (a) whose minimum required capital in terms of section 23 is impaired or whose condition is otherwise unsound;
 - (b) whose business is, in the opinion of the Central Bank, being conducted in an unlawful or imprudent manner;

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- (c) where the continuation of its activities is, in the opinion of the Central Bank, detrimental to the interests of its depositors;
 - (d) which refuses to submit itself to or otherwise obstructs any inspection by the Central Bank under section 42 of this Act or section 36 of the Central Bank of Seychelles Act;
 - (e) whose banking licence has been revoked under section 13(1), notwithstanding section 13(2) to (5) or any appeal or right to appeal under section 16.

(2) When taking possession of a financial institution under subparagraph (1), the Central Bank shall post on the premises of the institution a notice announcing its action under this Schedule, and the time when its possession is deemed to take effect, which shall not be earlier than the posting of the notice.

(3) Copies of a notice posted under subparagraph (2) shall be –

- (a) given by the Central Bank to the Supreme Court and to the Registrar of Companies; and
- (b) published immediately in the *Gazette* and in a local newspaper; and
- (c) in the case of a foreign financial institution, sent by the Central Bank to the head office of the institution.

Consequences of seizure

2. Notwithstanding the Civil Code or any other rule of law to the contrary, where the Central Bank takes possession of a financial institution under this Schedule –

- (a) any period, whether statutory, contractual or otherwise, on the expiration of which a claim or right of the financial institution would expire or be extinguished on or after the seizure, shall be extended so that it does not expire or is not extinguished while possession by the Central Bank under this Schedule continues;
- (b) any attachment or lien on the property or assets of the financial institution in Seychelles (except a lien existing 6 months prior to the seizure of the financial institution under this Schedule) shall cease to have effect;
- (c) no attachment or lien (except a lien created by the Central Bank in the application of this Schedule), shall attach to any property or assets of the financial institution in Seychelles so long as possession by the Central Bank under this Schedule continues; and
- (d) any transfer of any assets in Seychelles of the financial institution made within 6 months prior to the seizure of the financial institution shall be null and void unless the financial institution satisfies the Central Bank that the transfer was not made with the intent to effect a preference.

Management by Central Bank

3. (1) Where the Central Bank takes possession of a financial institution under this Schedule, subject to subparagraph (2), there is vested in the Central Bank the full and exclusive power of management and control of the affairs of the financial institution, including, without prejudice to this generality, the power –

- (a) to continue or discontinue its operations as a financial institution (notwithstanding that its banking licence has been revoked);

- (b) wholly or partially to suspend, limit or stop the payment of its obligations;
 - (c) to employ any necessary staff;
 - (d) to execute any instrument in the name of the financial institution;
 - (e) to initiate, defend and conduct in its own name any action or any proceedings to which the financial institution may be a party;
 - (f) to reorganise, wind up or close down the financial institution in accordance with this Act.
- (2) In the case of a foreign financial institution the power vested in the Central Bank under subparagraph (1) applies to –
- (a) the operation of the financial institution in and with respect to Seychelles; and
 - (b) the assets and liabilities whether in or outside Seychelles of the financial institution pertaining to any branch of the financial institution in Seychelles.
- (3) As soon as possible after taking possession of a financial institution the Central Bank shall make an inventory of the assets of the institution and shall transmit a copy of that inventory to the Supreme Court.
- (4) The copy of the inventory transmitted to the Supreme Court under subparagraph (3) shall be available for examination by any interested person at such place and such time as the Court directs.

Appeal

4. The financial institution may, within 21 days of the Central Bank taking possession under this Schedule, apply to the Supreme Court to have the seizure lifted.

Further action by Central Bank

5. (1) Within a maximum period of 30 days from taking possession under this Schedule, the Central Bank shall –

- (a) start the reorganisation of the financial institution under Schedule 4 (in which case the seizure under this Schedule remains effective until terminated under paragraph 7 of Schedule 4); or
- (b) revoke the banking licence of the financial institution and –
 - (i) in the case of a local financial institution, start the compulsory winding up of that institution under Schedule 2; or
 - (ii) in the case of a foreign financial institution, close that institution under paragraph 2(2) of Schedule 5; or
- (c) terminate the seizure and return full management, control and possession to the institution.

(2) Where the Central Bank terminates a seizure under subparagraph (1)(c) –

- (a) it may take action under section 53 (Central Bank's powers over unsafe practices);
- (b) it shall immediately give notice of the termination –
 - (i) to the Supreme Court and the Registrar of Companies;
 - (ii) in the *Gazette* and in a local newspaper; and

- (iii) in the case of a foreign financial institution, to its head office.

(3) Section 13(2) to (5) (taking effect of revocation) and section 16 (appeals against revocation) do not apply to the revocation of a banking licence under subparagraph (1)(b).

SCHEDULE 4

Section 66(4)

REORGANISATION OF FINANCIAL INSTITUTIONS

PART I

**REORGANISATION OF LOCAL FINANCIAL
INSTITUTIONS**

Appointment of reorganising agent

1. (1) Where under paragraph 5(1)(a) of Schedule 3 the Central Bank decides to reorganise a local financial institution, it shall appoint one of its officers or a suitably qualified person as reorganising agent to direct the reorganisation in accordance with this Schedule.

(2) The reorganising agent shall act under the supervision of the Central Bank and shall give effect to any direction given to him by the Central Bank which is not inconsistent with this Act.

(3) In this Schedule, and in section 49, “reorganising agent” means a reorganising agent appointed under this paragraph.

Reorganisation plan

2. (1) The reorganising agent shall, as soon as possible, and taking into account the interests of persons concerned with the local financial institution, draw up a reorganisation plan for the local financial institution.

- (2) The reorganisation plan shall –
- (a) be equitable to all depositors, beneficial owners, other creditors, safe deposit box lessees, owners of funds or property held by the financial institution as a fiduciary or on hire, loan, deposit or pledge and to the shareholders of the institution;
 - (b) provide for an amalgamation with or transfer to another financial institution under Schedule 1, or for bringing in new funds, so as to establish adequate ratios between –
 - (i) capital and deposits; and
 - (ii) liquid assets and deposits;
 - (c) provide for the removal of any director, manager, officer, employee or agent of the financial institution who in the opinion of the Central Bank was responsible for or contributed to the circumstances which led to the seizure of the institution under Schedule 3; and
 - (d) be approved by the Central Bank before copies are sent out under paragraph 3.

Notice of plan

3. (1) The reorganising agent shall send to all depositors, beneficial owners, other creditors, safe deposit box lessees, owners of property held by the institution as a fiduciary or on hire, loan, deposit or pledge and the shareholders of the institution a copy of the reorganisation plan with notice that –

- (a) if, within 30 days of the date on which it is sent, the plan is not objected to in writing by persons holding one-third or more of the aggregate amount of deposits and other liabilities of the institution (as determined by the Central Bank), the reorganising agent will proceed with the reorganisation in accordance with this Schedule; and
- (b) those persons may submit written objections to the plan to the reorganising agent within 30 days of the date on which it is sent.

(2) The reorganising agent shall publish in the *Gazette* and in a local newspaper a notice that the reorganisation plan is available for examination by any interested person at such place and at such times as are specified in the notice.

(3) The Central Bank may, before the commencement of the 30-day period, exempt the reorganising agent from sending copies of the reorganisation plan to any person specified by the Central Bank if it is satisfied that –

- (a) it is impracticable to do so; and
- (b) such person has otherwise had adequate notice.

Objections to and modifications of reorganisation plan

4. The reorganising agent shall consider all objections to the reorganisation plan submitted under paragraph 3(1)(b), and may, in his discretion –

- (a) modify the plan on account of one or more of the objections, and where he does so the procedure provided for in this paragraph and

paragraph 3 shall apply to such modification as it applies to the reorganisation plan;

- (b) proceed with the original plan as if no objection had been made; or
- (c) if on account of the objections he considers that the reorganisation of the financial institution will not be possible, request the Central Bank to revoke the banking licence of the institution and start its compulsory winding up in terms of paragraph 8:

Provided that paragraph (b) shall not apply if persons holding, in aggregate, one third or more of the deposits and other liabilities of the financial institution (as determined by the Central Bank) have objected to the reorganisation plan under paragraph 3(1)(b).

Approval of the Supreme Court

5. (1) Where the reorganising agent decides to proceed with the reorganisation plan either in its original form or with modifications, he shall, with the approval of the Central Bank submit the reorganisation plan for the approval of the Supreme Court.

(2) Before submitting the plan for approval, the reorganising agent may, with the approval of the Central Bank and without complying with the procedures under paragraphs 3 and 4, amend or modify the plan so as –

- (a) to remove any unfairness to any class of depositors, beneficial owners, other creditors, interested parties or shareholders;
- (b) to make its execution more workable or practicable; or

- (c) to correct any error or ambiguity.
- (3) The Supreme Court may –
- (a) approve the reorganisation plan subject to such modifications or alterations as it may determine; or
 - (b) reject the reorganisation plan either with or without making a direction to the Central Bank in terms of paragraph 8(1)(d) to revoke the banking licence of the financial institution and start its compulsory winding up.

Execution of reorganisation

6. (1) The reorganising agent shall carry on the reorganisation plan as soon as it has been approved by the Supreme Court and, for this purpose, the reorganising agent has all the necessary and incidental powers in respect of and in relation to the financial institution, notwithstanding the powers vested in the Central Bank under paragraph 3(1) of Schedule 3.

(2) When the reorganisation of the financial institution has been completed to the satisfaction of the reorganising agent he shall so inform the Central Bank.

Completion of reorganisation

7. (1) (a) Where the reorganising agent informs the Central Bank under paragraph 6(2) that the reorganisation of the financial institution has been completed to his satisfaction; or
- (b) if at any stage of proceedings under this Schedule the Central Bank is of the opinion that it is no longer necessary to proceed with the reorganisation,

the Central Bank shall terminate the seizure effected under Schedule 3 and return full management, control and possession to the local financial institution.

(2) Paragraph 5(2) (further action by Central Bank) of Schedule 3 applies to termination of a seizure under this paragraph.

Revocation of banking licence

8. (1) Notwithstanding paragraphs 5(2), 6 and 7 if at any stage of the procedure under this Schedule –

- (a) the reorganising agent so requests under paragraph 4(c); or
- (b) the reorganising agent is of the opinion that –
 - (i) the assets of the financial institution will not be sufficient for the full discharge of all its obligations; or
 - (ii) completion of the reorganisation is unduly delayed; or
 - (iii) it is impracticable to proceed with the reorganisation of the financial institution; or
- (c) the Central Bank is of the opinion that it is impracticable to proceed with the reorganisation of the financial institution; or
- (d) the Central Bank is directed to do so by the Supreme Court,

the Central Bank shall revoke the banking licence of the financial institution and appoint a liquidator for the compulsory winding up of the institution in terms of Part II of Schedule 2.

(2) Sections 13(2) to (5) (taking effect of revocation) and 16 (appeals against revocation) do not apply to a revocation under this paragraph.

PART II

REORGANISATION OF FOREIGN FINANCIAL INSTITUTIONS

9. (1) The Central Bank may order the reorganisation of a foreign financial institution by its head office under the supervision of the Central Bank and subject to such terms and conditions as the Central Bank may determine.

(2) Any reorganisation under this paragraph is conditional on the full protection of the interests in Seychelles of all depositors, beneficial owners, other creditors, safe deposit box lessees and persons otherwise entitled to funds or property held by the foreign financial institution in Seychelles as a fiduciary or on hire, loan deposit or pledge.

SCHEDULE 5

Section 66(5)

CLOSURE OF FOREIGN FINANCIAL INSTITUTIONS

Approval of closure

1. No foreign financial institution shall close down its business in Seychelles except with the written approval of the Central Bank, which may be given subject to such terms and conditions as the Central Bank may specify; and if approval is granted, the affairs of the institution shall be wound up in accordance with this Schedule.

Compulsory closure

2. (1) Where a revocation of the banking licence of a foreign financial institution has been made final under section 13, the business of that institution in and with respect to Seychelles shall be closed down and its affairs wound up in accordance with this Schedule.

(2) If –

- (a) liquidation or winding up proceedings in respect of a foreign financial institution are instituted in the country where its head office is located; or
- (b) the Central Bank so decides under paragraph 5(1)(b) of Schedule 3 (seizure),

the Central Bank shall order the business of that institution in and with respect to Seychelles to be closed down and its affairs wound up in accordance with this Schedule.

Notice of closure

3. A notice of closure, giving such information as the Central Bank may require, shall be –

- (a) published by the foreign financial institution in the *Gazette* and in a local newspaper; and
- (b) given by the foreign financial institution to the Registrar of Companies.

Appointment of supervising agent

4. (1) The Central Bank shall appoint a qualified person as supervising agent of the closure of the business of that foreign financial institution in and with respect to Seychelles.

(2) The supervising agent shall oversee the winding up of the foreign financial institution under this Schedule and shall –

(a) take all measures necessary to ensure that no assets owned by the institution are removed from Seychelles until all obligations and liabilities incurred by the institution in the conduct of banking business in Seychelles have been covered in accordance with its undertaking under section 5(1)(f); and

(b) report to the Central Bank –

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(i) any contravention by the foreign financial institution, or by any director, manager, officer, employee or agent of the institution of this Act or the Central Bank of Seychelles Act;

(ii) any action or proposed action by the foreign financial institution which in his opinion may be to the detriment of depositors with or creditors of the institution in Seychelles.

(3) The supervising agent shall give effect to any direction issued to him by the Central Bank which is not inconsistent with this Act.

(4) In this Schedule and in section 49, “supervising agent” means a supervising agent appointed under this paragraph.

Effect of closure

5. Where the business of a foreign financial institution in and with respect to Seychelles is closed down under this Schedule, the institution shall –

- (a) cease to do business in and with respect to Seychelles (except such business as is necessary to effect an orderly closure) –
 - (i) in the case of a closure under paragraph 1, on such date as the Central Bank may determine; or
 - (ii) in the case of a closure under paragraph 2, immediately;
- (b) repay its depositors in Seychelles and other creditors in respect of its operations in Seychelles;
- (c) return all funds and other property held by it in Seychelles to the persons entitled to possession of such funds or property; and
- (d) wind up all business and operations in and with respect to Seychelles undertaken prior to the closure.

Ban on removal of assets

6. (1) No person shall –
- (a) remove;
 - (b) assist in removing; or
 - (c) make or take part in any arrangement for removing,

from Seychelles any assets owned or held by a foreign financial institution until all obligations and liabilities incurred by the institution in the conduct of banking business in Seychelles have been –

- (i) fulfilled or met; or
- (ii) covered in accordance with the undertaking of the institution under section 5(1)(f).

(2) If the supervising agent is of the opinion that any assets owned or held by a foreign financial institution are likely to be removed from Seychelles in contravention of subparagraph (1), he may apply to the Supreme Court for an order prohibiting that removal and authorising such other action to stop that removal as the Court may determine.

Safe deposit boxes and unclaimed property

7. (1) Any safe deposit boxes, the contents of which have not been withdrawn before such date as may be specified in the notice under paragraph 3 shall be opened in the manner determined by the supervising agent.

(2) The contents of safe deposit boxes opened under subparagraph (1) or any unclaimed property held by the foreign financial institution as a fiduciary, or on hire, loan, deposit or pledge, shall –

- (a) if they are monies, be transferred on the direction of the Central Bank to a special account with the Central Bank;
- (b) if they are not monies, be referred, on the direction of the Central Bank, to the Minister for such action as he shall determine.

(3) Any items dealt with under subparagraph (2) shall be presumed to be abandoned property, and shall be dealt with in accordance with Part VI (abandoned property) of this Act if within 10 years of the original date of deposit the owner has not evidenced an interest in the items.

Unclaimed funds

8. (1) Unclaimed funds which are not subject to other provisions of this Act shall, on the direction of the Central Bank, be transferred to a special account with the Central Bank and may be used by the Central Bank for such purposes as may be determined by the Central Bank after consultation with the Minister.

(2) If, within 10 years of the date of the publication of the notice of closure under paragraph 3, the owner has not evidenced an interest in funds transferred under subparagraph (1), they shall be presumed to be abandoned property and shall be dealt with in accordance with Part VI (abandoned property) of this Act.

Final revocation of licence

9. (1) Where, in a closure under paragraph 1 or 2 (2), the Central Bank is of the opinion that the foreign financial institution has complied fully with this Schedule, the banking licence of the institution shall be revoked.

(2) Section 13(2) to (5) (taking effect of revocation) and section 16 (appeals against revocation) do not apply to a revocation under this paragraph.

Section 73(1)

SCHEDULE 6

Business Tax Act	(Cap 20)
Exchange Control Act	(Cap 76)
Stamp Duty Act	(Cap 226)
Trades Tax Act	(Cap 240)

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 21st December, 2004.



Sheila Banks
Clerk to the National Assembly