

COMMONWEALTH OF DOMINICA

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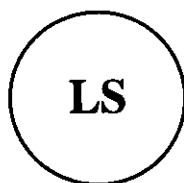
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COMMONWEALTH OF DOMINICA

ACT NO. 8 OF 1996

I assent



C.A. SORHAINDO
President.

6th May, 1996.

AN ACT TO MAKE PROVISION FOR REGULATING THE
BUSINESS OF OFFSHORE BANKING AND FOR
PURPOSES CONNECTED THEREWITH OR INCI-
DENTAL THERETO.

(Gazetted 9th May, 1996.)

BE IT ENACTED by the Parliament of the Commonwealth of
Dominica as follows:

PART I
PRELIMINARY

1. This Act may be cited as the –

OFFSHORE BANKING ACT 1996.

Short title.

Interpretation.

2. (1) In this Act, unless the contrary intention appears the expression –

“Bank” means any financial institution whose business includes the acceptance of deposits of money withdrawable by cheque;

“banking business” means the business of accepting deposits, receiving on current or savings deposits or on other similar account, money which is repayable by cheque or order and which may be invested by way of loans or advances to customers or otherwise or which may be withdrawn or repaid on demand or after a fixed period or after notice and the employment of these deposits in whole or in part by lending or any other means for the account and at the risk of the person accepting such deposits, and a person shall, without prejudice to the generality of the foregoing be deemed to accept deposits of money if he advertises for or solicits such deposits from the general public irrespective of any terms or conditions under which deposits or money are solicited or received or whether or not certificates or other instruments are issued in respect of such deposits;

“company” means a company incorporated in Dominica under any law for the time being in force relating thereto and includes any company incorporated outside Dominica which has complied with the provisions of any such law for the time being in force relating to the registration of companies;

“designated bank” means a bank designated by the Minister and different banks may be designated for different purposes under this Act;

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

“financial institution” means a company which carries on offshore banking business and which is constituted in Dominica in accordance with any law which may from time to time be in force in Dominica and includes any company incorporated

outside Dominica which has complied with the provisions of any law which may from time to time be in force in Dominica;

“Minister” means the Minister responsible for Finance;

“licence” means a licence granted to a company under the provisions of section 5;

“licensed” means licensed under this Act to conduct offshore banking business;

“Manager” includes any person for the time being in charge of the principal office in Dominica of any bank;

“offshore banking business” means banking business conducted exclusively in currencies other than East Caribbean dollars;

“officer” includes a director, manager or secretary;

“person” includes a body of persons;

“prescribed” means prescribed by Regulation or Order made by the Minister;

“trust business” means the business of acting as trustee under settlements and wills and as administrator or executor of deceased persons;

“trust company” means either a company appointed by the Court in any particular case to be a trustee or a company constituted under the Companies Ordinance and empowered by its constitution to undertake trust business and being either – Cap. 318.

(a) a company incorporated by special Act; or

(b) a company registered under the Companies Ordinance Cap. 318. having issued share capital of not less than one million United States dollars of which not less than five hundred thousand United States dollars has been paid up in cash.

(2) Grammatical variations of any expression defined in subsection (1) shall be construed accordingly.

PART II

LICENSING OF FINANCIAL INSTITUTIONS

Necessity of licence.

3. (1) Notwithstanding the provisions of any other Act, no offshore banking business shall, save as hereinafter provided, be carried on in, or from within Dominica except by a licensed financial institution.

(2) Notwithstanding the provisions of any other Act no financial institutions licensed under this Act shall engage in trust business except with a licence granted for that purpose by the Minister under section 7.

(3) Any person who contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine of twenty thousand dollars and to imprisonment for two years and in the case of a continuing offence to a further penalty of one thousand dollars for each day on which the offence is continued after conviction thereof.

Transitional
arrangements,
application procedure
and processing fees.

4. (1) Every company which on the date that this Act comes into force is licensed in Dominica for the purpose of carrying on offshore banking or trust business shall be deemed to be duly licensed under this Act.

(2) Any company desirous of commencing an offshore banking business from within Dominica after the date on which this Act comes into force shall apply to the Minister for a licence.

(3) An application made in accordance with subsection (2) shall be in such form and in such manner as may be prescribed and shall be accompanied by a copy of a memorandum and articles of association or any other instrument under which the company in respect of which the licence is sought is incorporated and such other information as the Minister may require.

(4) Every application shall also be accompanied by a receipt issued by the Accountant General for the payment of the prescribed fee for the processing of the application.

5. (1) Subject to the provisions of this Act, the Minister may grant a licence in respect of which application has been made under section 4 but if the Minister is of the opinion that it would be undesirable in the public interest that the licence should be granted, he may refuse to grant it and need not give any reason for so refusing.

Granting of licence.

(2) A licence granted under subsection (1) shall be granted exclusively for carrying on offshore banking business.

(3) In granting a licence under this Act the Minister shall have regard to –

- (a) the financial reputation and standing of the applicant;
- (b) the applicant's record in international business;
- (c) the satisfactory nature of verifiable records for three years immediately preceding the date of application;
- (d) the financial net worth of each of the directors, associates or affiliates of the company applying for a licence under this Act, such net worth to be in excess of one million United States dollars in cash or readily negotiable instrument as independently confirmed to the satisfaction of the Minister;
- (e) the character and standing of all the directors or proposed directors of the applicant; and
- (f) any other requirements he may in consultation with any financial advisers determine from time to time.

(4) For the purpose of this section, "associate" means, when used to indicate a relationship with any person –

- (a) a company of which that person beneficially owns or controls, directly or indirectly, shares or securities convertible into shares carrying

more than thirty per cent of the voting rights under all circumstances or by reason of the occurrence of an event that has occurred and is continuing, or a currently exercisable option or right to purchase those shares or convertible securities;

- (b) a partner of that person acting on behalf of the partnership of which they are partners;
- (c) a trust or estate in which that person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity;
- (d) a spouse or a child of that person; or
- (e) a relative of that person or of the spouse of that person if the relative has the same residence as that person.

(5) For the purposes of this section –

- (a) one company is affiliated with another company if one of them is the subsidiary of the same holding company or each of them is controlled by the same person;
- (b) if two companies are affiliated with the same company at the same time, they are affiliated with each other at that time.

Conditions for the
grant and retention of
the licence.

6. (1) No licence shall be granted to a company or allowed to be retained by a company unless –

- (a) it has a representative office in Dominica;
- (b) it has obtained the prior approval of the Minister to the appointment of two individuals as its authorised agent and alternate authorised agent and where the agent is a body corporate of the appointment of such company;

- (c) changes to be effected in relation to the address of its principal office or in respect of its authorised agents are notified in advance and approved by the Minister where such company was incorporated in Dominica;
- (d) it conducts its business in a manner consistent with the interest of depositors and the public;
- (e) it maintains permanent capital of at least five hundred thousand United States dollars or five per cent of deposit liabilities or such other percentage as shall from time to time be fixed by Order made by the Minister;
- (f) it maintains adequate liquidity by way of cash or marketable securities or time call deposits with a maturity of less than twelve months with a prime or other acceptable international bank amounting to at least twelve per cent of the total assets or such other percentage as may be determined from time to time by the Minister by Order;
- (g) it provides adequate provisions against loan defaulters, devaluation of currency and deposit losses;
- (h) it establishes and maintains an accounting system to the satisfaction of the Minister; and
- (i) it complies with any conditions relating to the structure and operation of the company which may be required by a direction issued by the Minister.

(2) A licensee that is licensed under the Banking Act shall, Ch. 73:01.
in the manner and to the extent prescribed, separate its offshore banking activities from its other activities in Dominica and keep separate records of its offshore banking business.

7. (1) The Minister may when granting a licence under this Issue of trust licences.
Act or at any time thereafter, upon the payment of the prescribed fee and upon such conditions as the Minister may specify, endorse the licence to the effect that the holder thereof is authorised to engage in trust business.

(2) The Minister shall not endorse any licence unless satisfied that the holder thereof qualifies as a trust company as defined in section 2.

Alterations,
reconstruction
arrangements and
agreements.

8. (1) Whenever alterations are made in the memorandum or articles of association of a licensed financial institution or in any other instrument whereunder the said institution was incorporated, that institution shall unless exempted in writing by the Minister forthwith give the Minister full particulars in writing of the alterations.

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

(3) Where a reconstruction of any licensed financial institution is contemplated, being a reconstruction which would result in the change of ownership of the share capital of that institution by –

(a) the sale or other disposal of its business by amalgamation or otherwise; or

(b) the purchase or other acquisition of the business of any other licensed financial institution,

that licensed financial institution shall seek prior approval in writing from the Minister for any such transaction and subsequently confirm by affidavit the execution of the transaction within three months of its execution.

Duties of authorised
agents.

9. The authorised agents of a licensed financial institution shall reside in Dominica and in their capacity as representatives of that financial institution ensure compliance with any statutory requirements under this Act.

Powers, duties and
functions of the
Financial Secretary.

10. (1) It shall be the duty of the Financial Secretary to assist the Minister with regard to the discharge of his responsibilities in relation to the regulation and supervision of financial institutions in general and in particular with regard to –

(a) maintaining a general review of banking practice in Dominica;

- (b) examining of regular returns or special returns and particulars that may be called for from time to time from any licensee for the purpose of satisfying himself whether the provisions of this Act are being complied with and that the financial position of the business of the licensee is sound;
- (c) assisting in the investigation of any offence against the laws of Dominica committed by the licensee, his director, agents or officers;
- (d) examining accounts and annual audited accounts;
- (e) evaluating and processing applications for licences; and
- (f) keeping the Minister fully and promptly informed concerning the exercise, discharge and performance of those powers, duties and functions conferred on him under the provisions of this Act.

(2) For the purpose of discharging his functions and duties under subsection (1) the Financial Secretary shall be entitled –

- (a) to have access to such books, records, vouchers, documents, cash and securities of any licensee;
- (b) to request any information, matter or thing from any person whom he has reasonable grounds to believe is carrying on offshore banking business in contravention of section 3; and
- (c) to call upon the manager of the licensee or any similar person, or any officer designated by either of them, for such information or explanation,

as the Financial Secretary may reasonably require for the purpose of enabling him to perform his functions under this Act.

(3) Where the Financial Secretary is satisfied that there is evidence of illegal activity in any financial institution and for any reason is unable to obtain the information required from any financial institution he may on the order of the Magistrate obtain the information from that institution as to –

- (a) the name and title of an account of a depositor or settlor;
- (b) the name and title of a trust; or
- (c) any other information he may require.

(4) The Minister may in writing authorise any person by name or office to assist the Financial Secretary in the performance of his functions under this Act.

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

(6) Any person who fails to comply with any requirement made pursuant to subsection (3) by the Financial Secretary or any person authorised under subsection (4) commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months.

(7) In the exercise, discharge and performance of his powers, duties and functions under this section or under any other provision of this Act the Financial Secretary shall be under the direction of the Minister.

Special examination.

11. (1) The Minister, shall examine or cause an examination to be made of each licensed financial institution from time to time or whenever in his judgment such examination is necessary or expedient in order to determine that the financial institution is in a sound financial condition and that the requirements of this Act have been complied with in the conduct of its business.

(2) For the purpose of determining the condition of a financial institution and its compliance with this Act, the Minister may at any time examine or cause an examination to be made of any of its affiliates in Dominica to the same extent that an examination may be made of the financial institution.

(3) The Minister may assess a financial institution for the reasonable expenses of conducting an examination under subsections (1) and (2).

12. (1) If a Magistrate is satisfied by information on oath given by the Financial Secretary or by a person authorised by the Minister to assist him generally or in any specific case either that –

Power of search.

- (a) there is reasonable ground for suspecting that an offence against this Act has been or is being committed and that evidence of the commission of the offence may be found at any premises specified in the information, or in any vehicle, vessel or aircraft so specified; or
- (b) any books, records, vouchers, documents, cash or securities which ought to have been produced under section 10(2) and have not been produced are to be found at any premises or in any vehicle, vessel or aircraft,

he may grant a search warrant authorising the Financial Secretary or that person authorised as aforementioned together with any other person named in the warrant to enter with a Police Officer the premises specified in the information or, as the case may be, any premises upon which the vehicle, vessel, or aircraft so specified may be, at any time within one month from the date of the warrant, and to search the premises or, as the case may be, the vehicle, vessel or aircraft.

(2) The person authorised by any such warrant to search any premises or any vehicle, vessel or aircraft may search every person who is found in or whom he has reasonable ground to believe to have recently left or to be about to enter those premises or that vehicle, vessel or aircraft, as the case may be, and may seize any books, records, vouchers, documents, cash or securities found in the possession of any such person or in such premises or in such vehicle, vessel or aircraft which he has reasonable ground for believing ought to have been produced under section 10(2).

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

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

(5) No female shall, in pursuance of any warrant issued under this Act, be searched except by another female.

Powers of the Minister.

13. (1) Whenever the Minister is of the opinion that a financial institution—

- (a) is or appears likely to become unable to meet its obligations as they fall due;
- (b) is carrying on business in a manner detrimental to the public interest or the interest of its depositors or of the beneficiaries of any trust or its creditors;
- (c) has contravened any provision of this Act;
- (d) has failed to comply with any conditions of its licence;
- (e) is carrying on offshore banking business in such a manner which will affect Dominica adversely as an offshore banking centre; or
- (f) had been granted a licence upon a wrong assumption or suppression of a material fact,

he may forthwith do all or any of the following:

- (i) revoke the licence;
- (ii) insert new conditions in the licence or amend or revoke any existing conditions;
- (iii) require the substitution of any officer of the financial institution;
- (iv) at the expense of the financial institution, appoint a person to advise the licensee on the proper conduct of its affairs and to report to him or to

his appointee within three months of the date of his appointment;

- (v) at the expense of the financial institution appoint a person to make a special examination under conditions of secrecy or to assume control over the affairs of the financial institution (or in the case of a licensee that is licensed under the Banking Act, to assume control of the offshore banking affairs of the licensee) with like power of a receiver appointed under the Bankruptcy Act; or

Ch. 73:01.

Ch. 9:90.

- (vi) require such action to be taken by the financial institution as he considers necessary in the circumstances.

(2) (a) Before making a revocation order under this section the Minister shall give the financial institution concerned notice in writing of his intention to revoke the licence specifying therein the grounds on which he proposes to revoke the licence and shall afford the financial institution fourteen days time to submit to him a written statement of objection.

(b) On receipt of the notice referred to in paragraph (a), the financial institution shall cease to effect any transactions save those which are necessary to meet the day to day expenditure of the institution including the payment of any salary or wages.

(c) Where a financial institution referred to in paragraph (b) is also licensed under the Banking Act, it shall cease offshore banking transaction only.

Ch. 73:01.

(d) If any person effects any transaction in contravention of paragraph (b), he as well as the financial institution shall be committing an offence and shall be liable on summary conviction to a fine equivalent to the amount of funds or assets which were transferred from the financial institution by that transaction.

(e) If the licence of the financial institution to which a notice is issued under paragraph (a) is not revoked within a period of ninety days from the date of such notice the notice issued shall be deemed to have been cancelled on the expiry of the period of ninety days.

(3) A person appointed under this section shall from time to time at his discretion and in any case within three months from the date of his appointment prepare and furnish a report to the Minister or to his appointee of the state of affairs of the financial institution and of his observation and recommendation thereon. The Minister may in any particular case extend the period within which the person appointed could make his report containing his observation and recommendation.

(4) On receipt of a report under subsection (3) the Minister may –

- (a) revoke the appointment of the person appointed under subsection (1)(iv) or (v);
- (b) extend the period of the appointment of the person appointed;
- (c) subject to such conditions as he may impose, allow the financial institution to reorganise its affairs in such manner as may be approved by him; or
- (d) revoke the licence and, in the case of a licensee not licensed under the Banking Act, apply to the Court for an order that the business of the licensee be wound up.

Ch. 73:01.

(5) Where the Court orders the winding up of a company under the provisions of subsection (4) the provisions of this Act with regard to compulsory liquidation shall apply and where those provisions are silent on any matter the provisions of the Companies Ordinance shall *mutatis mutandis* apply in relation to the winding up of that company.

Ch. 9:90.

(6) Notwithstanding any other provisions in this Act, the Minister may revoke a licence if the financial institution –

- (a) has ceased to carry on offshore banking business or trust business;
- (b) goes into liquidation or is wound up or otherwise dissolved; or
- (c) does not commence business within six months of the issuance of its licence.

(7) Whenever the Minister revokes a licence under this section the revocation shall be made by Order and published by exhibition at the Court House, Roseau. The Orders shall also be published as soon as possible in the Dominica Official Gazette, in one newspaper in Dominica and if considered necessary by the Minister in one newspaper outside Dominica.

(8) The Minister may cancel the order of revocation of the licence if it is just and equitable in all the circumstances of the case.

PART III

CAPITAL AND RESERVE

14. (1) A licence shall not be granted to any financial institution unless on commencing business its capital issued and paid up in cash and not repaid is not less than one million United States dollars or its equivalent in other convertible currency and documentary evidence is shown on commencement of business to the satisfaction of the Minister that such sum, as the case may be, is freely available in liquid form.

Minimum capital of a financial institution.

(2) Every licensed financial institution shall maintain its affairs in such a way that the total of its paid-up capital together with its reserves of accumulated profits less accumulated losses amount to not less than one million United States dollars or its equivalent in other convertible currency.

(3) The Minister may give directives to any licensed financial institution whose capital resources do not comply with the requirements of this section to comply with the requirements within such time as may be specified in the directive.

(4) When deemed appropriate by the Minister a licensee may be required to increase its fully paid-up capital to such greater sum as is considered necessary having regard to the nature of the banking business of the licensee.

15. (1) Subject to subsection (2), every licensed financial institution shall after its first year of operation maintain a reserve fund and shall, out of its net profits each year and before any

Maintenance of reserve fund.

dividend is declared, transfer to that fund a sum equal to not less than twenty-five per centum of such profits wherever the amount of the reserve fund is less than the issued paid up capital of the company.

(2) Subsection (1) shall not apply to any licensed financial institution with respect to which it is proved to the satisfaction of the Minister that the aggregate paid-up capital and reserves of the institution are adequate in respect of its business.

PART IV

RESTRICTIONS ON BUSINESS

Restriction on
distribution of
dividends.

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

Persons debarred from
management.

17. (1) Any person –

- (a) who has been a director of, or directly concerned in the management of a financial institution which has had its licence revoked;
- (b) who has been sentenced by a court in any country to a term of imprisonment for an offence involving dishonesty; or
- (c) who has been or is or becomes bankrupt, suspends payment to or compounds with his creditors,

shall not without the express authorisation of the Minister act or continue to act as a director, manager, secretary or other employee of any financial institution.

(2) Any person who contravenes the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars.

Restriction on use of
title "bank" or "trust"

18. (1) Except with the approval of the Minister, no person, other than a licensee, shall –

- (a) use or continue to use the words “bank”, “trust”, “trust company”, “savings” or “savings and loan” or any of their derivatives, either in English or in any other language, in the description or title under which that person is carrying on business from within Dominica;
- (b) make or continue to make any representation in any billhead, letter, letterhead, circular, paper, notice, advertisement or in any other manner whatsoever that the person is carrying on banking business or trust business; or
- (c) in any manner whatsoever solicit or receive deposits from the public.

(2) Except with the approval of the Minister, no company shall be registered, or continue to be registered, by a name which contains the words “bank”, “trust”, “trust company”, “savings” or “savings and loan” or any of their derivatives, either in English or in any other language, in the description or title under which such company is carrying on business from within Dominica or offshore.

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

(4) Whenever he considers it to be in the public interest, the Minister may withdraw any approval given under subsection (1) or (2).

(5) The Minister may refuse to grant a licence to a bank or trust company or, if that bank or trust company is already in possession of a licence, he may revoke its licence if, in his opinion, the bank or trust company is carrying on or intending to carry on offshore banking or trust business, as the case may be, under a name which is –

- (a) identical with that of any company, firm or business house, whether within Dominica or offshore, or which so nearly resembles that name as to be calculated to deceive;

- (b) calculated to suggest falsely, the patronage of or connection with some person or authority, whether within Dominica, or offshore; or
- (c) calculated to suggest, falsely, that the bank or trust company has a special status in relation to or derived from the Government, has the official backing or acts on behalf of the Government, or of any department, branch, agency or organ of Government, or of any officer thereof, or is recognised in Dominica as a national or central bank.

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

Restriction on certain activities by licensed financial institutions.

19. (1) A licensed financial institution shall not –

- (a) grant to any person, firm, company or to any group of companies or of persons which group is under the control or influence of one and the same person, any advance or credit facility, or give any financial guarantee or incur any other liability on behalf of such persons, firm, company or group so that the total value of the advances, credit facilities, financial guarantees and other liabilities in respect of such person, firm, company or group is at any time more than twenty-five per centum of the sum of the paid up capital and published reserves of the licensed financial institution.

Provided that this paragraph shall not apply to transactions between banks or between the branches of a bank;

- (b) grant any advance or credit facility against the security of its own shares;
- (c) grant or permit to be outstanding unsecured advances or unsecured credit facilities of an aggregate amount in excess of two thousand five hundred

United States dollars or of one per centum of the sum of the paid up capital and published reserves of such licensed financial institution, whichever is the greater or give any financial guarantees in excess of such amount without security, or incur any other liability in excess of such amount without security to or on behalf of any –

- (i) of its directors, whether such advances, facilities, guarantees or other liabilities are obtained by or on account of such directors jointly or severally;
 - (ii) firm, partnership or private company in which it, or any one or more of its directors is interested as director, partner, manager or agent, or to or on behalf of any individual, firm, partnership or private company of whom or of which any one or more of its directors is guarantor;
- (d) grant or permit to be outstanding to its officers and employees unsecured advances or unsecured credit facilities which in aggregate amount for any one official or employee exceeds one year's emolument of that official or employee;
- (e) engage in trust business unless authorised to do so by an endorsement to that effect on its licence under the provision of section 7.

(2) For the purposes of paragraph (c), a private company means a company which by its articles –

- (i) restricts the right of transfer of its shares;
- (ii) limits the numbers of its members to fifty, not including persons who are in the employment of the company and persons, who, having been formerly in the employment of the company, while in that employment have continued after the determination of that employment to be members of the company; and

- (iii) prohibits an invitation to the public to subscribe for any share or debentures of the company.

(3) In this section the expression “unsecured advances” or “unsecured credit facilities” means advances or credit facilities granted without security, or in respect of any advance or credit facility granted with security, any part thereof which at any time exceeds the market value of the assets constituting that security.

Restriction on the holding of certain interests by licensed financial institution.

20. (1) Except with the written approval of the Minister no licensed financial institution shall –

- (a) engage, whether on its own account or on a commission basis, in the wholesale or retail trade, including the import or export trade, or otherwise have a direct interest in commercial, agricultural, industrial or other undertaking except as permitted under paragraph (b) and except insofar as may be necessary with respect to such interest as a bank may acquire in the course of the satisfaction of debts due to it but all such interests shall be disposed of at the earliest suitable opportunity;
- (b) acquire or hold to an aggregate value exceeding twenty-five per centum of the sum of the paid up capital and published reserves of any other bank, any part of the share capital of any financial, commercial, agricultural, industrial or other undertaking except such shareholding as a bank may acquire in the course of the satisfaction of debts due to it which shareholding shall, however, be disposed of at the earliest suitable moment;
- (c) purchase, acquire or lease real estate except as may be necessary for the purpose of conducting its business or housing its staff or providing amenities for its staff having regard to any reasonable requirements for future expansion of its business or staff; but in the event of any debt due to a bank which is secured upon any real or other property of the debtor becoming endangered, the bank may ac-

quire such property which shall, however, be resold at the earliest suitable moment;

(d) knowingly accept or keep a resident of Dominica as a customer for any of its offshore banking services.

(2) An application for the approval of the Minister under paragraph (d) shall be for residents generally and shall not identify or refer to any particular resident or group of residents.

(3) Subsection (1)(b) shall not apply to any shareholding approved in writing by the Minister in a subsidiary bank or in a subsidiary company formed by a bank for the execution of nominee, executor or trustees functions incidental to banking business.

21. Any licensed financial institution which, prior to the date of the coming into operation of this Act, entered into any transaction inconsistent with the provisions of section 19(1)(a), (b), (c) or (d) shall, within six months after that date, submit a statement of these transactions to the Minister and shall, within one year from the said date or within such further time as the Minister may determine, liquidate the said transaction.

Liquidation of transaction inconsistent with this Act.

PART V

RETURNS AND ACCOUNTS

22. (1) Every licensed financial institution shall in relation to its operations submit to the Financial Secretary in English, in such form as he may from time to time approve, a statement of the assets and liabilities at the close of the last business day of each quarter within thirty days of the end of each quarter.

Returns.

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

(3) Notwithstanding subsection (1) the Financial Secretary may by notice served in that behalf require any licensed financial institution to submit to him within such period as may be specified a statement of the assets and liabilities as at a date specified by him in the notice.

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

(5) Any licensed financial institution which fails to comply with any of the provisions of subsection (1), (2) or (3) or with any requirement of the Minister thereunder, or furnishes information which is false or misleading commits an offence and is liable on summary conviction to a fine of five hundred dollars for every day during which the offence continues.

Publication of balance sheet.

23. (1) Not later than four months after the close of each financial year of each licensed financial institution or such longer period as the Financial Secretary may, in any particular case permit, the financial institution shall forward to the Financial Secretary, copies of its balance sheet and profit and loss account and the full correct names of the directors of the financial institution. The balance sheet and profit and loss account shall bear on their face the certificates of an auditor who is an approved auditor in accordance with section 27(5). The licence date shall be deemed to be the date of commencement of operations for the purpose of determining the due date for the first set of audited accounts unless previously agreed otherwise with the Financial Secretary.

(2) Any licensed financial institution which contravenes this section commits an offence and is liable on summary conviction to a fine of one hundred dollars for each day the submission of the audited accounts is overdue.

PART VI

EXAMINATION AND AUDIT

Examination in certain cases.

24. The Minister may at any time appoint a suitable person to make a special examination under conditions of confidentiality of

the books and affairs of any licensed financial institution whenever he deems it expedient in the public interest to do so as provided by section 11.

25. (1) Every licensed financial institution of which a special examination has been ordered under section 13 or 24 shall produce to the person or persons appointed under the provisions of those sections, at such times and in such places as the person or persons may specify (being times and places which, in the opinion of such person or persons, would not be detrimental to the conduct of the normal daily business of the financial institution) all books, accounts and documents in the possession or custody of the institution or of which it is entitled to possession or custody relating to its business, and shall give within such time as the person or persons may specify, such oral and or written information concerning its business as may be required.

Production of books,
etc.

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

26. (1) Except for the purpose of the performance of his duties or the exercise of his functions under this Act or when lawfully required or permitted to do so by any court of competent jurisdiction within Dominica the Financial Secretary or a person authorised under section 10(4) or under section 12(1) to assist him or any other person appointed to assist him in any other way in the discharge of his duties shall not disclose any information relating to any application by any person under the provisions of this Act or to the affairs of a financial institution or any customer of a financial institution which he has acquired in the performance of his duties under this Act.

Preservation of secrecy.

(2) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year.

Approved auditor.

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

(2) The report of an approved auditor under subsection (1) shall be read together with the report of the directors of the financial institution at the annual meeting of shareholders and copies of that report shall be sent to the Financial Secretary, together with copies of the balance sheet and profit and loss account, and if any default is made in complying with the requirements of this subsection, the financial institution concerned commits an offence and is liable on summary conviction to a fine of five thousand dollars.

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

(4) The duties and powers conferred by section 25(1) and (2) in relation to a person or persons appointed under the provisions of section 24 are hereby conferred also in relation to approved auditors.

Schedule.

(5) For the purpose of this Act an approved auditor is an auditor who satisfies the requirements specified in the Schedule.

Schedule.

(6) The Minister may by Order amend the Schedule so as to add or delete any recognised professional qualification.

(7) No person may be appointed an auditor of a financial institution if he –

- (a) has any proprietary interest in that financial institution otherwise than as a depositor;
- (b) is an officer of the financial institution or of an affiliate of the financial institution, within the meaning of section 5; or
- (c) is an officer or employee of the Eastern Caribbean Central Bank.

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

(9) In any case where a report of the annual balance sheet and accounts and the report of the directors have been duly made in accordance with subsection (8) and they are in a language other than English certified translations shall accompany the reports.

(10) Every licensed financial institution shall within four months of the end of its financial year publish in the Dominica Official Gazette a true and full yearly statement of its accounts of all its operations as certified by its auditor. The statement shall be signed by the manager or by another officer of the financial institution as may from time to time be authorised by the financial institution to sign such statement on behalf of the financial institution.

(11) If any licensed financial institution fails to comply with the requirements of subsection (10) within four months of the end of its financial year, it shall be liable to a penalty of five hundred dollars for every day of such default except when an extension of the period has been granted by the Minister.

PART VII**RECEIVERSHIP, LIQUIDATION AND REORGANISATION**

Voluntary liquidation.

28. A voluntary liquidation of a financial institution shall be subject to authorisation by the Minister upon the recommendation of the Financial Secretary who shall so recommend when –

- (a) the financial institution is solvent and has sufficient liquid assets to repay its depositors and other creditors without delay; and
- (b) the liquidation has been properly approved by at least two thirds of the outstanding voting shares of the financial institution.

Cessation of business operations.

29. When it has received the authorisation of the Minister, the financial institution shall –

- (a) immediately cease to carry on business, retaining only the powers necessary to effect an orderly liquidation;
- (b) repay its depositors and other creditors; and
- (c) wind up all operations undertaken prior to the receipt of the authorisation.

Notice to depositors of voluntary liquidation.

30. (1) Within thirty days from the receipt of the authorisation referred to in section 29 a notice of voluntary liquidation, setting out such information as the Minister may by Order prescribe, shall be sent by mail to all depositors, other creditors and persons otherwise entitled to the funds or property held by the financial institution as a trustee, lessor of a safe deposit box or bailee.

(2) The notice shall be –

- (a) be posted conspicuously on the premises of each office and branch of the financial institution if any;
- (b) published in the Dominica Official Gazette;
- (c) on at least one newspaper published in Dominica, and if considered necessary by the Minister in one newspaper outside Dominica.

(3) The Minister may exempt the mailing of such notice to specified persons upon the showing of cause therefore by the financial institution.

31. (1) The authorisation to go into voluntary liquidation shall not prejudice the rights of a depositor or other creditor to payment in full of his claim nor the right of an owner of funds or other property held by the financial institution to the return thereof.

Rights of depositors
and creditors in
voluntary liquidation.

(2) All lawful claims shall be paid promptly and all funds and other property held by the financial institution shall be returned to their owners within such maximum period as the Minister shall by Order prescribe.

32. (1) When the Minister is satisfied that the financial institution has discharged all the obligations referred to in sections 30 and 31, it shall be struck from the list of licensed financial institutions and the remainder of its assets shall be distributed among its shareholders in proportion to their respective rights, but no distribution shall be made before –

Distribution of assets.

- (a) all claims of depositors and other creditors have been paid or, in the case of a disputed claim, before the financial institution has turned over to the designated bank as agent for the Minister, sufficient funds to meet any liability that may be determined by a court of competent jurisdiction;
- (b) any funds payable to a depositor or other creditor who has not claimed them have been turned over to the designated bank, as agent for the Minister; and
- (c) any other funds and property held by the financial institution that could not be returned to the owners thereof in accordance with the provisions of section 31 have been transferred to the designated bank as agent for the Minister together with the inventories pertaining thereto.

(2) Any funds or property not claimed within a period of fifteen years following a transfer to the designated bank, as agent for the Minister shall be presumed to be abandoned property for purposes of section 51.

Insufficiency of assets in discharge of obligations in voluntary liquidation.

33. If the assets of a financial institution whose voluntary liquidation has been authorised will not be sufficient for the full discharge of all its obligations or the completion of the liquidation is unduly delayed, the Minister, may cause the commencement of proceedings leading to its compulsory liquidation or reorganisation in conformity with the procedures set out below.

Appointment of receiver.

34. The Minister may appoint a receiver for any financial institution –

- (a) when the realisable value of the financial institution's assets is less than the aggregate of its liabilities and capital accounts or the financial institution's financial condition suggests that it will shortly be in that condition;
- (b) whose business is being conducted in an unlawful or imprudent manner;
- (c) when the continuation of its activities is detrimental to the interests of its depositors;
- (d) that refuses to submit its accounting records and its operations for examination as provided for in section 11 or has otherwise obstructed such examination;
- (e) whose licence has been revoked in accordance with section 13(1)(i).

Notice of appointment of receiver.

35. When appointing a receiver, the Minister shall cause a notice to be posted on the premises of the financial institution announcing the appointment and the time when the appointment shall take effect. This time shall not be earlier than the posting of the notice. A copy of the notice shall be transmitted to the Registrar of the High Court and the Registrar of Companies.

36. Within a period of ten days after the date on which the Minister has appointed a receiver, the financial institution may institute proceedings in the High Court to have the appointment revoked.

Financial institution may institute proceedings to have receiver's appointment lifted.

37. (1) Within a period of sixty days from the date of the appointment of the receiver, the Minister may cause the commencement of proceedings leading to the compulsory liquidation or reorganisation of every financial institution for which he has appointed a receiver.

Period of obligation to commence compulsory liquidation or reorganisation proceedings.

(2) In the event that proceedings under subsection (1) are not commenced within that period, and the Minister has not sooner elected to terminate his appointment, the appointment of the receiver shall terminate forthwith.

38. (1) The Attorney General, may, by petition, apply to the High Court to order the compulsory liquidation or reorganisation of the financial institution for which a receiver has been appointed under section 34.

Compulsory liquidation, reorganisation proceedings.

(2) Upon an application under subsection (1), the High Court may make an order requiring the financial institution and any person having an interest in the financial institution or claim against it to show cause, at a time and place specified in the order which must not be less than thirty days after the date of the order, why the financial institution should not be liquidated and dissolved.

(3) A copy of an order made under subsection (2) must –

(a) be published in the Dominica Official Gazette and in a newspaper published in Dominica or distributed in Dominica as directed in the order at least twice before the time appointed for the hearing; and

(b) be served upon each person named in the order.

(4) Publication and service of an order under this section shall be effected by the financial institution or by such other person and in such manner as the High Court may order.

Powers of the High Court.

39. (1) The High Court may make any order it thinks fit, including an order for the –

- (a) compulsory liquidation of the financial institution;
- (b) return of the management and control of the financial institution to its shareholders, directors and officers, subject to such safeguards or conditions as the Court considers necessary; and
- (c) reorganisation of the financial institution subject to such terms and conditions as the Court may determine.

(2) Where the High Court orders either the compulsory liquidation or the reorganisation of the financial institution, it shall upon delivering its decision simultaneously order the appointment of the receiver to be terminated and appoint an Official Liquidator who will be responsible to the High Court to direct the compulsory liquidation, or as the case may be, the reorganisation of the financial institution.

(3) As soon as possible after his appointment, the Official Liquidator will make an inventory of the assets of the financial institution and transmit a copy thereof to the Registrar of the High Court and the Registrar of Companies.

Powers of receiver, Official Liquidator.

40. (1) After his appointment by the Minister, the receiver and, subsequent to his appointment by the High Court, the Official Liquidator shall be vested with the full and exclusive power of management and control of the financial institution including the power to –

- (a) continue or discontinue its operations;
- (b) stop or limit the payment of its obligations;
- (c) employ any necessary staff and terminate their employment;

- (d) execute any instrument in the name of the financial institution;
- (e) initiate, defend and conduct in its name any action or proceeding to which the financial institution may be party;
- (f) restore the financial institution to its board and shareholders; and
- (g) reorganise or liquidate the financial institution in accordance with the provisions of this Act.

(2) The actions of the receiver or, as the case may be, the Official Liquidator shall be promptly notified to the Minister.

41. (1) When the Minister has appointed a receiver for a financial institution in accordance with section 34 any – Terms, extensions, attachment and transfer of assets to be void.

- (a) term, statutory, contractual or otherwise, on the expiration of which a claim or right against the financial institution would expire or be extinguished shall be extended by six months from the date of the appointment; and
- (b) transfer of an asset of the financial institution made after or not more than six months before its insolvency or the appointment of a receiver with intent to effect a preference shall be void.

(2) When the Minister has appointed a receiver for a financial institution in accordance with section 34 and thereafter if an Official Liquidator has been appointed by the High Court any attachment or lien except a lien registered prior to the appointment of the receiver for the financial institution shall be vacated and no attachment or lien except a lien created by the receiver or the Official Liquidator in the application of the provisions of this Part shall attach to any of the property or assets of the financial institution so long as such possession continues.

42. No execution shall be returned against the assets of a financial institution for which a receiver or an Official Liquidator Execution against assets of a financial institution.

has been appointed except an execution effected pursuant to a judgment rendered before the date of the appointment of the receiver or Official Liquidator for an amount in excess of one thousand United States dollars.

Reorganisation
proceedings.

43. (1) If the High Court decides to reorganise the financial institution, whether pursuant to a request by the Minister, or by virtue of its authority under section 39(1), the Official Liquidator shall, after granting a hearing to all interested parties, send a copy of the reorganisation plan to all depositors and other creditors who will not receive full payment of their claims under the reorganisation plan.

(2) The copy of the reorganisation plan shall be accompanied by a notice stating that if the reorganisation plan is not refused in writing within a period of thirty days –

- (a) by persons holding at least one-third of the aggregate amount of deposit and other liabilities; or
- (b) if within the same period of thirty days the High Court does not order a stay of proceedings,

the Official Liquidator will proceed to carry out the reorganisation plan.

(3) When an objection to the re-organisation plan is received from one-third or more of the persons described in subsection (2)(a) the Official Liquidator shall submit further re-organisation plans in like manner until such time as fewer than one-third of the persons described in subsection (2)(a) object within the time limited therefor, or he may refer the matter back, at any time, to the High Court for further directions.

(4) The Official Liquidator may, subject to the confirmation by the High Court to be obtained before the commencement of the reorganisation, effect service of the reorganisation plan and cause notice to be published in the Dominica Official Gazette.

Reorganisation
provisions.

44. The application of any reorganisation plan under the provisions of this Act is subject to the following conditions:

- (a) the reorganisation plan shall be equitable to all classes of depositors, other creditors and shareholders;
- (b) the reorganisation plan shall provide for bringing in new funds so as to establish adequate ratios between –
 - (i) capital and deposits; and
 - (ii) liquid assets and deposits; and
- (c) the reorganisation plan shall provide for the removal of any director, manager, secretary, officer or employee responsible for the circumstances which led to the appointment of a receiver for the financial institution and subsequently of an Official Liquidator in accordance with sections 34 and 39(2), respectively.

45. When in the course of reorganisation it appears that circumstances render the plan inequitable or its execution undesirable, the Official Liquidator may apply to the High Court by petition to –

Petition for modification or revision of reorganisation.

- (a) modify the plan; or
- (b) order the compulsory liquidation of the financial institution in accordance with the provision of section 39.

46. (1) Notwithstanding any law to the contrary, in compulsory liquidation of a financial institution, the following claims shall have priority against the general assets of the financial institution as follows:

Preferential and other claims.

- (a) necessary and reasonable expenses incurred by the receiver and subsequently by the Official Liquidator;
- (b) wages and salaries of officers and employees of the financial institution in liquidation for the six month period preceding the appointment of the receiver for the financial institution;
- (c) social security contributions for officers and employees due but not paid;

- (d) balances of three hundred United States dollars and less in saving and time deposits;
- (e) other deposits;
- (f) taxes, rates and deposits owed to Dominica;
- (g) fees and assessments due to Government agencies.

(2) After payment of all other claims filed, with interest thereon at a rate to be fixed by the Official Liquidator with the approval of the High Court, any remaining claims which were not filed within the prescribed time shall be paid.

(3) If the amount available for any class is insufficient to provide payment in full, the said amount shall be distributed *pro rata* among the members of the class.

Unclaimed funds.

47. Unclaimed funds remaining after the final distribution made by the Official Liquidator which are not subject to other provisions of this Act shall be deposited by the Official Liquidator in a designated bank and shall be kept by the designated bank for fifteen years, unless claimed by the owner before the expiration of that period, and on the expiration of that period the funds remaining unclaimed shall be presumed to be abandoned property for the purposes of section 51.

Shareholders rights on remaining assets

48. Assets remaining after all claims have been paid shall be distributed among all the shareholders in proportion to their participation.

Safe deposits and unclaimed property.

49. Any safe deposit box the contents of which have not been withdrawn before a date specified by the Official Liquidator shall be opened by the Official Liquidator and its contents and any unclaimed property held by the financial institution as bailee, together with inventories pertaining thereto, shall be deposited by the Official Liquidator in the designated bank there to be kept for fifteen years, unless claimed by the owner before the expiration of that period. On the expiration of that time all funds and property not claimed shall be presumed to be abandoned for purposes of section 51.

50. (1) When all assets have been distributed or otherwise deal with in accordance with the provisions of this Act, the Official Liquidator shall render an audited account to the High Court.

Receiver's audited accounts, striking the name of the institution and conclusion of liquidation.

(2) Upon approval of this account by the High Court, the name of the financial institution shall be struck from the list of financial institutions in Dominica, and the Official Liquidator shall be relieved of any liability in connection with the liquidation. The liquidation and dissolution of the financial institution shall then be declared by the High Court and the Registrar of Companies shall proceed to terminate the judicial existence of the financial institution.

(3) When the name of the financial institution is struck off the list of financial institutions a notice to the effect shall be published in the Dominica Official Gazette.

PART VIII

ABANDONED PROPERTY

51. (1) Subject to subsection (2) the items listed in paragraphs (a), (b), (c) and (d) which are held or owing by a financial institution shall be presumed to be abandoned –

Abandoned property.

- (a) any general deposit (demand, savings or matured time deposit) made with a financial institution, together with any interest or dividend, but excluding any lawful charges thereon;
- (b) any funds paid in toward the purchase of shares or other interest in a financial institution, together with any interest or dividend, but excluding any lawful charges thereon;
- (c) any sum payable on cheques certified in or on written instruments issued on which a financial institution is directly liable; and
- (d) any contents of a safe deposit box upon which the lease or rental has expired and concerning which notice of the intention of the financial institution to deliver the contents thereof into the custody of

the designated bank has been sent by registered letter to the last known address of the lessee and to which the lessee has failed to respond within one year.

(2) The items enumerated in subsection (1) (a), (b) and (c) shall not be presumed to be abandoned if the owner has, within fifteen years of the date of deposit, payment of funds or issuance of instruments, as the case may be –

- (a) increased or decreased the amount of the deposit or funds or presented the pass book or other record for the crediting of interest or dividends in respect of the items enumerated in subsection (1)(a) or (b);
- (b) correspond in writing with the financial institution concerning the items; or
- (c) otherwise indicated an interest in the items as evidenced by a memorandum concerning them written by a financial institution.

Report, publication and disposal of abandoned property.

52. (1) Every financial institution holding any of the items enumerated in section 51 shall within ninety days after the end of its financial year report such holdings to the designated bank, and thereafter pay or deliver to the designated bank all property presumed to be abandoned listed in the report in accordance with Regulations made by the Minister. Upon paying or delivering such property into the custody of the designated bank a financial institution shall be relieved of all liability to the extent of the value of the property for any claim in respect thereof.

(2) Except with the approval of the Minister, on such terms and conditions as he may prescribe, no reduction in the amount of interest or dividends payable and no charges in excess of those made in respect of comparable active accounts shall be made by a financial institution either during the period of inactivity of the items set out in section 51 or at the time payment and the delivery of them under subsection (1) is required.

(3) Within thirty days after the end of its financial year but before the filing of the report to the designated bank required by subsection (1), a financial institution shall publish in the Dominica

Official Gazette, the name of the owner and particulars concerning the property and shall mail a notice to the owner at his last known address containing particulars concerning the property.

53. (1) A financial institution may sell at public auction all property other than money presumed to be abandoned after the expiration of sixty days from the last day of the publication or mailing required by section 52(3) following such advertisement of the auction as the Minister may prescribe.

Sale and handling of
proceeds of sale of
abandoned property, #

(2) Any purchaser shall receive title to the property free from all claims of the owner or prior holder and from all persons claiming through or under him.

(3) A financial institution shall deposit with the designated bank the proceeds of the sale of any property in accordance with subsection (1) less all reasonable costs incurred by it in connection with the sale, mailing of notices, and service as it may deem appropriate to ensure the prompt payment of claims which may subsequently be made and approved by the Minister, acting on the recommendation of the designated bank.

(4) Any property remaining unsold shall be delivered to the designated bank and shall be disposed of by the designated bank in such manner as the Minister may direct.

54. (1) Any person claiming an interest in any property which has been paid to, or delivered into the custody of the designated bank or in the proceeds from the sale thereof may file a claim thereto, with the designated bank and, after an appropriate hearing the decision of which shall be communicated to the claimant and made a public record, the designated bank may deliver up the property or make payment.

Claims on abandoned
property.

(2) Any person aggrieved by a decision of the designated bank may commence an action in the High Court to establish his claim within thirty days following the decision of the designated bank.

Penalties for failure to file report or deliver property.

55. Any financial institution which wilfully fails to file the report or to pay or deliver property presumed to be abandoned into the custody of the designated bank in accordance with section 52 or 53 commits an offence, and it and each of its directors shall be liable on summary conviction to a fine of one thousand dollars and to imprisonment for a term of three months.

PART IX

SPECIAL TAX PROVISIONS

Residents.

56. (1) For the purpose of this Act, the following are residents, namely:

- (a) a natural person ordinarily resident in Dominica or a citizen of Dominica with a residence in Dominica;
- (b) any incorporated or other body, incorporated, formed or organised in Dominica, the majority of the shares or other ownership of which is beneficially held by persons who are residents within the meaning of paragraph (a);
- (c) any incorporated or other body, wherever incorporated, formed or organised, that is controlled directly or indirectly by a person described in paragraph (a) or (b);
- (d) any incorporated body or other body that is controlled by a body described in paragraph (c), by the Government of Dominica or any agency thereof;
- (e) a trust –
 - (i) established by a resident as defined in any of paragraphs (a) to (d), other than a trust for the administration of funds for the benefit of persons a majority of whom are persons resident outside Dominica, or
 - (ii) in which residents as defined in any of paragraphs (a) to (d) have fifty per cent or more of the beneficial interest; or

(f) any incorporated or unincorporated body that is controlled directly or indirectly by a trust defined in this section as a resident of Dominica.

(2) A reference in this Part to any beneficial interest or to anything being beneficially owned or held includes ownership through a trust, legal representative, agent or other intermediary.

(3) A licensee controlled directly or indirectly by residents as defined in subsection (1) is, for the purposes of this Act deemed to be a resident in respect of any offshore banking business.

(4) A licensee is controlled by a person if shares of the financial institution that carry voting rights sufficient to elect a majority of the directors of the financial institution are held, directly or indirectly, other than by way of security only, by or on behalf of that person.

(5) Whether or not any licensee is effectively controlled directly or indirectly by persons who are residents of Dominica is a question of fact determinable by the Comptroller of Inland Revenue.

(6) Persons are not residents for the purposes of this Part if they are not residents within the meaning of section 56(1).

57. (1) No income tax, capital gains tax, or other direct tax or impost may be levied in Dominica upon the profits or gains of a licensee in respect of offshore banking business it carries on from within Dominica. Exemption from tax.

(2) No income tax, capital gains tax or other direct tax or impost may be levied in Dominica in respect of any securities or assets pertaining to the offshore banking business of a licensee which securities or assets are beneficially owned by another licensee or by a person who is not a resident.

(3) Notax, duty or impost may be levied upon the increment in value of the property or other assets in Dominica or elsewhere of a licensee pertaining to its offshore banking business other than upon such of them as are distributed to residents.

No assets transfer tax.

58. (1) No tax, duty or other impost may be levied upon a licensee, its security holders or transferees in respect of the transfer of all or any part of its securities or other assets pertaining to its offshore banking business to another licensee or to a person who is not a resident.

(2) When a licensee or a person who is not a resident transfers securities or assets of a licensee pertaining to its offshore banking business that are held by that licensee or person to another licensee or to a person who is not a resident, the transfer is exempt from the payment of any tax, duty or other impost thereon.

(3) No income tax or capital gains tax, and no other direct tax or impost may be levied or collected in Dominica, in respect of any dividends, interest or other returns from any securities, deposits or borrowings of a licensee pertaining to its offshore banking business or any assets managed by the licensee pertaining to its offshore banking business if the dividends, interest or other returns are in respect of securities, deposits, borrowings or assets beneficially owned by another licensee or a person who is not a resident; but the onus of establishing ownership lies upon the licensee holding or managing the securities, deposits, borrowings or assets.

Withholding tax and
report.
Ch. 67:01.

59. (1) Notwithstanding any provision of the Income Tax Act but subject to subsection (2), no licensee need withhold any portion of any dividend, interest or other returns payable to any person in respect of any borrowings of the licensee in respect of its offshore banking business from that person or in respect of securities of the licensee pertaining to its offshore banking business held by that person.

(2) All dividends, interest or other returns attributable to the securities of, or the management of, assets by a licensee pertaining to the offshore banking business of that licensee and which are payable to a resident who is known to be a resident by the licensee or who, with the exercise of reasonable care by the licensee, could be known by him to be a resident must be reported to the Comptroller of Inland Revenue by the licensee.

60. (1) Nothing in this Part constitutes an exemption from the payment of any charge to the Government or any agency of the Government in the nature of a service charge or utility charge. Service charges.

(2) A service charge includes a charge or fee levied or imposed for the issuance of any incorporation, registration or licence required in Dominica.

61. The Minister may, by order, grant a further exemption to a licensee in respect of its offshore banking business from all or so much of any duty payable under the Customs (Control and Management) Act or any other customs impost or surcharge in respect of its business as the Minister thinks reasonable, if the licensee satisfies the Minister that the goods concerned are not being manufactured in the CARICOM region, are essential as equipment or fixtures for carrying on its business from within Dominica and are not merely goods that will be used up or expended in the ordinary course of business. Customs relief.
Ch. 69:01.

62. When the Minister is satisfied that a licensee requires the services of specially qualified persons in order to do its offshore banking business effectively from within Dominica and that it can neither acquire those services in Dominica nor acquire them elsewhere without special benefits being made available for them, the Minister may, by order, in a special case or generally, provide that those persons – Specialist incentives.

- (a) be exempted from specified taxes in Dominica;
- (b) be permitted to be paid in a foreign currency into a trust account without being liable to be taxed thereon or on the interest thereon;
- (c) be permitted to be paid in some other prescribed manner in another currency or otherwise without being liable to be taxed thereon in Dominica,

notwithstanding any legislation relating to income tax or the Exchange Control Ordinance.

Exchange controls.

63. (1) The income, profits, gains and other revenues, and the funds and securities of a licensee that are generated, acquired or managed in the course of its offshore banking business are exempt from the Exchange Control Ordinance.

Cap. 130.

(2) Notwithstanding subsection (1) the income, profits, gains and other revenues, and the funds and securities of a licensee which is a resident, that are generated, acquired or managed in the course of its offshore banking business is not exempt from the Exchange Control Ordinance.

Cap. 130.

PART X

GENERAL

Fees.

64. (1) Every financial institution to which a licence is granted shall on or before the 15th day of January in each year, pay the prescribed annual licence fee. The annual licence fee payable in respect of the year of issue of the licence however, shall be paid upon the issue of the licence and on a *pro rata* basis up to December 31 of that year.

(2) Any licensed financial institution which fails to pay the prescribed fees by the due date shall be subject to a fine of five hundred dollars for each day during which the fees remain unpaid.

(3) The Minister may by Order revoke the licence of any financial institution for failure to pay the prescribed fees.

Director of Public
Prosecution's fiat for
prosecution.

65. No prosecution in respect of any offence committed under this Act shall be instituted except by or with the consent of the Director of Public Prosecutions acting in his discretion.

Penalty.

66. (1) Any person who by –

- (a) assaulting, resisting, obstructing or intimidation;
- (b) using abusive, indecent or insulting language;
- (c) interfering with or hindering; or
- (d) any bribe, gratuity or promise or other inducement,

prevents or attempts to prevent the due execution of the duty of any liquidator, receiver or person appointed by the Minister to advise the licensee or a person appointed by the Minister to make a special examination of the business of the licensee under section 13 or 24 commits an offence and is liable on summary conviction to a fine of one thousand dollars and to imprisonment for one year.

(2) A person upon whom a fine is imposed under this Act may be sentenced in default of payment thereof to imprisonment in the case of a fine –

- (a) not exceeding one thousand dollars for a period not exceeding three months;
- (b) exceeding one thousand dollars but not exceeding two thousand five hundred dollars for a period not exceeding six months;
- (c) exceeding two thousand five hundred dollars but not exceeding five thousand dollars for a period not exceeding twelve months;
- (d) exceeding five thousand dollars for a period not exceeding twenty-four months.

67. Where an offence under this Act by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer or agent of that body corporate the officer or agent as well as that body corporate shall be deemed to have committed that offence and shall be liable to be proceeded against and punished accordingly.

Liability of officers and agents.

68. Notwithstanding the provisions of any other law no liability shall attach to the Government of Dominica or any person acting on its behalf for anything done in the discharge or purported discharge of any function under this Act unless it is shown that the act or omission was not in good faith.

Immunity.

69. The Minister may make Regulations for the purpose of carrying into effect the provisions of this Act including the fees to be levied and charged thereunder.

Regulations.

Special provisions with
a regard to Mutual
Assistance in Criminal
Matters.

70. (1) Notwithstanding anything in this Act or in any other written law, where request is made to the Attorney General for any information or assistance pursuant to any Agreement or Treaty entered into with any other country concerning Mutual Assistance in Criminal Matters, it shall be lawful for the Attorney General to request any licensee by way of a notice to furnish such information as is required within such period as may be specified in the notice.

(2) Any licensee who has such information or has access to such information and wilfully fails to furnish or withholds such information commits an offence and is liable on summary conviction to a fine of twenty thousand dollars and to imprisonment for a period of five years.

Savings.

71. Nothing in this Act shall apply to –

- Ch. 74:04. (a) the Government Savings Bank established under the Savings Bank Act;
- Ch. 31:02. (b) any society registered under the provisions of the Friendly Societies Act;
- Ch. 78:03. (c) any co-operative society registered under the provisions of the Co-operative Societies Act;
- Ch. 31:60. (d) any Building Society incorporated under the provisions of the Building Societies Act;
- Ch. 74:01. (e) the Eastern Caribbean Central Bank established under the Eastern Caribbean Central Bank Act;
- Ch. 74:05. (f) the Caribbean Development Bank established under the Caribbean Development Bank Act;
- Ch. 74:03. (g) the Dominica Agricultural Industrial and Development Bank established under the Dominica Agricultural Industrial and Development Bank Act.

72. The provisions of this Act shall prevail over the provisions of the Banking Act in so far as the provisions of the Banking Act are inconsistent with the provisions of this Act with regard to the regulation of the offshore banking business in Dominica.

Provisions of this Act to prevail over the provisions of the Banking Act.
Ch. 73:01.

73. The provisions of this Act set out hereunder do not apply to a licensee that is a bank licensed under the Banking Act –

Certain provisions not to apply to banks licensed under the Banking Act.
Ch. 73:01.

- (a) Part III;
- (b) sections 5(3)(d) and (e), 16, 18, 19, 20(a), (b) and (c) and 21; and
- (c) Part VII.

SCHEDULE

(Section 27(5) and (6).)

APPROVED AUDITORS

1. A member firm or any overseas associate of a member firm of the Institute of Chartered Accountants in England and Wales.
2. A member firm or an overseas associate of a member firm of the Institute of Chartered Accountants of Scotland.
3. A member firm or an overseas associate of a member firm of the Institute of Chartered Accountants of Ireland.
4. A member firm or an overseas associate of a member firm of the American Institute of Certified Public Accountants.
5. A member firm or an associate of a member firm of the Canadian Institute of Chartered Accountants.
6. A member of the Chartered Association of Certified Accountants.
7. A member of the Certified General Accountants' Association of Canada.
8. A member of the Institute of Chartered Accountants of the Caribbean.
9. The Minister may, after consultation with the recognised supervisory body, authorise, by instrument in writing any person to be appointed as an auditor for the purposes of this Act, if that person –

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- (a) is in the opinion of the Minister suitably qualified for such an appointment by reason of his knowledge and experience; and
- (b) was in practice in Dominica as an auditor on the commencement of this Act.

Passed in the House of Assembly this 3rd day of April, 1996.

M. ALBERTHA JNO. BAPTISTE
Clerk of the House of Assembly.

DOMINICA

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