

COMMONWEALTH OF DOMINICA

ARRANGEMENT OF SECTIONS

SECTION

PART I PRELIMINARY

1. Short title and Commencement.
2. Interpretation.

PART II ESTABLISHMENT OF THE FINANCIAL SERVICES UNIT

3. Establishment of a Financial Services Unit.
4. Objectives of the Unit.
5. Appointment of the Director of the Unit.
6. Advisory Committee.
7. Functions of the Advisory Committee.
8. Meetings.
9. Functions of the Director.
10. Power of the Director.

PART III LICENSING

11. Requirement of licence.
12. Examination of books of person carrying on financial services business without a licence.

PART IV INFORMATION GATHERING

13. Director's power to gather information.
14. Privileged documents and information.
15. Examination under Oath.
16. Assistance to Foreign Regulatory Authority.
17. Restriction on disclosure of information

- 18. Search Warrant.
- 19. Offences and Penalties.

**PART V
ENFORCEMENT**

- 20. Compliance officers.
- 21. Compliance inspection.
- 22. Enforcement action.
- 23. Recommendation regarding revocation or suspension of licence.
- 24. Protection Order.
- 25. Directors power to issue directives.
- 26. Assistance from the Central Bank to conduct investigation.

**PART VI
GENERAL**

- 27. Fitness of persons carrying on licensed financial business.
- 28. Publication of the names of an unlicensed business.
- 29. Offence of giving misleading information.
- 30. Minister may issue guidance.
- 31. Director may issue guidelines.
- 32. Director enabled to seek assistance.
- 33. Penalty.
- 34. Immunity.
- 35. Regulations.
- 36. Amendment of Schedules
- 37. Amendments to certain financial enactments.

SCHEDULE I
SCHEDULE II
SCHEDULE III
SCHEDULE IV
SCHEDULE V

COMMONWEALTH OF DOMINICA

ACT No. 18 OF 2008

I Assent*N. J. O. Liverpool*
*President*10th December, 2008.**AN ACT TO ESTABLISH A FINANCIAL SERVICES
UNIT AND PROVIDE FOR RELATED MATTERS.**

(Gazetted _____, 2008.)

BE IT ENACTED by the Parliament of the Commonwealth of
Dominica as follows:**PART 1
PRELIMINARY****1.** (1) This Act may be cited as the -**FINANCIAL SERVICES UNIT ACT, 2008.**Short title and
Commencement.

(2) This Act shall not apply to commercial banks.

(3) This Act shall come into force on such date as the Minister may appoint by Order published in the Gazette.

Interpretation.

2. (1) In this Act -

“Central Bank” means the Eastern Caribbean Central Bank;

Act No. 21 of 1994.

“Companies Act” means the Companies Act 1994;

“Court” means the High Court;

“document” means a document in any form and includes-

(a) any writing or printing on any material;

(b) any record of information or data, however compiled and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium, including discs and tapes;

(c) books and drawings; and

(d) a photograph, film, tape, negative or other medium in which one or more visual images are embodied so as to be capable (with or without any aid or equipment) of being reproduced,

and without limiting the generality of the forgoing, includes any court application, order and other legal process and notice;

“Director” means the Director of the Financial Services Unit appointed under section 5;

Chap. 74:03.

“Dominica Agricultural, Industrial and Development Bank” means the Dominica Agricultural, Industrial and Development Bank established by section 3 of the Dominica Agricultural, Industrial and Development Bank Act;

“financial services business” means the collection of funds in the form of deposits, shares, loans, premiums, and the investment of such funds in loans, shares and other

securities and includes the operation of a business or activity set out in Schedule III, but does not include the domestic deposit taking institutions regulated by the Eastern Caribbean Central Bank;

Schedule III.

“financial services enactments” means Acts set out in Schedule I;

Schedule I.

“financial institution” means an institution set out in Schedule II;

Schedule II.

“Financial Intelligence Unit” means the unit established under section 12 of the Money Laundering (Prevention) Act 2000;

Act No. 20 of 2000.

“foreign regulatory authority” means an authority in a jurisdiction outside Dominica which exercises regulatory function;

“licence” means a licence, registration or recognition issued or granted under a financial services enactment;

“licensee” means a person having a licence;

“prescribed” means prescribed by Regulations or Order made under this Act;

“Registrar” means the Registrar of Companies;

“Regulatory Code “ means Codes issued under this Act or by the Central Bank;

“regulated person” means a person carrying on business as set out in the Schedule to the Money Laundering (Prevention) Act 2000;

Act No. 20 of 2000.

“Minister “ means the Minister responsible for Finance;

“Unit” means the Financial Services Unit established under section 3;

“unlicensed financial services business” has the meaning specified in subsection (2).

(2) A person carries on an unlicensed financial service business if he carries on an activity for which a licence is required without having a licence authorising him to carry on the activity.

(3) For the purposes of this Act the Dominica Agricultural, Industrial and Development Bank is deemed to be a licensee but Part III, sections 22(a)(vi)(vii)(viii)(ix), (c), (d)(i), (e)(iii), 23, 24, 25(2), 26(1)(b) and (20)(c) and 27 do not apply to the Dominica Agricultural, Industrial and Development Bank.

PART II
ESTABLISHMENT OF THE FINANCIAL
SERVICES UNIT

Establishment of a
Financial Services Unit.

3 . There is hereby established a Unit to be known as the Financial Services Unit.

Objectives of the Unit.

4. The objectives of the Unit are to -

- (a) maintain the public's confidence in the financial system;
- (b) facilitate the deterrence of financial crimes;
- (c) supervise financial services licensees in accordance with legislation, regulations and codes;
- (d) ensure periodic evaluation of the legislative and regulatory framework in accordance with developments in the financial services sector;
- (e) promote best practices, mutual assistance and exchange of information by maintaining contact and forging relations with foreign regulatory authorities, international associations of regulatory authority bodies or groups relevant to its functions;
- (f) facilitate the development of the financial sector and services.

Appointment of the
Director of the Unit.

5. The Minister shall appoint a Director of the Unit who shall be responsible for the administration of this Act.

Advisory Committee.

6. There shall be an Advisory Committee appointed by the Minister consisting of -

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- (a) the Financial Secretary or his representative from the public service;
 - (b) the Director of the Financial Services Unit;
 - (c) a nominee of the Central Bank;
 - (d) an attorney at law, nominated for a three-year renewable term by the Attorney General in consultation with the President of the Dominica Bar Association;
 - (e) an Accountant, nominated by the Minister for a three year renewable term;
 - (f) one person with expertise in financial services nominated by the Minister for a three-year renewable term; and
 - (g) one community representative nominated by the Minister for a three-year term from the financial services business sectors regulated by this Act.

7. The Advisory Committee shall advise-

- (a) the Minister with regard to the implementation of the financial services enactments in general and on such matters as the Minister may refer to it from time to time;
- (b) the Director in discharging his functions under this Act.

Functions of the
Advisory Committee.

8. (1) The meetings of the Advisory Committee shall be chaired by the person selected by the Minister, except that the person selected shall be neither the Financial Secretary nor the Director.

Meetings.

(2) The Advisory Committee shall meet at least once in a month.

(3) The Advisory Committee shall regulate its own procedure.

Functions of the
Director.

Act No. 20 of 2000.

Act No. 3 of 2003.

9. (1) The principal functions of the Director are to-

- (a) supervise licensees in accordance with this Act, the financial services enactments and Regulatory Codes;
- (b) monitor compliance by regulated persons with the Money Laundering (Prevention) Act and such other Acts, Regulations, Guidelines or the Codes relating to the Money Laundering (Prevention) Act or the Suppression of the Financing of Terrorism Act;
- (c) monitor financial institutions operating in or from Dominica and take action against persons carrying on unlicensed financial services business;
- (d) administer the financial services enactments or any other relevant enactments;
- (e) maintain and supervise the offshore registry;
- (f) monitor the effectiveness of the financial services enactments in providing for the regulation of financial services business in Dominica to internationally accepted standards;
- (g) advise the Minister on matters relating to financial services business;
- (h) make recommendations to the Minister on amendments or revisions necessary to be made to the financial services enactments or for the enactment of new legislation to regulate financial services;
- (i) encourage high professional standards within the financial services industry;
- (j) maintain contacts and forge relations with foreign regulatory authorities, international associations of regulatory authorities and other international

associations or groups relevant to its functions and to provide regulatory assistance to foreign regulatory authorities in accordance with this Act;

- (k) provide such information and advice to licensees and the public or any section of the public concerning financial services as he considers appropriate;
- (l) discharge such other functions as may be assigned to him under this Act;
- (m) take such other measures as he considers appropriate to develop the financial services industry in Dominica;
- (n) liaise with the Financial Intelligence Unit established under section 12 of the Money Laundering (Prevention) Act 2000;
- (o) liaise with the Central Bank with respect to supervising the functioning of the Financial Services Business sector in Dominica;
- (p) make a Regulatory Code with the approval of the Minister; and
- (q) inspect financial institutions to ensure that they comply with any Regulatory Code issued by the Central Bank or the Minister.

Act No. 20 of 2000.

(2) In discharging his functions, the Director may take into account any matter which he considers to be appropriate but shall, in particular, have regard to –

- (a) the protection of the public, whether within or outside Dominica against financial loss arising out of dishonesty, incompetence, malpractice or insolvency of persons engaged in financial services business in Dominica;

- (b) the protection and enhancement of the reputation of Dominica as a financial services centre;
- (c) the deterrence of financial crime; and
- (d) any directives, guidelines or Regulatory Codes issued by the Central Bank.

(3) For the purpose of subsection (2) (a) the expression “the public” includes customers and potential customers of persons engaged in a financial services business in or from within Dominica.

(4) In discharging its functions under this section the Unit shall be assisted wherever possible by the Financial Intelligence Unit.

Power of the Director.

10. For the purpose of exercising his functions under this Act and in particular the matters specified under section 9 the Director has the power to –

- (a) require any person who is carrying on a financial services business in Dominica to produce such documents as are required to enable the Director to satisfy himself that the business is not acting in contravention of any conditions under which a licence is issued;
- (b) inspect any business during normal working hours for the purpose of supervising the operation of the financial services business to ensure compliance with this Act and the relevant financial services enactments;
- (c) require a licensee to submit periodic reports in the form and with the content to be determined by the Director;
- (d) require a licensee to submit periodic reports in the form and with the content to be determined by the Director;

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- (e) require licensees to take any actions that in the opinion of the Director are necessary to correct problems identified either through inspection or monitoring of periodic reports or to address issues of safety and soundness;
 - (f) require non licensed businesses to cease their operations; and
 - (g) take enforcement action as provided for in Part IV.

PART III LICENSING

11. (1) A person shall not carry on a financial services business or hold himself out as carrying on a financial services business in Dominica without a licence.

Requirement of Licence.

(2) A person who intends to conduct a financial services business in Dominica shall, before commencing business, obtain a licence.

(3) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction-

- (a) in the case of a financial institution, to a fine of five hundred thousand dollars, and in the case of a continuing offence, to a further penalty of five thousand dollars for each day on which the offence is continued after conviction thereof;
- (b) in the case of a director or manager, to a fine of two hundred and fifty thousand dollars or to imprisonment for a term not exceeding three (3) years or to both such fine and imprisonment; and in the case of a continuing offence, to a further penalty of two thousand five hundred dollars for each day on which the offence is continued after conviction thereof.

Examination of books of person carrying on financial services business without a licence.

12. (1) If the Director has reasonable cause to suspect that –

- (a) any person is carrying on financial services business without a licence; and
- (b) evidence of contravention of subsection (1) of section 11 is to be found on any premises in Dominica,

after consultation with the Minister the Director is authorized to request a search warrant under the procedures specified in section 18(3).

(2) A person who, without lawful excuse, refuses to make available for examination any books, accounts and records having been requested to do so by the Director commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for a term of six months or to both such fine and imprisonment.

(3) Without prejudice to section 11(3), where a person is found under subsection (1) to be conducting a financial services business without a licence, the Minister may on the recommendation of the Director make an application to the Court for an Order to appoint an administrator for the person under section 24.

(4) A person holding funds which the person has obtained by doing a financial services business without being in possession of a licence granted under this Act shall repay such funds in accordance with the directions of the Director.

PART IV INFORMATION GATHERING

Directors power to gather information.

Chap. 12:19.

13. (1) For the purpose of this section, “central authority” means the central authority designated in section 4 of the Mutual Assistance in Criminal Matters Act.

(2) Where reasonably required by the Director for the discharge of his functions under this or any other Act or, on being

requested by the central authority of Dominica for providing mutual assistance in criminal matters the Director may by notice in writing to a person specified in subsection (3) require him to –

- (a) provide specified information or information of a specified description; or
- (b) produce specified documents or documents of a specified description.

(3) A notice under subsection (2) -

- (a) may be issued to -
 - (i) a licensee;
 - (ii) a person connected with a licensee;
 - (iii) a person carrying on unlicensed financial services business; or
 - (iv) a person reasonably believed to have the information or documents to which the notice relates; and
- (b) shall specify the place where and the period within which the information or documents shall be provided or produced.

(4) The Director may require-

- (a) any information provided under this section to be provided in such form as the Director may specify; and
- (b) any information provided or documents produced under this section to be verified or authenticated in such manner as he may reasonably specify.

(5) The Director may take copies or extracts of any document produced under this section.

(6) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.

(7) For the purpose of this section-

Schedule IV.

(a) the criteria set out in Schedule IV shall be used to determine whether a person is connected with a licensee; and

(b) a “licensee” includes a person who has at any time been a licensee but who has ceased to be a licensee.

(8) A person who receives a notice issued by the Director under subsection (2) may apply to the Court to have the notice set aside.

(9) An application under subsection (8), must be made within 14 days of receipt of the notice, or before the expiration of the time period specified by the Director for compliance, if earlier.

(10) On the hearing of an application under subsection (7), the Court may confirm, set aside or modify the notice issued by the Director.

(11) The Director shall be entitled to appear and be heard on the hearing of an application under subsection (8).

Privileged documents and information.

14. (1) A person shall not be required to disclose information or produce a document under section 13 if he would be entitled to refuse to disclose the information or to produce the document on the grounds of legal professional privilege in legal proceedings.

(2) For the purposes of this section, information or a document comes to an attorney in privileged circumstances if it is communicated or given to him-

(a) by a client or by the representative of a client in connection with the giving of legal advice to the client;

(b) by , or by the representative of, a person seeking legal advice from the adviser; or

(c) by the person –

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purposes of those proceedings.

(3) Information or a document shall not be treated as coming to an attorney in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

(4) Notwithstanding subsection (1), an attorney may be required under section 13 (2) to provide the name and address of his client.

15. (1) Where, in connection with a notice given under section 13, the Director considers it necessary to examine a person on oath, the Director may apply to a Magistrate to have that person examined before the Magistrate.

Examination under oath.

(2) On an application under subsection (1), the Magistrate may order an examination of a person under oath on such terms and conditions as he considers fit.

16. (1) Where a foreign regulatory authority requests the Director, in writing, to provide it with assistance in connection with the exercise of its regulatory functions, the Director may disclose information, or provide documentation, in his possession to the foreign regulatory authority in accordance with this section.

Assistance to Foreign Regulatory Authority.

(2) The Director shall not -

(a) issue a notice under section 13 on the request of a foreign regulatory authority; or

(b) disclose information or provide documentation to a foreign regulatory authority under subsection (1),

unless he is satisfied that the information or documentation to which the request relates is reasonably required by the foreign regulatory authority for the purposes of its regulatory functions.

(3) In deciding whether or not to issue a notice under section 13 on the request of a foreign regulatory authority or to disclose information or provide documentation to a foreign regulatory authority under subsection (1), the Director may take into account, in particular-

- (a) whether corresponding assistance would be given to the Director in the country or territory of the foreign regulatory authority concerned;
- (b) whether the request relates to the breach of a law, or other requirement, which has no close parallel in Dominica or involves the assertion of a jurisdiction not recognised by Dominica;
- (c) whether it is otherwise appropriate in the public interest to provide the assistance sought;
- (d) whether there are any agreements between Dominica and the country of the foreign regulatory authority with regard to mutual assistance in criminal matters.

(4) For the purposes of subsection (3) (a), the Director may require the foreign regulatory authority making the request to give a written undertaking, in such form as the Director may require, to provide corresponding assistance to the Director or any authority in Dominica.

(5) If a foreign regulatory authority fails to comply with a requirement of the Director made under subsection (4), the Director may refuse to provide the assistance sought by the foreign regulatory authority.

(6) The Director may decide that he will not, on the request of a foreign regulatory authority, exercise his powers under section 13 or under subsection (1) unless -

- (a) he is satisfied that any information provided to the foreign regulatory authority will not be used in any criminal proceedings against the person furnishing it, other than proceedings for an offence under section 19 or for an offence of perjury or any like offence;
- (b) the foreign regulatory authority undertakes to make such contribution towards the cost of exercising his powers as the Director considers appropriate; and
- (c) he is satisfied that the foreign regulatory authority is subject to adequate legal restrictions on further disclosure of the information and documents and that it will not, without the written permission of the Director-
 - (i) disclose information or documents provided to it to any person other than an officer or employee of the authority engaged in prudential supervision; or
 - (ii) take any action on information or documents provided to it.

(7) The provisions of this section are subject to the condition that no decision taken by the Director should undermine existing relationships of other Dominican regulatory bodies or of the Central Bank with foreign regulatory authorities.

17. (1) For the purpose of this section-

- (a) “protected information” means-
 - (i) information concerning a protected person or his affairs that is acquired by the Director in the discharge of his functions under this Act

Restriction on disclosure of information.

or a financial services enactment and includes any such information that is acquired by an employee of the Unit or any person acting under the authority of the Director;

(ii) any information that is obtained from a foreign regulatory or law enforcement authority.

(b) “protected person” means-

(i) a person who has applied for a licence under a financial services enactment;

(ii) a licensee;

(iii) a customer or a former customer of a licensee;

(iv) a company managed or formerly managed by a licensee; and

(v) a settlor or beneficiary or former beneficiary of a trust of which the licensee is or has been a trustee.

(2) Subject to subsection (3) the Director or any employee of the Unit or any person acting under the authority of the Director shall not disclose protected information to any other person.

(3) Subsection (2) does not apply to a disclosure-

(a) required or permitted by any court of competent jurisdiction in Dominica;

(b) required or permitted by any other Act;

(c) to the Director of Public Prosecutions;

(d) to any authority appointed under any financial services enactment which provides for rendering mutual assistance in criminal matters;

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- (e) in respect of affairs of a protected person made with the consent of the person, his heirs or a legal representative;
 - (f) if the information disclosed is or has been available to the public from any other source;
 - (g) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of a protected person to which the information relates to be determined; or
 - (h) made by the Director to a foreign regulatory authority upon the written request of that authority in accordance with section 16.

18. (1) A Magistrate may issue a search warrant under subsection (3) if he is satisfied on information on oath or affirmation given by the Director or on behalf of the Director that there are reasonable grounds for believing that one or more of the conditions specified in subsection (2) have been satisfied. Search warrant.

- (2) The conditions referred to in subsection (1) are-
 - (a) that a person has failed to fully comply with a notice of the Director issued under section 13 (2) within the time period specified in the notice and that on the premises specified in the warrant-
 - (i) there are documents that have been required to be produced; or
 - (ii) there is information that has been required to be provided; or
 - (b) that –
 - (i) a notice could be issued by the Director under section 13 (2) against a person; and
 - (ii) there are documents, or there is information, on the premises specified in the warrant in

respect of which a notice under section 13 (2) could be issued; and

(iii) if a notice under section 13 (2) was to be issued, it would not be fully complied with or the documents or information to which the notice related would be removed, tampered with or destroyed; or

(c) that –

(i) an offence under this Act or a financial services enactment has been, is being or may be committed by a person; and

(ii) there are documents, or information on the premises specified in the warrant that evidence the commission of the offence; and

(iii) if a notice under section 13 (2) was to be issued, it would not be complied with or the documents or information to which the notice related would be removed, tampered with or destroyed.

(3) Where the Director, after consultation with the Minister lays information on oath to a Magistrate, it shall be lawful for such Magistrate, by warrant signed by the Magistrate, to authorize the Director or a named representative of the Director to–

(a) with a police officer enter the premises named in the warrant within one week from the date of the warrant;

(b) with a police officer search the premises and seize any books, accounts, records and other documents, cheques and securities (in this subsection referred to as “the relevant documents”) and any cash as may be found on the premises relating to the conduct of financial services business, to ascertain whether the person is carrying on financial services business without a licence;

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- (c) search the premises and seize any documents or information of a type in respect of which the warrant was issued or to take, in relation to documents or information, any other steps which appear to be necessary for preserving or preventing interference with them;
 - (d) take copies of or extracts from any documents or information appearing to be documents or information of a type in respect of which the warrant was issued;
 - (e) make and retain copies of the documents or information;
 - (f) maintain a registry of the documents or information that have been seized and returned;
 - (g) require any person on the premises to provide an explanation of any document or information appearing to be documents or information of a type in respect of which the warrant was issued or to state where such documents or information may be found; and
 - (h) use such force as may be reasonably necessary to execute the warrant.
- (4) Unless the court on the application of the Director, otherwise orders, any document of which possession is taken under this section may be retained-
- (a) for a period of thirty days; or
 - (b) if within that period proceedings for a criminal offence, to which the document is relevant, are commenced against any person, until the conclusion of those proceedings.
- (5) In this section “premises” includes a vehicle, vessel or aircraft.

Offences and penalties.

19. (1) A person commits an offence if, without reasonable excuse he fails to comply with a notice issued under section 13(2) that has not been set aside by the court under section 13(10).

(2) A person who in purported compliance with a notice issued by the Director under section 13(2) –

(a) provides information which he knows to be false or misleading in a material respect; or

(b) recklessly provides information which is false or misleading in a material respect;

commits an offence.

(3) A person who, for the purpose of obstructing or frustrating compliance with a notice issued by the Director under section 13 (2) destroys, mutilates, defaces, hides or removes a document commits an offence.

(4) A person convicted for an offence under this section shall be liable to a fine of ten thousand dollars or imprisonment for a term of two years or both.

PART V ENFORCEMENT

Compliance officers.

20. (1) Every licensee shall appoint a fit and proper senior staff person as compliance officer.

(2) It shall be the duty of the compliance officer to give effect to any regulatory code issued by the Director or that of any other agencies authorised to issue regulatory codes under any other enactments for the purpose of ensuring financial stability of the business activity of the licensee and of deterring financial crimes.

Compliance inspection.

21. (1) In this section “ relevant person” means –

(a) a licensee;

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- (b) a subsidiary or holding company of a licensee or of a former licensee; and
 - (c) a regulated person who is not a licensee or a former licensee.

(2) The Director may, for the purpose or purposes specified in subsection (3)-

- (a) inspect the premises and the business, whether in or outside Dominica , including the systems and controls, of a relevant person;
- (b) inspect the assets, including cash, belonging to or in the possession or control of a relevant person;
- (c) examine and make copies of documents belonging to or in the possession or control of a relevant person that, in the opinion of the Director, relate to the carrying on of financial services business by the relevant person; and
- (d) require oral or written information from the licensees or any officer of the licensees.

(3) A compliance inspection may be undertaken for the following purposes-

- (a) in the case of a person specified in paragraphs (a), (b) and (c) of subsection (1)-
 - (i) the prudential supervision of financial services business carried from within Dominica; and
 - (ii) monitoring and assessing the licensee's or former licensee's compliance with his obligations under the Money Laundering Prevention Act or Regulations and Guidelines or Codes.

(4) Subject to subsection (5), the Director may, upon the request of a foreign regulatory authority, permit the authority to take part in a compliance inspection undertaken by the Director under this section.

(5) The Director shall not permit a foreign regulatory authority to take part in a compliance visit under subsection (4) unless he is satisfied that –

(a) the participation of the foreign regulatory authority–

(i) is necessary for the effective prudential supervision of a licensee or former licensee; and

(ii) is not contrary to the public interest; and

(b) the foreign regulatory authority is subject to adequate legal restrictions on further disclosure and that it will not, without the written permission of the Director–

(i) disclose information obtained or documents examined or obtained during the compliance visit to any person other than an officer or employee of the authority engaged in prudential supervision; or

(ii) take any action on information obtained or documents examined or obtained during the compliance visit.

(6) Where the Director carries out a compliance inspection in respect of a regulated person who is not a licensee or former licensee, the regulated person shall be regarded as a protected person under section 17 in respect only of the information that the Director acquires during the course of his compliance inspection.

Enforcement action.

22. (1) The Director may take enforcement action against a licensee if –

(a) in the opinion of the Director , the licensee–

(i) has contravened or is in contravention of this Act, a financial services enactment or a Regulatory Code;

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- (ii) has contravened or is in contravention of the Money Laundering (Prevention) Act 2000 or any regulation made under that Act, or any Guidelines or Codes prescribed by the Money Laundering (Prevention) Act or the Suppression of the Financing of Terrorism Act; Act No. 20 of 2000.
- (iii) is carrying on business detrimental to the public interest or to the interest of any of its customers or creditors;
- (iv) is or is likely to become insolvent;
- (v) has failed to comply with a directive given to it by the Director;
- (vi) is in breach of any term or condition of his or its licence;
- (vii) is not a fit and proper person as defined in section 27 to hold a licence;
- (viii) has provided the Director with any false, inaccurate or misleading information, whether on making application for a licence or subsequent to the issue of the licence; or
- (ix) fails to commence operations within a period of 12 months following the granting of the licence;
- (b) the licensee is compulsorily wound up, passes a resolution for voluntary winding up or is dissolved;
- (c) possession has been taken of any of its property by or on behalf of the holder of a debenture secured by a registered charge;
- (d) in the opinion of the Director-
- (i) a person having a share or interest in the licensee, whether equitable or legal or any director, officer or key employee of the licensee

is not a fit and proper person as defined in section 27 to have an interest in or be concerned with the management of a licensee, as the case may be; or

(ii) the licensee or another relevant person has refused or failed to co-operate with the Director on a compliance inspection conducted under section 21; or

(e) if the Director is entitled to take enforcement action under subsection (1) he may as appropriate-

(i) appoint a qualified person at the cost of the licensee to advise the licensee on the proper conduct of his business;

(ii) appoint an examiner to conduct an investigation under section 26;

(iii) recommend the revocation or suspension of the licensee's licence;

(iv) issue a directive under section 25.

(2) The Director shall take enforcement action only if the licensee fails to take corrective action for problems identified by the Unit.

(3) If the Director is not entitled to take enforcement action he shall inform the Minister or the relevant authority which is empowered under any other law to take such action as the Director thinks appropriate in the interest of the public and the financial services industry.

Recommendation regarding revocation or suspension.

23. (1) The Director may at any time recommend to the Minister or the relevant licensing authority under the financial services enactment that he revoke or suspend a licensee's licence if-

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- (a) the Director is entitled to take enforcement action against the licensee under section 22;
 - (b) the licensee has failed to commence or ceased to carry on the financial services business for which it was licensed;
 - (c) the licensee applies to the Director for its licence to be revoked; or
 - (d) the licensee has repeatedly and after receiving adequate notice failed to pay the prescribed licence fee.

(2) Subject to subsection (3), the period of suspension of a licence under subsection (1) shall not exceed 90 days.

(3) If it is satisfied that it is in the public interest to do so, the Court may, on the application by the Minister on the recommendation of the Director, extend the period of suspension of a licence under this section for one or more further periods not exceeding 90 days each.

(4) Subject to subsection (6), before suspending or revoking a licence the Minister or the relevant licencing authority shall give written notice to the licensee stating –

- (a) the grounds upon which he intends to suspend or revoke the licence; and
- (b) that unless the licensee, by written notice filed with the Director, shows good reason why the licence should not be revoked, the licence will be revoked on a date not less than 14 days after the date of the notice.

(5) If, on the recommendation of the Director the Minister makes an application to the Court and the Court is satisfied that it is in the public interest or in the interests of any of the customers or creditors of a licensee that subsection (4) should not have effect or that the period referred to in paragraph (b) of that subsection should be reduced, the Court may so order.

(6) An application under subsection (5) may be made on an ex parte basis or upon such notice as the Court may require.

Protection order.

24. (1) The Director may recommend to the Minister or the relevant licencing authority that he apply to the Court for a protection order under this section in respect of a licensee or former licensee, where-

- (a) the Director is entitled to take enforcement action against a licensee;
- (b) the Minister or the relevant licencing authority is entitled to revoke or suspend a licensee's licence under section 23;
- (c) in the case of a former licensee, its licence has been revoked, suspended or surrendered.

(2) On an application made under subsection (1), the Court may make such order as it considers necessary to protect or preserve the business or property of the licensee, or the interests of its customers, creditors or the public including -

- (a) an order preventing the licensee or any other person from transferring, disposing of or otherwise dealing with property belonging to him or in his custody or control;
- (b) an order appointing an administrator to take over and manage the financial services business then carried on by the licensee or carried on by him immediately before the revocation or suspension of the licence, as the case may be;
- (c) in the case of a company, an order that the licensee be wound up by the Court or subject to the supervision of the Court under the Companies Act ; and
- (d) an order granting the Director a search order.

(3) Without limiting subsection (2) (b), an order made under that subsection shall specify the powers of an administrator, which may include the powers of a licensee under this Act or of a liquidator under the Companies Act and may –

- (a) require an administrator to provide security to the satisfaction of the Court ;
- (b) fix and provide for the remuneration of the administrator;
- (c) require such persons as it considers necessary to appear before the court for the purpose of giving information or producing records concerning the licensee or the business carried on by the licensee.

(4) An order made under subsection (2) (b) shall make provision for reports to be submitted by the administrator to the Court and to the Director.

(5) The Court may , on its own motion or on the application of the Minister or the administrator, make any one of the following orders:-

- (a) an order giving directions to the administrator concerning the exercise of his powers;
- (b) an order varying the powers of the administrator;
- (c) an order terminating the appointment of the administrator; or
- (d) an order that the licensee or former licensee in respect of whom the protection order is applied for or made, pay the costs, in whole or in part, of or in connection with-
 - (i) the Minister’s application under this section, whether or not a protection order is made;and
 - (ii) giving effect to any protection order made.

(5) An application under subsection (1) may be made-

- (a) on an ex parte basis or upon such notice as the Court may require; and
- (b) before the Minister has given notice of intention to revoke a licence under section 23(5).

Directors power to issue directives.

25. (1) Where the Director is entitled to take enforcement action against a licensee, the Director may issue a directive-

- (a) imposing a prohibition, restriction or limitation on the financial services business undertaken by the licensee, including -
 - (i) that the licensee shall cease to engage in any type of business, or
 - (ii) that the licensee shall not enter into any new contracts for any type of business;
- (b) requiring any director, key employee or person having functions in relation to a licensee be removed and replaced by another person acceptable to the Director;
- (c) requiring the licensee to take such other action as the Director considers may be necessary to protect the property of, or in the custody, possession or control of, the licensee or to protect customers or creditors or potential customers or creditors of the licensee.

(2) A directive issued under section 25(1) (a) (i) shall require the Registrar to revoke the registration of the licensee.

Assistance from Central Bank to conduct investigation.

26. (1) The Minister may in consultation with the Governor of the Central Bank appoint any officer of the Central Bank to assist the Director to conduct an investigation where-

- (a) the Director is entitled to take enforcement action against a licensee under section 22;

(b) the licence of a licensee has been suspended or revoked.

(2) The matters investigated by an examiner appointed under subsection (1) may include one or more of the following in respect of the person being investigated-

(a) the nature, conduct or state of his business;

(b) a particular aspect of his business; and

(c) the ownership or control of the person being investigated.

(3) A person appointed as an examiner under this section shall for all purposes be an officer of the Unit and would not require a work permit under the relevant provisions of the Immigration and Passport Act to work in Dominica if he is not a national of Dominica.

Chap. 18:01.

PART V GENERAL

27. (1) Every person who is, or is likely to be a director, controlling shareholder, or manager of a licenced financial institution must be a fit and proper person to hold the particular position which he holds or is likely to hold.

Fitness of persons carrying on a licensed financial business.

(2) In determining whether a person is fit and proper to hold any particular position, regard shall be had to-

(a) that person's probity, competence and soundness of judgment for fulfilling the responsibilities of that position;

(b) the diligence with which that person is fulfilling or likely to fulfill the responsibilities of that position; and

(c) whether the interests of the customers or creditors of the proposed or current financial institution are, or are likely to be, in any way threatened by that person holding that position.

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

- (a) committed an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under an enactment designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services business or the management of companies or against financial loss due to the conduct of a discharged or undischarged bankruptcy;
- (c) contravened any provision under the Money Laundering (Prevention) Act, Regulations, Guidelines, or Codes prescribed under the Money Laundering (Prevention) or Suppression of the Financing of Terrorism Act;
- (d) engaged in any business practices appearing to the Director to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect a discredit on that person's method of conducting business;
- (e) earned an employment record which leads the Director to believe that the person carried out an act of impropriety in the handling of his employer's business; or
- (f) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.

Act No. 20 of 2000.

Act No. 3 of 2003.

Publication of the names of an unlicensed business.

28. The Director may with the approval of the Minister make a public statement where the Minister is of the opinion that in the

interest of the public it is necessary to bring to the notice of the public the name and address of the person who is carrying on unlicensed business of a financial nature.

29. (1) A licensee shall not issue, or cause or permit to be issued, any advertisement, statement, brochure or other similar document which is misleading or which contains an incorrect statement of fact.

Offence of giving misleading information.

(2) If the Director is of the opinion that any advertisement, statement, brochure or other similar document issued, or to be issued, by or on behalf of a licensee is misleading, contains an incorrect statement of fact, breaches a Regulatory Code or is contrary to the public interest, the Director may-

- (a) direct the licensee in writing not to issue the document or to withdraw it;
- (b) authorise the licensee in writing to issue the document with such changes as the Director may specify.

(3) A licensee who issues or causes or permits to be issued an advertisement, statement, brochure or other similar document intending it to mislead or knowing that it contains an incorrect statement of fact, commits an offence under this Act and upon conviction shall be liable to a fine of five thousand dollars or imprisonment for a term of six months or to both such fine and imprisonment.

(4) A licensee who issues or causes or permits to be issued an advertisement, statement, brochure or other similar document contrary to a direction or authorisation of the Director under subsection (2) commits an offence under this Act and upon conviction shall be liable to a fine of ten thousand dollars or imprisonment for a term of one year or to both such fine and imprisonment.

(5) The Director may, in a Regulatory Code, provide for the issue, form and content of advertisements issued by or on behalf of licensees.

Minister may issue guidance.

30. (1) The Minister may on the recommendation of the Director or on the recommendation of the Central Bank issue Regulatory Code or Codes by Order for the purpose of establishing sound principles for the conduct of financial services business.

(2) An Order made under subsection (1) shall be Gazetted and be subject to negative resolution of the House of Assembly.

Director may issue guidelines.

31. (1) The Director may with the approval of the Minister issue guidelines with respect to the procedures to be followed by and the conduct expected of licensees in the operation of their licensed businesses.

(2) The Guidelines may make different provision in relation to different persons, circumstances or cases.

(3) The Director must publish the Guidelines and any amendments thereto in the Gazette.

(4) Failure to follow guidelines issued under this section shall not, in itself, render a person liable to proceedings of any kind but such failure may be taken into account by the Court or the Director, as the case may be, in determining whether there has been a contravention of this Act, a financial services enactment or a Regulatory Code.

(5) Without limiting subsection (1) the Minister may make Regulations prescribing any matter that shall be, or may be, provided for in Guidelines.

Director enabled to seek assistance.

32. (1) In discharging his functions under the Act the Director may seek the assistance of the Central Bank or such other institutions or persons as may be approved by the Minister.

(2) The Minister may constitute such committees as are necessary to assist the Director generally or in any specific task.

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- 33.** A person who, with intent to deceive or for any purpose of this Act or a financial services enactment provides any information, makes any representation or submits any return that he knows to be false or materially misleading or does not believe to be true commits an offence under this Act and upon conviction shall be liable to a fine of twenty thousand dollars or imprisonment for a term of two years or to both such fine and imprisonment. Penalty.
- 34.** The Director or any officer acting under the authority of the Director shall not be personally liable for any act done *bona fide* in the exercise of his duty under this Act. Immunity.
- 35.** The Minister may make Regulations to give effect to this Act and in particular make Regulations where anything is prescribed to be made by Regulations. Regulations.
- 36.** The Minister may by Order amend the Schedules to this Act. Amendment of Schedules.
- 37.** (a) In the event of any inconsistency between this Act and the financial services enactments this Act shall prevail. Amendments to financial services enactments.
- (b) The financial services enactments in Column I of Schedule V are amended in the manner set out in Column II.

SCHEDULE I

Section 2.

Financial Services Enactments

Building Societies (Chap 31:60)
 Co-operative Societies Act 1996 (No. 15 of 1996)
 Dominica Agriculture Industrial and Development
 Bank (Chap. 74:03)
 Exempt Insurance Act (No. 14 of 1997)
 International Exempt Trust Act (No. 10 of 1997)
 International Business Companies Act (No. 10 of 1996)
 Offshore Banking Act 1996(No 8 of 1996)

Section 2.

SCHEDULE II**Financial Institutions**

Building societies as defined by the Building Societies Act Chap 31:60
Credit unions as defined by the Co-Operative Societies Act 1996, No. 15 of 1996
Development Banks
Exempt insurance companies as defined by the Exempt Insurance Act 1997, No. 14 of 1997
International trusts as defined by the Exempt Trust Act 1997, No. 10 of 1997
International business companies as defined by the International Business Companies Act 1996, No. 10 of 1996
Internet gaming companies
Insurance Companies and Money Transfer Companies
Offshore banks as defined by the Offshore Banking Act 1996, No. 8 of 1996

Section 2.

SCHEDULE III**Financial Services Business**

1. "Offshore banking" as defined in the Offshore Banking Act 1996, No. 8 of 1996.
2. Services offered or provided in connection with:
 - (a) building society operations;
 - (b) credit union operations;
 - (c) insurance operations, including those covered under the Exempt Insurance Act 1997, No. 14 of 1997;
 - (d) issuing and administrating means of payments (credit cards, travelers cheques, bankers drafts, money orders, electronic money);

-
- (e) money transmission operations;
 - (f) money broking, lending and pawning operations;
 - (g) money and currency exchange operations;
 - (h) trust company operations, including those covered under the International Exempt Trust Act 1997, No. 10 of 1997.
3. Trading for own account or for account of customers in-
- (a) money market instruments (e.g. cheques, bills of exchange, certificates of deposit, commercial papers, treasury bills, promissory notes, derivatives, etc.);
 - (b) foreign exchange;
 - (c) financial and commodity-based derivative instruments (e.g. options, interest rates, foreign exchange, and index, etc.);
 - (d) transferable or negotiable instruments;
 - (e) commodities futures trading;
4. Venture risk capital.
5. Financial guarantees and commitments.
6. Financial leasing.
7. Individual and collective portfolio management.
8. Safekeeping and administration of cash or liquid securities on behalf of other persons.
9. Otherwise investing, administering or managing funds or money on behalf of other persons.
10. Underwriting and placement of life insurance and other investment related insurance including insurance agents and brokers `.

Section 13.

SCHEDULE IV**Meaning of connected person**

1. In relation to a company “connected person” means any one or more of the following:

- (a) a promoter of a company;
- (b) a director or member of the company or of a related company;
- (c) a beneficiary under a trust of which the company is or has been a trustee;
- (d) a related company;
- (e) another company one of whose directors is also a director of the company;
- (f) a nominee, a spouse, parent, sibling or children (including step-children) or their spouse;
- (g) a person in partnership with a person referred to in paragraphs (a) to (c); and
- (h) a trustee of a trust having as a beneficiary a person who is, apart from this paragraph, a connected person.

2. A company is related to another person if:

- (a) it is a subsidiary or holding company of that other company;
- (b) the same person has control of both companies; and
- (c) the company and that other company are both subsidiaries of the same holding company.

3. In relation to an individual, “connected person” means any one or more of the following:

- (a) a spouse, parent, sibling or children (including step-children) or their spouse;

-
- (b) a person in partnership with the individual;
 - (c) a spouse, parent, sibling or children (including step-children) or their spouse who is in partnership with the individual;
 - (d) a company in respect of which he is a connected person under subsection (1);
 - (e) a trustee of a trust having as a beneficiary a person who is, apart from this paragraph, a connected person.

SCHEDULE V

Section 37.

AMENDMENTS TO FINANCIAL SERVICES ENACTMENTS

COLUMN I	COLUMN II
Building Societies Act Chapter 31:60	1. In section 2 - <ul style="list-style-type: none"> (a) delete the definition of "Registrar"; (b) insert the following definition in alphabetical order - <p style="margin-left: 40px;">"Unit" means the Financial Services Unit established under section 3 of Financial Services Unit Act".</p> 2. Delete the words "Registrar" or "Registrar of Societies" wherever they occur and replace them with the word "Unit" with such grammatical modifications as the circumstances require.
Exempt Insurance Act, No. 14 of 1997	1. In section 2(1), <ul style="list-style-type: none"> (a) delete the definition of "Supervisor"; (b) insert the following definition in alphabetical order -

“Unit” means the Financial Services Unit established under section 3 of the Financial Services Unit Act.”.

2. Delete the word “Supervisor” wherever it occurs in the following provisions and replace it with the word “Unit’ with such grammatical modifications as the circumstances require -

- (a) subsection 4 (2) (f);
- (b) section 11;
- (c) subsections 15 (1) and (3);
- (d) section 16;
- (e) subsections 19 (1), (2), (3), (4) and (5);
- (f) subsections 21 (1) (a), (2) (a) and (3);
- (g) subsections 23 (1) and (2);
- (h) subsection 25 (1);
- (i) subsections 26 (2), (3) and (4);
- (j) subsection 27 (1) (b);
- (k) section 30(b);
- (l) subsections 31(1), (4), (5) and (7);
- (m) section 32 (d);
- (n) subsections 34 (5) and (6).

International Exempt
Trust Act, No. 10 of 1997

1. In section 2,
 - (a) delete the definition of “Registrar”;
 - (b) insert the following definition in alphabetical order-

“Unit” means the Financial Services Unit established under section 3 of the Financial Services Unit Act”.

2. Delete the word “Registrar” wherever it occurs and replace it with the word “Unit’ with such grammatical modifications as the circumstances require.

International Business
Companies Act
No. 10 of 1996.

1. In section 2 insert the following definition in alphabetical Order -

“Unit” means the Financial Services Unit established under section 3 of the Financial Services Unit Act”.

2. Section 115 is repealed and replaced with the following -

“Minister may transfer functions 115. (1) The Minister may by Order transfer all or any of his functions to the Unit.

(2) Where an Order is made under subsection (1) the Unit shall have in Dominica power to perform regulatory, investigatory and enforcement functions in relation to the activities of International Business Companies in Dominica.”.

Offshore Banking
Act, No. 8 of 1996

1. In section 2, insert the following definition in alphabetical Order -

“Unit” means the Financial Services Unit established under section 3 of the Financial Services Unit Act”.

2. Delete the word “Minister” wherever it occurs in the following definition and provisions and replace it with the word “Unit” with such grammatical modifications as the circumstances require -

- (a) section 2(1) in the definition of “designated bank”;
- (b) subsection 3(2);
- (c) subsections 4(2) and (3);
- (d) subsections 5(1) and (3);
- (e) subsection 6(1), (b), (c), (h), (i);
- (f) section 7;
- (g) subsections 8 (1) and (3);
- (h) subsections 10 (1), (4) and (7);
- (i) section 11;
- (j) subsection 12 (1);
- (k) subsections 13 (1), 2(a), (3), (6), (7) and (8);
- (l) subsections 14 (1), (3) and (4);
- (m) subsection 15 (2)
- (n) subsections 18 (1), (2), (3), (4) and (5);
- (o) subsections 20 (1), (2) and (3);
- (p) section 21;
- (q) subsection 22 (5);
- (r) section 24;

- (s) subsections 27 (3), (6), (8) and (11);
- (t) section 28;
- (u) section 29;
- (v) subsections 30 (1), (2) and (3);
- (w) subsection 31 (2);
- (x) section 32;
- (y) section 33;
- (z) section 34;
- (aa) section 35;
- (bb) section 36;
- (cc) section 37;
- (dd) subsections 40 (1) and (2);
- (ee) section 43;
- (ff) section 52;
- (gg) subsections 53 (3) and (4);
- (hh) section 61;
- (ii) section 62.

Passed in the House of Assembly this 14th day October of 2008.

ALEX F. PHILLIP (MRS.)
Clerk of the House of Assembly

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