

TURKS AND CAICOS ISLANDS

CHAPTER 16.02
BANKING ORDINANCE
and Subsidiary Legislation

Revised Edition
showing the law as at 31 December 2014

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance.

This edition contains a consolidation of the following laws—

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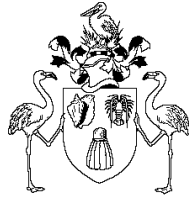
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CHAPTER 16.02
BANKING ORDINANCE

*(Ordinances 1 of 1979, 13 of 1989, 5 of 1990, 28 of 1990,
10 of 1995, 6 of 2001, 4 of 2002, 24 of 2004, 16 of 2007 and 7/2013 and
Legal Notices 9/1990 and 39/1994)*

AN ORDINANCE TO MAKE PROVISION TO REGULATE THE BUSINESS OF BANKING
AND FOR PURPOSES CONNECTED THEREWITH.

Commencement

[24 July 1979]

PART I

PRELIMINARY

Short title

1. This Ordinance may be cited as the Banking Ordinance.

Interpretation

2. (1) In this Ordinance, unless the context otherwise requires—

“assigned capital” means the assets of a licensed financial institution—

- (a) which are derived from the funds of a financial institution incorporated outside the Islands;
- (b) which the institution incorporated outside the Islands is required to make available to the licensed financial institution in the Islands during the period of that financial institution’s licence in the Islands; and
- (c) which are not subject to any security;
(Inserted by Ord. 4 of 2002)

“auditor” means a person holding a currently valid certificate from the Financial Services Commission certifying that in its opinion such person is of good standing and qualified to undertake the audit of a financial institution;
(Amended by Ord. 6 of 2001)

“bank” means a person carrying on banking business;

“banking business” means the business of accepting deposits of money which may be withdrawn or repaid on demand or after a fixed period or after notice, and the employment of those deposits in whole or in part by lending or any other means for the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;

“Belonger” means a person belonging to the Islands as defined by section 2(2) of the Immigration Ordinance;

“business plan” means a plan in the prescribed form, if any, containing such information relating to the business or the proposed business of a financial institution as is for the time being prescribed;

“Commission” means the Turks and Caicos Financial Services Commission established under the Financial Services Commission Ordinance, 2001 and preserved and continued under the Financial Services Commission Ordinance; (*Inserted by Ord. 16 of 2007*)

“company” means a company incorporated in the Islands under any law for the time being in force relating thereto or any company incorporated outside the Islands which has complied with the provisions of any such law relating to companies incorporated outside the Islands and carrying on business within the Islands;

“director” includes an 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 the Islands;

“financial institution” means a company which carries on a banking business including banking business carried on by a trust company;

“financial year” in relation to a licensee means the period not exceeding fifty-three weeks at the end of which the balance of the licensee’s accounts is struck or, if no such balance is struck or if a period in excess of fifty-three weeks is employed, then a calendar year;

“Governor” means—

- (i) in relation to National Banking Licences, the Governor in Cabinet; and
- (ii) in relation to Oversea Banking Licences, the Governor acting in his discretion;

“licence” means a licence granted under this Ordinance;

“licensed” means licensed under this Ordinance to conduct banking business;

“liquid assets” means those assets for the time being prescribed as such;

“manager” includes any person for the time being in charge of the principal office in the Islands of any financial institution;

“National Banking Licence” means a licence of the class provided for in section 4(2)(a);

“officer” includes a director, manager or secretary;

“Oversea Banking Licence” means a licence of the class provided for in section 4(2)(b);

“risk weighted assets” are the assets and off-balance sheet exposure of a licensed financial institution weighted for risk in such manner as may be prescribed. (*Inserted by Ord. 4 of 2002*)

(2) Grammatical variations and cognate expressions of any term defined in subsection (1) shall be construed accordingly.

(3) For the purpose of this Ordinance, a person shall be deemed to accept deposits of money if he advertises for or solicits such deposits from the general public, irrespective of any terms and conditions under which such deposits of money are solicited or received and whether or not certificates or other instruments are issued in respect of such deposits.

(Amended by Ords. 13 of 198, 10 of 1995 and 16 of 2007)

Financial Services Commission

3. It shall be the duty of the Commission to maintain a general view of banking practice in the Islands. *(Amended by Ords. 6 of 2001 and 16 of 2007)*

PART II

LICENSING OF FINANCIAL INSTITUTIONS

Classes of licences and necessity for licence of the appropriate class

4. (1) Notwithstanding the provisions of any other Ordinance, no banking business shall be carried on in or from within the Islands except by a licensed financial institution acting under the authority of a licence of the appropriate class, as set out in subsection (2).

(2) Licences under this Ordinance are of the following two classes—

- (a) A National Banking Licence which shall authorise the licensee to carry on banking business in and from within the Islands with persons who are Belongers and persons who are ordinarily or temporarily resident in the Islands;
- (b) An Oversea Banking Licence which shall authorise the licensee to carry on banking business from within the Islands but shall not permit the licensee to accept deposits from or lend money to, or carry on any other banking business with, or on behalf of, any person who is ordinarily or temporarily resident in the Islands:

Provided that both a National Banking Licence and an Oversea Banking Licence may be issued to the same financial institution if the Commission is satisfied that the business conducted is accounted for under separate accounting arrangements or business under each licence will be conducted through separate branches or subsidiaries.

(Substituted by Ord. 13 of 1989 and

Amended by Ords. 10 of 1995, 6 of 2001 and 16 of 2007)

(3) The terms of any licence granted under this section shall specify whether or not the licensee is a bank.

(4) Every licence shall be subject to the conditions that the licensee—

- (a) notifies the Commission of any change, or proposed change, in its business plan; *(Amended by Ords. 6 of 2001 and 16 of 2007)*

(b) carries on business only in accordance with its business plan and such changes therein as have been approved in writing by the Commission; *(Amended by Ords. 6 of 2001 and 16 of 2007)*

(c) furnishes annually to the Commission a certificate in the prescribed form of compliance with the provisions of this section. *(Inserted by Ord. 13 of 1989 and Amended by Ords. 10 of 1995, 6 of 2001 and 16 of 2007)*

(5) Any person who contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine of \$500 for each day during which the offence continues. *(Amended by Ord. 13 of 1989)*

Application for licence

5. (1) Any company desirous of commencing banking business in or from with the Islands shall apply to the Commission for a licence.

(2) An application for a licence under this Ordinance shall be made to the Commission in such form and in such manner as may be prescribed, shall state the class or classes of licence required and be accompanied by a copy of the memorandum and articles of association or of any other instrument under which such company is incorporated, a business plan, and such other information as the Commission may require.

(Amended by Ords. 13 of 1989, 10 of 1995 and 6 of 2001)

Granting of licences

6. (1) The Commission may refuse an application made under section 5 or it may grant a licence conditionally or subject to such conditions as it may see fit to impose. A decision under this subsection is final and not subject to appeal to, or review by, any court or other authority.

(2) A licence shall not be granted to any company unless it includes the word "Bank" or a cognate expression in its name and meets all the requirements laid down in the Schedule 1 for the grant to it of such licence.

(3) A licence shall not be granted to any company having its head office outside the Islands unless it maintains a principal office in the Islands and designates in writing to the Commission the names and addresses of two or more persons resident in the Islands who are its authorised agents and who shall be licensed under the Company Management (Licensing) Ordinance and who shall have the functions set out in section 7.

(4) A licensee which has its head office outside the Islands shall forthwith notify the Commission of any change in its principal office in the Islands or in the persons designated under subsection (3).

(5) The other provisions of this section notwithstanding, the Governor may exempt the holder of an Oversea Banking Licence from complying with subsections (3) and (4) if, and as long as, he is satisfied that the banking business in the Islands is managed—

- (a) by another licensee which maintains a principal office in the Islands; or
- (b) by a person, or group of persons, resident in the Islands, qualified and experienced in the banking business and approved by the Governor for the purposes of this subsection.

A licensee, person or group so managing the business of a licensee, shall be deemed to be authorised to accept on its behalf service of process and any notice required to be served on it. The provisions of section 177(2) of the Companies Ordinance shall apply to a licensee, person or group in relation to the debts of such exempted licensee as it applies to a director thereof.

(6) Every licensee, or in the case of a licensee exempted under subsection (5), the licensee, person or group managing its business in the Islands shall—

- (a) affix, and keep affixed, on the outside of its principal office, or place in which the business of such an exempted licensee is managed, as the case may be, the name of the licensee, or exempted licensee, in a conspicuous position and in easily legible letters;
- (b) display in such office or place its licence or that of the exempted licensee, as the case may be, with a statement—
 - (i) as to whether or not such licence allows the acceptance of deposits; and
 - (ii) giving particulars of the restrictions, if any, imposed on such licence; and
- (c) keep its principal office, or place where the business of the exempted licensee is managed, as the case may be, open during normal business hours.

(7) Any licensee which fails to comply with any of the requirements of subsection (4) or subsection (6) commit an offence and is liable on summary conviction to a fine of \$500 for every day during which the offence continues.

(Amended by Ords. 6 of 2001, 4 of 2002 and 16 of 2007)

Functions of authorised agents

7. Authorised agents designated under section 6(3) shall have the following functions—

- (a) they shall accept on behalf of the licensed financial institution service of process and notices required to be served on it;
- (b) they shall keep books and records of the licensed financial institution;
- (c) they shall inform the Commission if they know or have reason to believe that the licensed financial institution is likely to become unable to meet its obligations as they fall due or is carrying on business in a manner which is or is likely to be prejudicial to its depositors or creditors; and

(d) they shall ensure that the licensed financial institution meets its obligations under sections 29 and 30.

(Inserted by Ord. 4 of 2002 and amended by Ord. 16 of 2007)

Alterations, reconstruction arrangements and agreements

8. (1) When and as often as any alteration is 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 forthwith give the Commission full particulars in writing of such alteration. *(Amended by Ord. 6 of 2001 and 16 of 2007)*

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

(3) Where a licensed financial institution—

(a) proposes a reconstruction;

(b) wishes to transfer or dispose of part of its share capital;

(c) wishes to sell or dispose of its business by amalgamation or otherwise; or

(d) wishes to purchase or acquire the business of another financial institution,

it shall, before doing so, obtain the approval of the Commission. *(Substituted by Ord. 4 of 2002 and Amended by Ord. 16 of 2007)*

(4) Where any particulars are or any information is, received under this section the Commission, having regard thereto, and notwithstanding the fact that the financial institution concerned is licensed, may direct that the institution apply for another licence within such time and in such form as the Commission may determine. *(Substituted by Ord. 13 of 1989 and Amended by Ords. 10 of 1995, 6 of 2001 and 16 of 2007)*

(5) The issue of a directive pursuant to subsection (4) shall not affect the validity of any licence subsisting at the date of such directive and which was granted to the financial institution to which the said directive is issued.

(6) Every licence to which subsection (5) refers shall be of full force and effect until—

(a) it is revoked by the Commission under the Financial Services Commission Ordinance; or *(Amended by Ords. 6 of 2001 and 16 of 2007)*

(b) another licence is granted to the financial institution concerned upon an application made pursuant to a directive under subsection (4), and thereafter the licence referred to in subsection (5) shall cease to have effect.

(7) Any licensed financial institution which fails to comply with any of the provisions of subsections (1), (2) and (3) or with any directive of the Commission under subsection (4) commits an offence and is liable on conviction

to a fine of \$500 for every day during which the offence continues. (*Amended by Ords. 6 of 2001 and 16 of 2007*)

PART III

CAPITAL AND RESERVES

Maintenance of assets

9. Every licensee which accepts deposits in the Islands from the general public shall maintain in the Islands assets which are, or will be, available immediately to meet all the liabilities of the licensee as they fall due in the ordinary course of business. (*Substituted by Ord. 13 of 1989*)

Retention of paid up share capital

10. (1) A licensed financial institution which is incorporated in the Islands and accepts deposits from the general public shall retain paid up share capital of not less than such amount as may be prescribed.

(2) A licensed financial institution which does not have at the date of the coming into force of this section paid up share capital of not less than the amount prescribed under subsection (1), shall increase its paid up share capital to not less than that amount not later than the end of the period of three years beginning with the day after the date of the coming into force of this section.

(Inserted by Ord. 4 of 2002)

Maintenance of guarantee

11. A Licensed financial institution which—

- (a) is incorporated in the Islands;
- (b) accepts deposits from the general public;
- (c) is a subsidiary of a holding or parent company incorporated outside the Islands; and
- (d) has a guarantee from the holding or parent company under paragraph 1(f)(ii) of the Schedule 1,

shall maintain its guarantee of not less than such amount as may be prescribed.

(Inserted by Ord. 4 of 2002)

Maintenance of assigned capital

12. A licensed financial institution which accepts deposits from the general public and is a branch of a financial institution incorporated outside the Islands shall maintain assigned capital of not less than such amount as may be prescribed. (*Inserted by Ord. 4 of 2002*)

Capital adequacy ratio

13. (1) A licensed financial institution referred to in section 10 shall maintain a ratio of capital to risk weighted assets of not less than such amount as may be prescribed to which there shall be added three per cent.

(2) For the purposes of this section a licensed financial institution's capital shall comprise—

- (a) its issued and fully paid up share capital, its perpetual non-cumulative preference shares and its disclosed reserves as may be prescribed; and
- (b) its reserves other than its disclosed reserves which shall comprise such elements as may be prescribed or as may be provided for under the prescribed Regulations including hybrid debt and capital instruments and subordinated debts.

(3) For the purpose of this section the amount of a licensed financial institution's capital shall be the sum of—

- (a) the institution's capital under subsection (2)(a) calculated as may be prescribed less its goodwill; and
- (b) the institution reserves under subsection (2)(b)—
 - (i) which shall be calculated as may be prescribed; and
 - (ii) which shall not exceed in total the amount of capital calculated under paragraph (a),

from which sum there shall be deducted the institution's investments in its subsidiary companies which carry on banking and financial activities and whose assets are not consolidated in the institution's consolidated financial statements.

(Inserted by Ord. 4 of 2002)

Guarantee ratio

14. A licensed financial institution referred to in section 11 shall maintain a ratio of its guarantee to risk weighted assets of not less than such amount as may be prescribed. *(Inserted by Ord. 4 of 2002)*

Assigned capital ratio

15. A licensed financial institution referred to in section 12 shall maintain a ratio of assigned capital to risk weighted assets of not less than such amount as may be prescribed. *(Inserted by Ord. 4 of 2002)*

Maintenance of reserve fund

16. A licensed financial institution which accepts deposits from the general public—

- (a) shall maintain a reserve fund; and

- (b) shall transfer out of its net profits as determined by the Commission not less than twenty five per cent of these profits into the reserve fund when the reserve fund is less than—
- (i) for a financial institution referred to in section 10, the amount of the paid up share capital prescribed under section 10(1);
 - (ii) for financial institution referred to in section 11, the amount of the guarantee; or
 - (iii) for a financial institution referred to in section 12, the amount of the assigned capital.

(Inserted by Ord. 4 of 2002 and Amended by Ord. 16 of 2007)

PART IV

RESTRICTIONS ON BUSINESS

Restriction on dividends

17. No licensed financial institution incorporated in the Islands shall pay any dividend on its shares, and no licensed financial institution incorporated outside the Islands shall remit any profits outside the Islands, 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

18. (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 under the Financial Services Commission Ordinance or has been wound up by a court;
- (b) who has been sentenced by a court in any country to a term of imprisonment for an offence involving dishonesty and has not received a full pardon for that offence; or
- (c) who is or becomes bankrupt, suspends payment to or compounds with his creditors,

shall not without the express written authorisation of the Commission act or continue to act as a director, manager, secretary or other employee of any financial institution. *(Amended by Ords. 13 of 1989, 10 of 1995, 6 of 2001 and 16 of 2007)*

(2) Any person who contravenes the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000.

Director or officer no longer fit and proper person

19. Where the Commission is of the opinion that a director or officer of a licensed financial institution is no longer a fit and proper person to be a director or officer of the licensed financial institution the Commission may request the financial institution to replace the director or officer with a person approved by the Governor or the Commission as a fit and proper person. (*Inserted by Ord. 4 of 2002 and Amended by Ord. 16 of 2007*)

Restrictions on use of title “bank”

20. (1) Save with the permission of the Commission, no person other than a licensed bank shall use the word “bank” or any of its derivatives in any language in the description or title under which such person is carrying on business in or from within the Islands; or make any such representation in any billhead, letter paper, notice, advertisement or in any other manner whatsoever:

Provided that nothing in this subsection shall apply to an association of banks or bank employees, formed for the protection of their common interests.

(*Amended by Ords. 13 of 1989, 10 of 1995, 6 of 2001 and 16 of 2007*)

(2) Any person or group of persons contravening the provisions of this section commits an offence and is liable on summary conviction to a fine of not less than \$250 or more than \$500 for each day during which the contravention continues.

Restriction upon granting financial concessions to persons generally

21. (1) A licensed financial institution shall not grant a financial concession to a person or related persons except as may be prescribed or as may be agreed with the Commission. (*Substituted by Ord. 4 of 2002 and Amended by Ord. 16 of 2007*)

(2) For the purposes of this section—

- (a) a licensed financial institution grants a financial concession to a person or related persons if that institution—
 - (i) grants an advance to that person or to these related persons;
 - (ii) grants a credit facility to that person or to these related persons;
 - (iii) gives a financial guarantee on behalf of that person or on behalf of these related persons; or
 - (iv) incurs any other liability on behalf of that person or on behalf of these related persons;

whether such advance, credit facility, financial guarantee or other liability is granted to, given on behalf of or incurred on behalf of that person or these related persons singly or jointly with any other person or persons or is obtained by or on account of that person or these related persons singly or jointly with any other person or persons; and

(Amended by Ord. 4 of 2002)

(b) “person” includes a firm or other unincorporated body; and

(c) “related persons” means a person and—

(i) a firm or other unincorporated body of which the person is the proprietor or beneficial owner;

(ii) a firm or other unincorporated body of which the person is a partner, director or manager or in which the person has a beneficial interest; or

(iii) a body corporate—

(A) where the person or a trustee or nominee on his behalf holds twenty per cent or more of the issued share capital of the body corporate;

(B) where the person or a trustee or nominee on his behalf, if the body corporate has no share capital, would be entitled to twenty per cent or more of the assets of the body corporate available for distribution among its members in the event of its winding up;

(C) where the person or a trustee or nominee on his behalf holds twenty per cent or more of the shares in the body corporate which carry voting rights at meetings of its members;

(D) where the person or a trustee or a nominee on his behalf, if there are no shares in the body corporate which carry such voting rights, however determined; or

(E) where the person or nominee on his behalf is a director of the body corporate.

(Amended by Ord. 4 of 2002)

(3) This section shall not apply to—

(a) transactions between banks or between branches of the same bank;

(b) the purchase of bills of exchange or documents of title to goods where the holder of the bills or documents is entitled to payment outside the Islands for exports from the Islands;

(c) advances made against such bills or documents; or

(d) advances made against telegraphic transfers.

(Substituted by Ord. 28 of 1990)

Restriction upon granting advances etc against security of or for the purchase of shares

22. A licensed financial institution shall not grant any advance or credit facility against the security of its own shares or for the purchase of such shares.
(*Inserted by Ord. 28 of 1990*)

Restriction upon granting unsecured financial concessions to directors

23. (1) A licensed financial institution shall not at any time grant any unsecured financial concession to any one of its directors or permit any such unsecured financial concession to be outstanding if the effect of so granting or so permitting would be either—

- (a) to increase the total value of all the unsecured financial concessions granted to that director before that time to an amount exceeding \$20,000 or 1 *per centum* of the value of the total assets of that financial institution at that time, whichever is the greater; or
 - (b) to increase the total value of all the unsecured financial concessions granted to its directors as a whole before that time to an amount exceeding \$100,000 or 1 *per centum* of the value of the total assets of that financial institution at that time, whichever is the greater.
- (2) For the purposes of this section—
- (a) a licensed financial institution grants an unsecured financial concession to a director of that institution if that institution—
 - (i) grants an unsecured advance to that director;
 - (ii) grants an unsecured credit facility to that director;
 - (iii) gives an unsecured financial guarantee on behalf of that director; or
 - (iv) incurs any other unsecured liability on behalf of that director, whether such advance, credit facility, financial guarantee or other liability is granted to, given on behalf of or incurred on behalf of that director singly or jointly with any other person or persons or is obtained by or on account of that director singly or jointly with any other person or persons;
 - (b) a licensed financial institution grants an unsecured financial concession to a director of that institution if that institution grants that unsecured financial concession to that director or to—
 - (i) a firm or other unincorporated body of which that director is the proprietor or beneficial owner;
 - (ii) a firm or other unincorporated body of which that director is a partner, director or manager or in which that director has a beneficial interest;

- (iii) a body corporate—
 - (A) where that director singly or that director jointly with other directors, or a trustee or nominee on his or on their behalf, holds twenty *per centum* or more of the issued share capital of that body corporate;
 - (B) where that director singly or that director jointly with other directors, or a trustee or nominee on his or on their behalf, if that body corporate has no share capital, would be entitled to twenty *per centum* or more of the assets of that body corporate available for distribution among its members in the event of its winding up;
 - (C) where that director singly or that director jointly with other directors, or a trustee or nominee on his or on their behalf, holds twenty *per centum* or more of the shares in that body corporate which carry voting rights at meetings of its members;
 - (D) where that director singly or that director jointly with other directors, or a trustee or nominee on his or on their behalf, if there are no shares in that body corporate which carry such voting rights, holds twenty *per centum* or more of the voting rights, however determined; or
 - (E) where that director or a nominee on his behalf is a director of that body corporate; or
- (iv) any person of whom that director is a guarantor; and
- (c) a financial concession is unsecured—
 - (i) if it is granted without security; or
 - (ii) where security is given, if the value of the concession granted exceeds the market value of the assets constituting that security.

(3) In this section “director” includes the wife, husband, father, mother, son or daughter of a director.

(Inserted by Ord. 28 of 1990)

Restriction upon granting unsecured financial concession to related persons

24. (1) A licensed financial institution shall not grant a financial concession to a connected counterparty or permit a financial concession to be outstanding to a connected counterparty except as may be prescribed or as may be agreed with the Commission. *(Substituted by Ord. 4 of 2002 and Amended by Ord. 16 of 2007)*

(2) For the purposes of this section—

- (a) a licensed financial institution grants a financial concession to a connected counterparty if that institution—
 - (i) grants an advance to that connected counterparty;

- (ii) grants a credit facility to that connected counterparty;
- (iii) gives a financial guarantee on behalf of that connected counterparty; or
- (iv) incurs any other unsecured liability on behalf of that connected counterparty,

whether such advance, credit facility, financial guarantee or other liability is granted to, given on behalf of or incurred on behalf of that connected counterparty singly or jointly with any other person or persons or is obtained by or on account of that connected counterparty singly or jointly with any other person or persons;

(b) a licensed financial institution grants a financial concession to a connected counterparty if that institution grants that financial concession to that connected counterparty or to—

- (i) a firm or other unincorporated body of which that connected counterparty is the proprietor or beneficial owner;
- (ii) a firm or other unincorporated body of which that connected counterparty is a partner, director or manager or in which that connected counterparty has a beneficial interest;
- (iii) a body corporate—

(A) where that connected counterparty singly or that connected counterparty jointly with other connected counterparties, or a trustee or nominee on his or on their behalf, holds twenty *per centum* or more of the issued share capital of that body corporate;

(B) where that connected counterparty singly or that connected counterparty jointly with other connected counterparties, or a trustee or nominee on his or on their behalf, if that body corporate has no share capital, would be entitled to twenty *per centum* or more of the assets of that body corporate available for distribution among its members in the event of its winding up;

(C) where that connected counterparty singly or that connected counterparty jointly with other connected counterparties, or a trustee or nominee on his or on their behalf holds twenty *per centum* or more of the shares in that body corporate which carry voting rights at meetings of its members;

(D) where that connected counterparty singly or that connected counterparty jointly with other connected counterparties, or a trustee or nominee on his or on their behalf, if there are no shares in that body corporate which carry such voting rights, holds twenty *per centum* or more of the voting rights, however determined;

(E) where that connected counterparty or a nominee on his behalf is a director of that body corporate; or

(iv) any person of whom that connected counterparty is a guarantor.

(3) In this section, “connected counterparty”, in relation to a licensed financial institution, means—

(a) a firm or other unincorporated body of which that institution is the proprietor or beneficial owner;

(b) a firm or other unincorporated body of which that institution is a partner, director or manager or in which that institution has a beneficial interest;

(c) a body corporate, where that institution singly or that institution jointly with other persons, or a trustee or nominee on its or on their behalf, or that institution together with any other corporation controlled by or associated with it, or a trustee or nominee on its or on their behalf—

(i) holds twenty *per centum* or more of the issued share capital of that body corporate;

(ii) if that body corporate has no share capital, would be entitled to twenty *per centum* or more of the assets of that body corporate available for distribution among its members in the event of its winding up;

(iii) holds twenty *per centum* or more of the shares in that body corporate which carry voting rights at meetings of its members;

(iv) if there are no shares in that body corporate which carry such voting rights, holds twenty *per centum* or more of the voting rights, however determined;

(d) a body corporate of which that institution or a nominee on its behalf is a director; or

(e) any person of whom that institution is a guarantor.

(Inserted by Ord. 28 of 1990 and Amended by Ord. 4 of 2002)

Restriction upon granting unsecured advances or credit facilities to employees

25. (1) A licensed financial institution shall not at any time grant any unsecured advance or unsecured credit facility to any one of its employees, other than a director, or permit any such unsecured advance or unsecured credit facility to be outstanding if the effect of so granting or so permitting would be to increase the total value of all the unsecured advances and unsecured credit facilities granted to that employee before that time to an amount exceeding one year’s emoluments of that employee at that time in his employment with that institution.

- (2) For the purposes of this section—
- (a) a licensed financial institution grants an unsecured advance or an unsecured credit facility to an employee of that institution, whether such advance or credit facility is granted to that employee singly or jointly with any other person or persons or is obtained by or on account of that employee singly or jointly with any other person or persons; and
 - (b) an advance or a credit facility is unsecured—
 - (i) if it is granted without security; or
 - (ii) where security is given, if the value of the advance or credit facility granted exceeds the market value of the assets constituting that security.
- (Inserted by Ord. 28 of 1990)*

Approval for the doing of prohibited activities

26. (1) Notwithstanding sections 21, 22, 23, 24 or 25, a licensed financial institution may do any or all of the acts or things prohibited by those sections if the doing of any or all of those acts or things by that financial institution is approved by the Commission under subsection (2).

(2) The Commission may, either on its own motion or upon application being made to it for the purpose, if it is satisfied that the doing by a licensed financial institution of any or all of the acts or things prohibited by sections 21, 22, 23, 24 or 25 would not be inconsistent with the business plan of that financial institution and would not be detrimental to the public interest, approve in writing signed by it, subject to such conditions or restrictions as it may impose, the doing of any or all of those acts or things by that financial institution.

*(Inserted by Ord. 28 of 1990 and
Amended by Ords. 10 of 1995, 6 of 2001 and 16 of 2007)*

Restriction on holding of certain interests by licensed banks

27. A licensed bank shall not—

- (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 any 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 total assets of that 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:

Provided that this paragraph shall not apply to—

- (i) any shareholding approved in writing by the Commission in a subsidiary bank or in a subsidiary company formed by a bank for the execution of nominee, executor or trustee functions incidental to banking business; or
- (ii) such shareholding as is necessary in the course of the underwriting or necessary to the acquisition or holding of shares in the course of any underwriting business consistent with the current business plan of the licensed bank;
*(Amended by Ords. 13 of 1989, 10 of 1995,
6 of 2001 and 16 of 2007)*
- (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 acquire such property which shall, however, be resold at the earliest suitable moment.

Minimum holdings of liquid assets

28. (1) (a) Every licensed bank shall in relation to its operations in or from within the Islands maintain the minimum holding of liquid assets, provided that the minimum shall be the same for all banks holding licences of the same class and shall not exceed twelve *per centum* of deposit liabilities. *(Amended by Ord. 4 of 2002)*
- (b) Every licensed financial institution not being a bank shall in relation to its operations in or from within the Islands maintain such minimum holding of liquid assets, as may from time to time be prescribed; provided that the minimum shall be the same for all such financial institutions and shall not exceed seven *per centum* of deposit liabilities.
- (2) The Commission shall determine the method of computing the amounts of liquid assets to be held by banks and financial institutions.
- (3) For the purposes of this section, “liquid assets” means such assets as the Commission may from time to time specify.*
- (4) Any licensed bank or licensed financial institution which fails to comply, within such reasonable time as the Commission may appoint, with any requirement of subsection (1) shall be liable to pay, on being called upon to do so by the Commission, a penalty interest charge not exceeding one-tenth of one

* See also the definition in regulation 17 of the Banking Regulations

per centum of the amount of the deficiency for every day on which the deficiency continues.

*(Amended by Ords. 13 of 1989, 10 of 1995,
6 of 2001 and 16 of 2007)*

PART V

RETURNS AND ACCOUNTS

Returns

29. (1) Subject to subsection (3), every licensed financial institution shall in relation to its operations in or from within the Islands submit to the Commission the undermentioned statements at such times as are specified therefor in the Schedule 1 and in such form as it may from time to time approve—

(a) in the case of the holder of a National Banking Licence—

- (i) a monthly statement of assets and liabilities accompanied by a statement showing the total value of all the unsecured financial concessions granted to its directors and related persons and of all the unsecured advances and credit facilities granted to its employees within the meaning of sections 22, 23 and 24 respectively; and
- (ii) a quarterly return providing an analysis of the liabilities of customers to such licensee in respect of loans, advances and other assets of the licensee at the close of the last day of business of the quarter to which the return relates;

(Substituted by Ord. 28 of 1990)

(b) in the case of a holder of an Oversea Banking Licence, or a financial institution which is not a bank, a quarterly statement of the assets and liabilities of its offices and branches in the Islands at the close of the last business day of the quarter to which the statement relates. *(Substituted by Ord. 13 of 1989)*

(2) Subject to subsection (3), the Commission may require a licensed financial institution to submit such further information as it 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 such period and in such manner as the Commission may require.

(3) No statement, return or information shall be required under subsection (1) or (2), as the case may be, with respect to the affairs of any particular customer of a licensed financial institution.

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

(5) Any licensed financial institution which fails to comply with any of the provisions of subsections (1), (2) or with any requirement of the Commission

thereunder commits an offence and is liable on summary conviction to a fine of \$500 for every day during which the offence continues.

(6) Any statement or return submitted by a licensed financial institution under subsection (1) and any information submitted by such institution under subsection (2) shall be regarded as secret, save that the Commission may publish consolidated statements aggregating the figures in the statements or returns furnished under subsection (1).

*(Amended by Ords. 13 of 1989, 28 of 1990,
10 of 1995, 6 of 2001 and 16 of 2007)*

Publication of balance sheet

30. (1) No later than three months after the close of each financial year of each licensed financial institution, or such longer period as the Commission may, in any particular case permit, the financial institution shall publish in the *Gazette* and exhibit thereafter in a conspicuous position in each of its offices and branches in the Islands, and forward to the Commission copies of its balance sheet and profit and loss account and the full and correct names of the directors of the financial institution. The balance sheet and profit and loss account shall bear on their face the certificate of an auditor who is an approved auditor in accordance with subsection (5) of section 31. *(Amended by Ords. 13 of 1989, 10 of 1995, 6 of 2001 and 16 of 2007)*

(2) Any licensed financial institution which contravenes any of the provisions of this section commits an offence and is liable on summary conviction to a fine of \$500.

PART VI

EXAMINATION AND AUDIT

Approved auditor

31. (1) Every licensed financial institution shall appoint annually an approved auditor whose duties shall be to make to 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 financial institution's affairs, and, in any case in which the auditor has called for explanation or information from the officers 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 director of the financial institution at the annual meeting of shareholders and copies of that report shall be sent to the Commission 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 \$5,000. *(Amended by Ord. 6 of 2001 and 16 of 2007)*

(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 Commission may appoint an approved auditor and shall fix the remuneration to be paid by that institution to such auditor. *(Amended by Ord. 6 of 2001)*

(4) For the purposes of this section, an approved auditor is an auditor who is a member of a firm which is for the time being declared by the Commission by notice in the *Gazette* to be approved for such purposes. *(Amended by Ord. 6 of 2001 and 16 of 2007)*

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

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

(Amended by Ords. 13 of 1989, 10 of 1995, 6 of 2001 and 16 of 2007)

(7) The approved auditor shall report to the Commission—

(a) breaches of this Ordinance; and

(b) failure by the licensed financial institution to conduct its business in accordance with its business plan or its internal controls.

(Inserted by Ord. 4 of 2002 and Amended by Ord. 16 of 2007)

PART VII

GENERAL

Fees payable

32. (1) The Licensee under each licence shall pay to the Commission for the benefit of the revenues of the Islands the fees prescribed upon the granting of the licence and on the 31st day of March in each and every year during the subsistence of the licence, the prescribed annual renewal fee. *(Substituted by Ord. 13 of 1989 and Amended by Ords. 10 of 1995 and 6 of 2001)*

(2) Without prejudice to the power of the Commission to revoke a licence under the Financial Services Commission Ordinance, any licensed financial institution which fails to pay any fee payable under this section commits an offence and is liable on summary conviction to a fine of \$250 for each day during which such fee remains unpaid. *(Amended by Ords. 13 of 1989, 10 of 1995, 6 of 2001 and 16 of 2007)*

Publication of annual list, etc.

33. The Commission shall publish in the *Gazette*—

- (a) before the 31st May in each and every year, a list of all current licences showing in each case, the name of the licensee and the type of licence; and
- (b) immediately upon its occurrence, notice of—
 - (i) the revocation or suspension of a licence;
 - (ii) the failure on the part of a licensee to pay the prescribed annual renewal fee on or before the prescribed date; and
 - (iii) the cessation of a licensee to carry on business.

*(Substituted by Ord. 13 of 1989 and
Amended by Ords.10 of 1995 and 6 of 2001)*

Confidentiality

34. (1) Except for the purpose of the performance of duties or the exercise of functions under this Ordinance or when lawfully required to do so by any court of competent jurisdiction in the Islands or under the provisions of any law for the time being in force in the Islands, neither the Commission nor any person acting under the authority of the Commission, shall disclose any information relating to any application by any person under the provisions of this Ordinance, or to the affairs of a licensee or a customer of a licensee which has been acquired by the Commission or authorised person in the performance of its or his duties or the exercise of its or his functions under this Ordinance. *(Amended by Ord. 6 of 2001)*

(2) Any person who contravenes the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine of \$50,000 or to a term of imprisonment not exceeding 12 months or to both. *(Inserted by Ord. 10 of 1995)*

(Amended by Ord. 16 of 2007)

Consent of Director of Public Prosecutions

35. No prosecution in respect of any offence committed under this Ordinance shall be instituted except by or with the consent of the Director of Public Prosecutions. *(Amended by Ord. 7 of 2013)*

Imprisonment in default of payment of fine

36. A person upon whom a fine is imposed under this Ordinance may be sentenced in default of payment thereof to imprisonment in the case of a fine—

- (a) not exceeding \$1,000 for three months;
- (b) exceeding \$1,000 but not exceeding \$2,500 for six months;
- (c) exceeding \$2,500 for twelve months.

Liability of officers

37. Where any offence under this Ordinance 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 of such body corporate, he as well as such body shall be liable to be proceeded against and punished accordingly.

Regulations

38. (1) The Governor may make Regulations prescribing all matters authorised or required to be authorised under this Ordinance or as may appear to him to be necessary or desirable for the purpose of giving effect to this Ordinance.

(2) Without derogation from the generality of the aforementioned, Regulations made under this section may—

- (a) prescribe Schedule 1 to this Ordinance and provide for amendments and additions to, and deletions from, such Schedule;
 - (b) prescribe the fees to be paid under this Ordinance;
 - (c) provide for the granting of exemptions from any requirements of the Regulations or Schedule 1;
 - (d) define what assets constitute assets or any particular kind of assets for the purposes of this Ordinance and the methods to be employed in computing them;
 - (e) such other matters or things as it is necessary or desirable to prescribe for the purposes of this Ordinance.
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SCHEDULE 1

(Sections 6(2), 29(1) and 38(2)(a))

APPLICATION FOR A LICENCE: PROCEDURE

1. Every company applying for a licence under this Ordinance shall at the time of application furnish to the Financial Services Commission the following—

- (a) an application in writing in such form as may be prescribed or if none has been prescribed then in such form as shall be acceptable to the Commission in its discretion;
- (b) a remittance for such fee as shall be prescribed;
- (c) evidence in writing satisfactory to the Commission of the incorporation and registration of the applicant under the Companies Ordinance or, if the applicant was incorporated outside the Islands, then such evidence of its proper incorporation and registration according to the law of the place of its incorporation;
- (d) where the Commission considers it appropriate, a statement in writing in a form acceptable to it from the authority responsible for the supervision of banking in the country in which the applicant or its parent company was incorporated, that such authority is aware of the intended application;
- (e) evidence in writing satisfactory to the Commission that the board of directors or governing body of the applicant, and the persons responsible for the management of the applicant, is or are sufficiently experienced and knowledgeable in the business of banking;
- (f) either—
 - (i) an undertaking in writing that the applicant shall maintain at all times commencing no later than the date it begins banking business, its fully paid up capital at an amount not less than such sum as shall be determined by the Commission and notified to the applicant following receipt of its application; or
 - (ii) a guarantee given under seal by a holding or parent company of the applicant or some other person approved by the Commission:

Provided that such guarantee shall be in such form and in respect of such sums as the Commission may approve;

And Provided further that such guarantee shall expressly provide that its formal validity, its essential validity, its interpretation and effect, and the rights and obligations of the parties thereto shall be governed exclusively by the law of the Islands and matters relating thereto shall be determined by the courts of the Islands;

- (g) the annual accounts of the applicant and (if appropriate) the annual accounts of the applicant's holding, parent and associated companies for the two years immediately preceding the application, such accounts to be duly audited and certified to the satisfaction of the Commission;

- (h) a statement of the assets and liabilities of the applicant at the end of the month prior to the lodging of the application, such statement to be certified by a director or senior officer of the applicant and, if such assets include a shareholding in another company, a statement of the capital of such company;
- (i) the name, address and professional qualifications of the proposed auditor of the applicant, and also the written consent of such auditor to act;
- (j) three references, one of which shall be financial in nature from a bank or trust company in respect of all the persons who are directors (not to be less than two), managers or senior officers of the applicant;
- (k) a list of all persons, with their addresses and nationalities, who are registered shareholders of the applicant, distinguishing the shareholdings of each, and a list of all persons, with their addresses and nationalities, who are beneficial owners of shares in the applicant but not registered shareholders, distinguishing the shares of which each is such beneficial owner, and two or more references verifying the financial good standing of each such shareholder or beneficial owner or person who is a natural person:

Provided that no applicant shall have issued any bearer shares nor shall it have power to issue such shares;

And provided further that no company which is, directly or indirectly, the registered or beneficial owner of any share or shares in the applicant shall have issued, nor have power to issue, any bearer shares;

- (l) a certified copy of the charter, statutes or memorandum and articles of the applicant or other instrument constituting or defining the constitution of the applicant, and if the instrument is not written in the English language, a certified translation thereof and in every case a certified copy of the certificate of incorporation:

Provided that—

- (i) in the case of a company incorporated in the Islands, certification shall be under seal by the Registrar of Companies; and
- (ii) in the case of a company incorporated outside the Islands, certification shall be under the public seal of the place under the law of which the company has been incorporated or under the public seal of the registrar or other responsible officer holding office under such law;

And provided further that every such copy, instrument, translation or certificate shall be verified by a statutory declaration made by a director or the secretary of the applicant;

- (m) a business plan which shall set out details of the commercial operations in which the applicant intends to engage if a licence is granted and which shall include the following information—

- (i) the business objectives of the applicant and the type and source of business contemplated;
 - (ii) the applicant's proposed initial assets and its anticipated assets and liabilities and estimated income at the end of each of the two years next succeeding the grant of the licence;
 - (iii) particulars of the applicant's management structure and personnel;
 - (iv) the reasons for the selection of the Islands as a place for the conduct of the applicant's business;
 - (v) particulars of the applicant's customer base;
- (n) in the case of an application for an Oversea Banking Licence, an undertaking in writing that the applicant shall not solicit or receive funds by way of trade or business from persons or companies other than those listed in such undertaking and which shall be approved by the Commission who may impose the terms of such undertaking as a condition to which any licence to be granted to the applicant shall be subject;
- (o) a list of all companies in which the applicant holds shares, distinguishing the number of shares held and stating the registered office of each company.

(Amended by L.N. 39/1994 and Ords. 6 of 2001 and 16 of 2007)

Returns And Accounts: Filing Times

2. All monthly statements required by section 29(1) of this Ordinance to be submitted to the Commission shall be submitted within the first twenty-one days of the month following the month to which the statement relates. *(Amended by L.N. 39/1994 and Ord. 6 of 2001 and 16 of 2007)*

3. All quarterly statements and returns required to be submitted as aforesaid shall be submitted within the first twenty-eight days of the month following the end of the quarter to which the statement or return relates.

BANKING REGULATIONS
ARRANGEMENT OF REGULATIONS

REGULATION

1. Short title
 2. Interpretation
 3. Amendments etc. to Schedule 1 of Ordinance
 4. Exemptions: the Governor's power to grant
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 10. Prior approval of issue or disposal of shares
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BANKING REGULATIONS – SECTION 38

(Legal Notices 9/1990, 39/1994, 55/2001, 13/2009, 26/2014 and Ordinance 10 of 1995)

Commencement

[14 February 1988]

Short title

1. These Regulations may be cited as the Banking Regulations.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires, the following expressions have the following meanings—

“applicant” means a company applying for a licence;

“licensee” means a company to which a licence has been granted;

“prescribed” means prescribed under the Ordinance or under these Regulations; “Ordinance” means the Banking Ordinance.

(2) The expressions defined in section 2(1) of the Ordinance shall, insofar as the same appear in these Regulations and unless the context otherwise requires, have the same meanings as those expressions have for the purposes of the Ordinance.

Amendments etc. to the Schedule 1 to the Ordinance

3. The Governor may by Order published in the *Gazette* make amendments and additions to and deletions from the Schedule 1 to the Ordinance.

Exemptions: the Governor’s power to grant

4. The Governor may, in any case where he deems it appropriate, whether on his own motion or upon application by a licensee, make an order exempting a licensee, wholly or partly and subject to such conditions as he may at his discretion impose, from any of the requirements of the Schedule 1 to the Ordinance. Any such order shall be published in the *Gazette*.

Schedule 1: Fees

5. The fees to be paid under the Ordinance shall be as set forth in the Schedule 1 to these Regulations.

Schedule 2: Form of Licence

6. A licence shall be in the form set forth in the Schedule 2 to these Regulations.

Commission’s power of investigation

7. (1) The Commission shall have the power to investigate the affairs of any licensee either on his own motion or if so directed by the Governor.

(2) For the purposes of exercising such powers of investigation, the Commission shall have the right to enter premises and to inspect, take into his possession, and copy, as appropriate, documentary records, microfilm, assets held by the licensee, including cash and securities, and information stored as computer data, on disc or otherwise.

(3) The Commission shall have the right, in exercising such powers and rights, to require computer data to be copied from one disc to another, or to be printed out into documentary form.

(4) The rights hereinbefore set out shall extend to property of the licensee, property held in the possession of the licensee for a third party, and property of the licensee in the possession or control of a third party.

Duty to report detrimental conduct

8. If at any time a licensee has cause to believe that a customer of the licensee is conducting his business affairs or is likely to do so either contrary to any law of the Islands or in a manner which is, or may become, detrimental to the reputation or standing of the licensee or of the Islands, it shall forthwith notify the Commission and furnish full particulars thereof.

Prior approval of appointment of directors, senior officers or auditors

9. Unless expressly exempted from so doing by the Commission a licensee shall obtain the approval in writing of the Commission prior to making the appointment of the director, senior officer or auditor of the licensee.

Prior approval of issue or disposal of shares

10. No shares in a licensee shall be issued and no issued shares shall be transferred, charged or disposed of in any manner without the prior approval of the Commission:

Provided that the Commission may exempt any licensee from the provisions of this regulation subject to such terms and conditions, if any, as it may deem necessary. *(Amended by L.N. 26 of 2014)*

Duty to notify changes in shareholdings, members or beneficial owners

11. Without prejudice to regulation 10, any change in the shareholdings in a licensee or in the persons who are beneficial but not registered owners of the shares in a licensee, shall be notified to the Governor within thirty days of such change and details of the new shareholdings or members or persons shall be given with such notification.

Duty to notify changes in directors or senior officers

12. Without prejudice to regulation 9, any change in the directors or senior officers of the licensee shall be notified to the Commission within fourteen days of such change and details of the newly appointed directors or senior officers shall be given with such notification.

Duty to notify changes of auditors

13. Without prejudice to regulation 9, any change of a licensee's auditor shall be notified to the Commission within fourteen days of such change and details of the newly

appointed auditor together with his written consent to act shall be given with such notification:

Provided that the Commission may at its discretion require that the former auditor disclose the circumstances responsible for the change.

Prohibition of bearer shares

14. (1) No licensee shall at any time issue bearer shares nor shall it at any time be authorised to do so by its memorandum or articles, or the charter, statutes or other instrument defining its constitution.

(2) No company which is, or shall become, directly or indirectly, the registered or beneficial owner of any share or shares in any licensee shall have issued or shall issue at any time, or have power to issue, any bearer shares.

Duty to provide fees schedules

15. (1) Any licensee which holds a National Banking Licence shall keep a stock of forms or leaflets (herein referred to as a “fees schedule”) setting out the fees and commissions charged to its customers for usual banking services.

(2) Such services shall include the following insofar as provided by the licensee—

- (a) the sale and encashment of international money orders;
- (b) the clearing of cheques, including specifically cheques drawn on banks in the United States of America, Canada and the United Kingdom;
- (c) transactions of the customer on his current account or checking account, by reference to their number or amount;
- (d) the transfer of funds, telegraphically or otherwise, to or from a customer’s account;
- (e) the supply of cheque books;
- (f) the maintenance of a customer’s current or checking account, by reference to the balance at any particular time.

(3) Where the fee or commission is determined by reference to a scale, full particulars of the scale shall be stated.

(4) At the time of opening any type of account with the licensee every person shall be given a fees schedule, and in the event of any changes in such fees or commissions, or of the introduction of any new fees or commissions, all customers of the bank shall be notified and the fees schedule shall be revised accordingly.

Directions

16. Whenever anything is required or allowed to be done under the Ordinance or these Regulations and no form or procedure is prescribed for so doing, application may be made in writing to the Commission for directions as to doing the same and anything done in accordance with such directions shall be deemed to have been properly done in compliance with the Ordinance or these Regulations, as the case may be.

Meaning of “Liquid Assets”

17. For the purposes of the Ordinance the expression “liquid assets” shall, without prejudice to the generality thereof, include the following—

- (a) money market funds and other deposits at call or short notice with established banks approved by the Permanent Secretary, Finance; and
 - (b) government securities with less than one month maturity traded on an established stock exchange approved by the Permanent Secretary, Finance; and
 - (c) bills of exchange discountable at a Central Bank and having less than one month maturity.
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SCHEDULE 1

(Regulation 5)

FEES

Fees on the application of a Licence

1. Upon the application for a National Banking Licence only.....	\$15,000
Upon the application for an Overseas Banking Licence only	\$10,000
Upon the simultaneous application by the same applicant of both a National Banking Licence and an Overseas Banking Licence, in lieu of the above fees	\$25,000

Fees on the renewal of a Licence

2. On or before 31 March in each year after the grant of a National Banking Licence only and during its subsistence.....	\$22,500
On or before March in each year after the grant of an Overseas Banking Licence only and during its subsistence.....	\$17,500
On or before 31 March in each year after the grant, simultaneous or otherwise, to the same applicant of both a National Banking Licence and an Overseas Banking Licence and during the subsistence of both licences, in lieu of the above fees	\$40,000

Provided that when a licence is first granted, the annual fee payable for the initial year of the company's operations shall be the relevant annual fee indicated above, pro-rated from the month in which the licence is granted to the following 31 March.

(Replaced by Legal Notice 13/2009)

SCHEDULE 2

(Regulation 6)

(FORM OF LICENCE)

BANKING ORDINANCE

BANKING REGULATIONS

LICENCE TO CARRY ON BANKING BUSINESS

1.being a financial institution incorporated in and having its Head Office at is hereby granted a National Banking Licence*
an Oversea Banking Licence*
both a National Banking Licence and an Oversea Banking Licence*
to carry on banking business in the Islands*
from within the Islands*
in and from within the Islands*
2. The licensee is/is not* permitted under section 20 of the Ordinance to use the word "bank" in the title or description of its business.
3. This licence is issued under and subject to the provisions of the Banking Ordinance and these Regulations and any other Regulations made under the Ordinance and subject also to the conditions (if any) set out hereunder.

CONDITIONS

Dated at Grand Turk thisday of 20

Governor

* Delete as appropriate.

DECLARATIONS OF APPROVED AUDITOR FIRMS –SECTION 31

(Gazette Notices 330, 331, 332, 333 and 334/1990)

The following firms have been declared to be approved for the purposes of section 31 of the Banking Ordinance, upon the conditions noted—

Name	Conditions	Gazette Notice	Date
Morris, Cottingham, Co.	Overseas Banks only	G.N. 335/90	5/10/90
Ernst and Young	None	G.N. 336/90	5/10/90
KPMG Peat Marwick	None	G.N. 337/90	5/10/90
Coopers and Lybrand	None	G.N. 338/90	5/10/90

BANKING (CAPITAL) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Short title
 2. Interpretation
 3. Paid up share capital
 4. Amount of guarantee
 5. Amount of assigned capital
 6. Capital adequacy ratio
 7. Risk weighting of assets
 8. Risk weighting of off-balance sheet exposure
 9. Share capital and disclosed reserves
 10. Unpublished reserves and other amounts
 11. Guarantee ratio
 13. Assigned capital ratio
 14. Financial concessions to related persons
 15. Financial concessions to connected counterparties
-

BANKING (CAPITAL) REGULATIONS – SECTIONS 10 TO 15

(Legal Notice 2/2003)

Commencement

[7 February 2003]

Short title

1. These Regulations may be cited as the Banking (Capital) Regulations.

Interpretation

2. In these Regulations references to numbered sections are to sections as so numbered in the Banking Ordinance.

Paid up share capital

3. The amount of paid up share capital to be retained under section 10(1) shall be three million United States dollars.

Amount of guarantee

4. The amount of the guarantee under section 11 shall be three million United States dollars.

Amount of assigned capital

5. The amount of assigned capital under section 12 shall be three million United States dollars.

Capital adequacy ratio

6. The amount prescribed under section 13(1) shall be eight per cent.

Risk weighting of assets

7. A licensed financial institution's assets listed in column (1) of the table below shall be weighted for risk by deducting from their value the percentage of that value listed opposite and in relation to the assets in column (2) for the purposes of the definition of risk weighted assets in section 2 and of section 13(1) and of regulation 10(c)(iii) of these Regulations—

(1) (On –Balance Sheet Assets)	(2) (Risk Weights)
1. Local and foreign currency.	0%
2. (a) Treasury bills and other securities issued or guaranteed by the Government. (b) Claims on statutory boards, other public sector entities and countries outside the Islands and approved by the licensing committee and loans to entities guaranteed by the Government. (c) Claims fully secured by cash on deposits at the institution which reports to the Financial Services Commission under the Banking Ordinance or Government securities and guarantees.	10%
3. (a) Claims on financial institutions licensed by the Financial Services Commission and financial institutions in countries outside the Islands and approved by the licensing committee and loans guaranteed by institutions. (b) Claims on multilateral developments and claims related to multilateral developments and guaranteed or collateralised by securities issued by banks approved by the licensing committee. (c) Bankers' acceptances held as part of a licensed institution's portfolio. (d) Cash items in the process of collection.	20%
4. Loans fully secured by mortgages on residential properties whether these properties are occupied by their owners or rented.	50%

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5. (a) Claims on the private sector.
 (b) Loans and advances other than those in paragraph 4.
 (c) Premises, plant and equipment and other fixed assets.
 (d) Real estate and equity investments. 100%
 (e) Capital instruments issued by financial institutions outside the Islands and approved by the licensing committee, unless deducted from capital under section 13(3).
 (f) Assets other than those listed in paragraphs 1 to 5(e).
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Risk weighting of off-balance sheet exposure

8. The off-balance sheet exposure of a licensed financial institution shall be weighted for risk for the purposes of the definition of risk weighted assets, by the nominal principal amounts of a licensed financial institution's off-balance sheet engagements or activities listed in column (1) of the table below—

- (a) being multiplied by the credit conversion factor listed opposite and in relation to them in column (2); and
 (b) the resulting amount being weighted for risk according to the nature of the counterparty under regulation 10:

(1) (Off- Balance Sheet Items)	(2) (Credit Conversion Factor)
1. (a) Instruments which are substitutes for loans and advances including general guarantees of indebtedness, standby letters of credit other than those mentioned in paragraphs 2 and 4 and bank acceptance guarantees. (b) Sales and purchase agreements with recourse where the credit risk remains with the licensed financial institution. (c) Forward assets purchases, forward deposits and partly-paid shares and securities representing commitments with certain draw-down.	100%
2. (a) Certain transaction-related contingent items including performance bonds, warranties and standby letters of credit related to particular transactions. (b) Note issuance facilities and revolving underwriting facilities. (c) Other commitments including formal standby facilities and credit lines, with an original maturity of over one year.	50%

3. Short-term self liquidating trade related contingencies including documentary credits collateralised by the underlying shipments.	20%
4. Commitments other than those listed in paragraphs 1 to 3 including formal standby facilities and credit lines—	0%
(a) with an original maturity of up to one year; or	
(b) which can be unconditionally cancelled at any time.	

Share capital and disclosed reserves

9. A licensed financial institution's capital and the amount of that capital for the purposes of subsection (2)(a) and subsection (3)(a) respectively of section 13 shall be—

- (a) its shares at their nominal paid up value where fully paid up;
- (b) the amount received in excess of the nominal value;
- (c) where shares are partly paid up, the amount paid;
- (d) perpetual non-cumulative preference shares where issued and fully paid up;
- (e) perpetual non-cumulative preference shares convertible into ordinary shares including those redeemable at the option of the issuer with the Commission's consent, where the shares have been issued and fully paid up;
- (f) disclosed reserves under the Banking Ordinance;
- (g) disclosed reserves including—
 - (i) the undistributed balances on the profit and loss account attributable to previous years;
 - (ii) reserves created or increased by appropriations of retained earnings or other surplus e.g. share premiums, retained profits, general reserves and legal reserves;
 - (iii) general funds (such as a fund for general banking risks in certain EC countries) of the same quality that meet the following criteria—
 - (A) allocations to the funds must be made out of post-tax retained earning or out of pre-tax earnings adjusted for all potential tax liabilities;
 - (B) the funds and movements into or out of them must be disclosed separately in the bank's published accounts;
 - (C) the funds must be available to a bank to meet losses for unrestricted and immediate use as soon as they occur;
 - (D) losses cannot be charged directly to the funds but must be taken through the profit and loss account; and
 - (E) in the case of consolidated accounts, minority interest in the equity of the subsidiaries which are less than wholly owned.

Undisclosed reserves and their amounts

10. A licensed financial institution's reserves other than its disclosed reserves and the disclosed reserves' amounts for the purposes of subsection (2)(b) and subsection (3)(b) respectively of section 13 shall be—

- (a) undisclosed reserves which have been created out of the institution's profit and loss account and which are accepted by the Commission;
- (b) reserves created by revaluation of assets subject to—
 - (i) the assets being considered by the Commission to be prudently valued, reflecting the possibility of price fluctuations and forced sale; and
 - (ii) in the case of revaluation of long term holdings of equity, a discount of fifty five per cent of the difference between their historic cost book value and their market value, being made;
- (c) general provisions or general loan-loss reserves which—
 - (i) are created against the possibility of losses not yet identified;
 - (ii) do not reflect a known deterioration in the valuation of identified assets; and
 - (iii) do not exceed one and a quarter per cent of the risk weighted assets;
- (d) instruments which combine characteristics of equity and debt, known as "hybrid debt capital instruments" and which meet the following requirements—
 - (i) they are unsecured, subordinated and fully paid-up;
 - (ii) they are not redeemable at the initiative of the holder or without the prior consent of the Commission;
 - (iii) they are available to participate in losses without the licensed financial institution being obliged to cease trading; and
 - (iv) they allow service obligations to be deferred where the profitability of the licensed financial institution would not support payment; and
- (e) other subordinated term debt including—
 - (i) conventional unsecured subordinated debt capital instruments with a minimum original fixed term to maturity of over five years; and
 - (ii) limited life redeemable preference shares,
after amortisation and not exceeding 50% of the capital calculated under section 13(3)(a).

Ratio under Section 14

11. The amount of the ratio under section 14 shall be 11%.

Ratio under Section 15

12. The amount of the ratio under section 15 shall be 11%.

Financial concessions to related persons

13. A licensed financial institution may grant financial concessions to related persons for the purposes of section 21(1) where—

- (a) the value of the financial concessions granted would not exceed twenty-five per cent of the paid up capital of the financial institution;
- (b) granting the financial concession would not increase the total value of all the concessions granted to the related persons before that time to an amount exceeding twenty-five per cent of the paid up capital of the institution; or
- (c) the licensed financial institution has obtained approval from the Commission to grant the concessions.

Financial concession to connected counterparties

14. For the purposes of section 24(1) a licensed financial institution may grant a financial concession to a connected counterparty or permit a financial concession to be outstanding to a connected counterparty where—

- (a) the financial concession would not exceed twenty-five per cent of the paid up capital of the institution; or
- (b) the licensed financial institution has obtained approval from the Commission to grant the concession.

