



ANALYSIS

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2011, No. 15

An Act to provide for the licensing, regulation, and supervision of banking business and for related purposes

(13 December 2011)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title - This Act is the Banking Act 2011.
2. Commencement - This Act comes into force on 1 December 2011.

PART 1
PRELIMINARY

3. Application - (1) This Act has effect despite the Companies Act 1970-71 and the International Companies Act 1981-82.
 (2) If there is any conflict between this Act and the Companies Act 1970-71 or the International Companies Act 1981-82, this Act prevails.
 (3) Nothing in this Act exempts a licensee from –
 (a) the Development Investment Act 1995-96; or
 (b) the Entry, Residence and Departure Act 1971-72.
4. Interpretation - (1) In this Act, unless the context otherwise requires, –
 “accounting records” includes the working papers and other documents (including data held electronically or in any other non-paper-based form) that are necessary to explain the methods and calculations by which financial statements are made up;

“approved auditor” means an auditor appointed under section 47(1);

“banking business” means –

- (a) the business of receiving funds through the acceptance of money deposits that are payable on demand, after a fixed period, or after notice; and
- (b) the use of those funds either in whole or in part for loans or investment for the account and the risk of the person depositing that money; and
- (c) other activities specified in a prudential statement as constituting banking business;

“Commission” means the Financial Supervisory Commission established under the Financial Supervisory Commission Act 2003;

“company” means a body corporate incorporated under the laws of the Cook Islands or any other country;

“compliance inspection” means the activities referred to in section 18(1);

“Court” means the High Court of the Cook Islands;

“court-appointed manager” means a person appointed by the Court as a court-appointed manager under section 25;

“credit” means a loan, advance, line of credit, commitment letter, standby facility, letter of credit, or any other facility or arrangement in which a licensee –

- (a) agrees to provide funds, financial guarantees, or commitments to a customer; or
- (b) undertakes a financial liability to another person on behalf of a customer;

“directive” means a written directive issued by the Commission in accordance with section 66;

“director” means an individual who exercises management and policy-making functions at the highest level of a company, and includes an individual who is a member of the board of directors, committee, council, or other governing body of a company;

“disqualified person” means a person referred to in subsection (3);

“dollars” and “\$” means dollars of the currency of the Cook Islands, unless otherwise stated;

“domestic banking business” means banking business that is conducted with a person who –

- (a) is a resident of the Cook Islands; or
- (b) is visiting the Cook Islands; or

- (c) is not a residence of the Cook Islands if that business is conducted wholly in the currency of the Cook Islands;

“eligible capital” means the eligible capital requirements of a licensee specified in a prudential statement or a directive in accordance with section 30;

“examiner” means a person appointed as an examiner under section 21(1);

“financial statements” –

- (a) means profit and loss accounts and balance sheets; and
- (b) includes –
 - (i) notes (other than directors’ reports) attached to, or intended to be read with, the profit and loss accounts or balance sheets; and
 - (ii) if applicable, consolidated profit and loss accounts and consolidated balance sheets;

“foreign bank” means a company that is incorporated and licensed to carry on banking business in a country other than the Cook Islands;

“foreign licensee” means a licensee that is incorporated in a country other than the Cook Islands;

“foreign supervisory authority” means an authority or body of a country other than the Cook Islands that performs functions corresponding or similar to those performed by the Commission;

“holding company” has the same meaning as in the Companies Act 1970-71;

“incorporated” means, as applicable, incorporated, formed, constituted, or established;

“international banking business” means banking business that is conducted with a person who is not a resident of the Cook Islands;

“law enforcement authority” –

- (a) means an authority or body, in the Cook Islands or any other country, dealing with the investigation of suspected criminal activity; and
- (b) includes the Financial Intelligence Unit established by the Financial Transactions Reporting Act 2003;

“licence” means –

- (a) a domestic banking licence issued under section 9 that authorises the licensee to carry on domestic banking business in and from within the Cook Islands;
- (b) an international banking licence issued under section 9 that authorises the licensee to carry on international banking business in and from within the Cook Islands;

“licensee” means a body corporate or a statutory corporation that holds a licence;

“manager”, in relation to a licensee, means –

- (a) an individual who occupies the position of chief executive (however described) of the licensee; or
- (b) any other individual who under the immediate authority of the chief executive or a director exercises management functions for the licensee;

“Minister” means the Minister of Finance, and includes any member of the Cabinet or Minister of the Cook Islands Government acting for, or in place of, the Minister;

“officer”, in relation to a licensee, includes a director, manager, or company secretary;

“prescribed” means prescribed by the regulations;

“prudential matters”, in relation to a licensee, includes matters relating to the conduct by the licensee of its affairs with integrity, prudence, and professional skill in order to keep itself in a sound financial position and not to cause or promote instability or a loss of confidence in the financial system of the Cook Islands;

“prudential statement” means a prudential statement issued by the Commission in accordance with section 65;

“prudential supervision” means the supervision of prudential matters and includes –

- (a) the collection and analysis of information in respect of prudential matters relating to licensees; and
- (b) the encouragement and promotion of licensees to carry out sound practices in relation to prudential matters; and
- (c) the evaluation of the effectiveness and carrying out of those practices;

“records” includes –

- (a) accounting records; and
- (b) books, registers, documents, and vouchers; and
- (c) securities and financial instruments; and
- (d) any other record of information; –

whether stored in paper form, on disk or tape, electronically, or in any other non-paper-based form;

“regulations” mean regulations made under this Act;

“resident of the Cook Islands” –

- (a) means –
 - (i) an individual who ordinarily resides in the Cook Islands; or
 - (ii) a company incorporated or registered under the Companies Act 1970-71; or

- (iii) a company, partnership, or other entity, wherever incorporated, with a place of business in the Cook Islands; but
- (b) does not include –
 - (i) a licensee; or
 - (ii) a trustee of a trust registered under the International Trusts Act 1984; or
 - (iii) a company incorporated or registered under the International Companies Act 1981-82; or
 - (iv) a partnership registered under the International Partnerships Act 1984; or
 - (v) a limited liability company incorporated under the Limited Liability Companies Act 2008; or
 - (vi) other prescribed persons;

“significant interest” has the meaning given by subsection (2);

“subsidiary” has the same meaning as in the Companies Act 1970-71;

“voting stock” means any stock, share, security, or other entitlement that carries with it the right for the holder, whether personally or through a nominee, to vote at any general meeting of the issuer.

- (2) A person has a significant interest in a company if –
 - (a) the person has a legal or equitable interest in that company or in a holding company of that company; and
 - (b) the interest directly or indirectly –
 - (i) enables the person to control 10% or more of the voting stock of the company at a general meeting of the company; or
 - (ii) entitles the person to a share of 10% or more in dividends declared and paid by the company; or
 - (iii) entitles the person to a share of 10% or more in any distribution of the surplus assets of the company; –

whether or not the person holds the interest alone or with one or more other persons.

- (3) A person is a disqualified person if the person –
 - (a) has been convicted of an offence against, or arising out of, this Act or any other Act administered by the Commission; or
 - (b) has been convicted of an offence against, or arising out of, a law of a country other than the Cook Islands that corresponds to this Act; or
 - (c) is or has been an officer, or is or has been directly or indirectly concerned in the management, of a licensee, a bank, or other financial institution in the Cook Islands or any other country that has had its licence revoked or has been wound up; or
 - (d) has been convicted by a court in the Cook Islands or any other country for an offence involving dishonesty; or
 - (e) is or becomes bankrupt; or

- (f) has applied during the past 7 years to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
- (g) has during the past 7 years compounded with his or her creditors.

PART 2

LICENSING AND CONDUCT OF BANKING BUSINESS

5. Licence needed to carry on banking business - (1) A person must not carry on banking business in or from within the Cook Islands unless the person –

- (a) is a body corporate or a statutory corporation; and
- (b) holds a licence.

(2) A person who holds funds in contravention of subsection (1) must repay the funds in accordance with a directive.

(3) If the Commission has reason to believe that a person is contravening subsection (1), the Commission may examine the person's books, accounts, and records to find out if there is a contravention.

(4) If the Commission determines that a person is contravening subsection (1), the Commission must issue a notice to the person –

- (a) informing the person that it is contravening this Act; and
- (b) informing the person of the basis for the Commission's determination; and
- (c) ordering the person to cease carrying on banking business.

(5) For the purposes of this section, a person is carrying on banking business if the person –

- (a) advertises for, or solicits, banking business; or
- (b) purports to be licensed, or otherwise entitled, to carry on banking business; or
- (c) takes or uses any name, title, or description implying, or likely to lead the public to believe, that the person is licensed, or otherwise entitled, to carry on banking business; or
- (d) makes any representation that the person is carrying on, or is licensed to carry on, banking business on any letterhead, notice, or advertisement or in any other manner.

(6) A person that contravenes subsection (1) or (2) commits an offence and is liable on conviction, –

- (a) if the person is an individual, to a fine not exceeding \$50,000, or imprisonment for a term not exceeding 3 years, or both; or
- (b) in any other case, to a fine not exceeding \$250,000.

(7) A person that refuses to make books, accounts, or records available for examination by the Commission for the purposes of subsection (3) commits an offence and is liable on conviction to a fine not exceeding \$25,000.

6. Application for licence to carry on banking business - (1) A body corporate or a statutory corporation may apply in writing to the Commission for a licence.

(2) An application under subsection (1) must be in the form specified by the Commission and be accompanied by –

- (a) a statement disclosing the ultimate and intermediate, if any, beneficial ownership of the applicant; and

- (b) all other information and documents specified by the Commission; and
- (c) the prescribed application fee and the prescribed annual licence fee.

(3) The Commission may request in writing that an applicant provide such additional information and documents as the Commission considers necessary to determine the application.

(4) The applicant must provide any additional information and documents requested in accordance with subsection (3) to the Commission within the time specified by the Commission.

(5) An applicant must not provide any information or document that is false or misleading in any material particular in connection with an application.

(6) An applicant that contravenes subsection (5) commits an offence and is liable on conviction to a fine not exceeding \$100,000.

7. Criteria for the issue of a licence - (1) The Commission must not issue a licence unless it is satisfied that –

- (a) the ownership spread, reputation, financial capacity, and financial history (if any) of the applicant are satisfactory; and
- (b) each officer of the applicant is a fit and proper person and has sufficient experience in banking to be involved with the operations or management of a bank; and
- (c) each associate of the applicant is a fit and proper person to have an interest in a bank; and
- (d) the risk management, accounting, and internal control systems of the applicant are satisfactory; and
- (e) the capital structure of the applicant is adequate and the amount of fully paid-up capital of the applicant is at least \$2,000,000; and
- (f) if issued with a licence, the applicant intends to carry on banking business of an acceptable kind; and
- (g) if issued with a licence, the applicant will comply with this Act, the regulations, and all other enactments that apply to the applicant; and
- (h) the relationship between the applicant and its associates will not prejudice the effective supervision of the applicant's banking business; and
- (i) issuing the licence is not against the public interest and would not be detrimental to the reputation of the Cook Islands.

(2) For the purposes of subsection (1), –

- (a) a person is an associate of an applicant if the person –
 - (i) has a significant interest in the applicant; or
 - (ii) is a subsidiary of the applicant; or
 - (iii) is a holding company of the applicant;
- (b) if a person has a significant interest in the applicant and a significant interest in another company, that other company is an associate of the applicant.

8. Additional criteria for issue of a licence to a foreign bank - The Commission must not issue a licence to a foreign bank or a wholly owned subsidiary of a foreign bank unless the Commission is satisfied –

- (a) of the matters set out in section 7(1); and
- (b) that the reputation of the foreign bank is satisfactory; and
- (c) that the relevant law and regulatory requirements relating to the licensing and supervision of banking business in the country in which the foreign bank is incorporated are acceptable; and
- (d) that there is sufficient evidence that the foreign bank is subject to comprehensive supervision and regulation on a consolidated basis by relevant supervisory authorities in the country in which the foreign bank is incorporated (the “home authority”); and
- (e) that the foreign bank has provided written confirmation from its home authority that –
 - (i) the home authority has no objection to the foreign bank carrying on banking business in the Cook Islands; and
 - (ii) the foreign bank is supervised on a basis consistent with the guidelines established by the Basel Committee on Banking Supervision; and
 - (iii) the home authority is willing to cooperate with the Commission in the supervision of the foreign bank and its operations in the Cook Islands; and
- (f) that the foreign bank has provided a written acknowledgment that the Commission may discuss its conduct and status with the home authority; and
- (g) with the capital, legal, and operating structure and arrangements between the foreign bank and its subsidiaries (if any); and
- (h) that proper resources and arrangements are in place, having regard to the scale and nature of the proposed operations of the foreign bank in the Cook Islands, to ensure that –
 - (i) the foreign bank complies with its legal obligations; and
 - (ii) the Commission has the ability to carry out its supervisory functions under this Act; and
- (i) that the foreign bank will provide the Commission with any information that the Commission may require for it to carry out its prudential supervision functions under this Act; and
- (j) that the foreign bank will keep the Commission informed of any significant developments adversely affecting the foreign bank’s financial soundness or reputation and the financial soundness or reputation of the foreign bank’s holding company (if any).

9. Commission to issue or refuse licence within 3 months - (1) Within 3 months after receiving an application for a licence and all other information and documents requested by the Commission under section 6, the Commission must –

- (a) issue a licence to the applicant subject to such terms and conditions as the Commission considers fit; or
- (b) refuse the application in accordance with subsection (3).

(2) However, the Commission may issue an international banking licence only to a person who holds a domestic banking licence.

(3) If the Commission refuses an application, it must –

- (a) advise the applicant in writing of the reasons why the Commission refused to issue a licence to the applicant; and
- (b) refund the annual licence fee paid by the applicant; and
- (c) retain the application fee paid by the applicant.

(4) As soon as practicable after a licence has been issued, the Commission must publish a notice to this effect on the Commission's public website, which notice may list any terms and conditions imposed on the licence.

(5) A licence issued under this Act remains in force until it is –

- (a) revoked or suspended by the Commission under section 14; or
- (b) surrendered by the licensee under section 16.

10. No assignment or transfer of licence - (1) A licence must not be assigned or transferred.

(2) A purported assignment or transfer of a licence is null and void.

11. Obligations on licensee - A licensee must not carry on banking business in contravention of –

- (a) terms or conditions that are imposed on its licence; or
- (b) this Act or the regulations; or
- (c) a prudential statement that applies to the licensee; or
- (d) a directive that applies to the licensee.

12. Terms and conditions imposed on a licence - (1) A licence is subject to all terms and conditions imposed on it in accordance with –

- (a) section 9(1)(a);
- (b) this section;
- (c) section 20.

(2) The Commission may –

- (a) vary or revoke a term or condition of a licence; or
- (b) impose further terms or conditions on a licence.

(3) Before taking action under subsection (2), the Commission must give the relevant licensee 21 days notice in writing of the changes proposed and an opportunity to make a submission in writing to the Commission about the changes.

(4) The licensee must make its submission to the Commission within 14 days after receiving the notice.

(5) The Commission must take into account any submissions received in deciding whether or not to proceed with the changes.

(6) A licensee that has had a term or condition imposed on its licence in accordance with this section or section 20 may submit in writing to the Commission a request to have the condition waived or removed.

(7) The Commission may, at its discretion, grant a request made in accordance with subsection (6) if the Commission determines that –

- (a) the licensee has taken appropriate steps to address the circumstances that gave rise to the term or condition; or
- (b) the circumstances that gave rise to the term or condition no longer exist.

13. Annual fee - (1) A licensee must pay to the Commission the prescribed annual licence fee on or before each anniversary of the licence being issued.

(2) A licensee that fails to pay the fee by the due date is liable to pay a prescribed surcharge to the Commission on or before the date specified by the Commission.

(3) An annual licence fee and any surcharge are debts due to the Commission and are recoverable in a court of competent jurisdiction.

(4) A licensee that carries on banking business after failing to pay an annual licence fee or a surcharge by its due date commits an offence and is liable on conviction to a fine not exceeding \$50,000.

14. Revocation or suspension of licence - (1) The Commission may revoke or suspend the licence of a licensee if –

- (a) the Commission is entitled to take enforcement action against the licence under section 20; or
- (b) the licensee fails to commence carrying on banking business in or from within the Cook Islands within 3 months after the issue of its licence; or
- (c) the licensee ceases to carry on banking business in or from within the Cook Islands for a period exceeding 3 months; or
- (d) the licensee fails to pay an annual licence fee in accordance with section 13 within 30 days after its due date; or
- (e) the licensee makes a written request to the Commission for its licence to be revoked.

(2) If the Commission intends to revoke or suspend a licence on 1 of the grounds in subsection (1)(a) to (d), the Commission must give the licensee 30 days notice in writing of its intention and the grounds on which it intends to revoke or suspend the licence.

(3) The licensee may, within 21 days after receiving the notice, submit in writing reasons why its licence should not be revoked or suspended.

(4) The Commission may revoke or suspend a licence if –

- (a) the licensee does not make a submission in accordance with subsection (3); or
- (b) after having taken into account a submission made by the licensee, the Commission is of the opinion that the licensee has failed to show good reason why its licence should not be revoked or suspended.

(5) Despite anything to the contrary, the Commission may suspend a licence without providing notice to the licensee under subsection (2) or providing the licensee with an opportunity to respond under subsection (3) if the Commission determines that that action is necessary to –

- (a) protect the licensee's depositors or other creditors; or
- (b) maintain stability or confidence in the financial system of the Cook Islands.

(6) The Commission must give a licensee written notice of a revocation or suspension of its licence.

(7) A revocation or suspension takes effect on –

- (a) the date the notice referred to in subsection (6) is given to the licensee; or
- (b) such later date as is specified by the Commission in the notice.

(8) If a licence is revoked or suspended, the licensee must –

- (a) cease to carry on banking business in or from within the Cook Islands on and from the date the revocation or suspension takes effect; and
- (b) immediately return to the Commission the original licence and all copies of the licence in its custody or control.
- (9) The period of suspension of a licence must not exceed 30 days.
- (10) However, if it is satisfied that it is in the public interest to do so, the Commission may extend the period of suspension of a licence for 1 or more further periods not exceeding 30 days each.
- (11) The Commission must publish a notice on its public website if a licensee's licence has been suspended or revoked.

15. Appeals against revocation or suspension - (1) A licensee may appeal to the Court against a decision of the Commission to revoke or suspend its licence.

(2) An appeal must be made to the Court within 21 days after the date the licence was revoked or suspended, or within such further time as the Court may allow.

(3) Unless the Court otherwise orders, an appeal does not suspend the decision of the Commission.

(4) In determining an appeal, the Court may confirm, vary, or revoke the decision of the Commission.

16. Surrender of licence - (1) A licensee that has ceased to carry on banking business in or from within the Cook Islands may apply to the Commission to surrender its licence if the licensee –

- (a) produces evidence that it has repaid all deposits held or administered by it; or
- (b) is being wound up voluntarily and produces evidence that it is solvent and is able on demand to repay all deposits held or administered by it and all of its other creditors.

(2) If it receives an application in accordance with subsection (1), the Commission may approve the surrender of the licence and publish a notice of the surrender in any publication it considers appropriate.

(3) If it receives an application in accordance with subsection (1)(b), the Commission may request the Attorney-General to apply to the Court for an order that the licensee be wound up, either by the Court or subject to the supervision of the Court.

(4) If the Court orders that the licensee be wound up, the provisions of the Companies Act 1970-71 relating to the winding up of a company by, or subject to the supervision of, the Court apply with all necessary modifications.

PART 3

SUPERVISION AND ENFORCEMENT

17. Banking supervision - (1) The functions of the Commission include –

- (a) undertaking, in accordance with this Act and the regulations, the prudential supervision of the banking business of licensees with a view to maintaining stability and confidence in the financial system of the Cook Islands; and
- (b) reviewing banking business and implementing internationally accepted standards for the prudential supervision of banking business; and

- (c) recommending to the Minister amendments to this Act and the regulations that the Commission considers necessary to enable it to supervise banking business in accordance with internationally accepted standards; and
 - (d) collecting and analysing the information required by the Commission in respect of prudential matters relating to licensees; and
 - (e) encouraging and promoting licensees to carry out sound practices in relation to prudential matters; and
 - (f) evaluating the effectiveness and carrying out of those practices.
- (2) In carrying out its functions in relation to a licensee, the Commission may take into account the following matters –
- (a) the capital adequacy of the licensee in relation to the size and nature of its banking business; and
 - (b) the asset concentration and risk exposure of the licensee; and
 - (c) the separation of the licensee's banking business from the financial interests of any person having a significant interest in the licensee; and
 - (d) the adequacy of the liquidity of the licensee in relation to its liabilities; and
 - (e) the quality of the licensee's assets and the adequacy of its loss provision; and
 - (f) the internal controls, risk management, and accounting systems of the licensee; and
 - (g) the quality of the management of the licensee; and
 - (h) the licensee's compliance with this Act and the regulations; and
 - (i) such other matters as the Commission considers relevant.

18. Compliance inspection - (1) The Commission may, for the purposes of the prudential supervision of the banking business of licensees, do all or any of the following–

- (a) inspect a licensee's premises, banking business, and systems and controls, whether they are located in the Cook Islands or in another country;
- (b) inspect the assets, including cash, belonging to, or in the possession or control of, a licensee;
- (c) examine and make copies of records belonging to, or in the possession or control of, a licensee that, in the opinion of the Commission, relate to the carrying on of banking business by the licensee.

(2) Subsection (3) applies if, after a compliance inspection, the Commission is satisfied that a person –

- (a) is, or has been, an officer, employee, subsidiary, or agent of a licensee; or
- (b) holds, or has held, a significant interest in a licensee; or
- (c) may have relevant records or information concerning the licensee.

(3) If this subsection applies, the Commission may, by notice in writing, require the person –

- (a) to produce any records in the person's possession or control; or
 - (b) to provide any information within the person's knowledge or belief concerning the banking business carried on, or formerly carried on, by the licensee.
- (4) A notice issued under subsection (3) must state the time period within which, and the place where, the records must be produced or the information provided.
- (5) A person that fails to comply with a notice issued under subsection (3) commits an offence and is liable on conviction, –
- (a) if the person is an individual, to a fine not exceeding \$50,000, or imprisonment for a term not exceeding 2 years, or both; or
 - (b) in any other case to a fine not exceeding \$50,000.

19. Participation of a foreign supervisory authority - (1) The Commission may, upon the request of a foreign supervisory authority, permit that authority to take part in a compliance inspection undertaken by the Commission.

(2) However, the Commission must not permit a foreign supervisory authority to take part in a compliance inspection unless it is satisfied that –

- (a) the compliance inspection is necessary for the effective consolidated supervision of the licensee; and
- (b) the foreign supervisory authority is subject to adequate legal restrictions on further disclosure of information obtained during the compliance inspection; and
- (c) the foreign supervisory authority will not, without the written permission of the Commission, –
 - (i) disclose information obtained during the compliance inspection to any person other than an officer or employee of the authority engaged in prudential supervision; or
 - (ii) take any action on information obtained during the compliance inspection.

20. Enforcement action - (1) The Commission may take enforcement action against a licensee if, –

- (a) in the opinion of the Commission, the licensee –
 - (i) has contravened this Act or the regulations or has failed to follow any prudential statement; or
 - (ii) is following unsound or unsafe practices in the conduct of its banking business that are likely to jeopardise its obligations to its depositors or other creditors or likely to adversely affect the operation or stability of the financial system of the Cook Islands; or
 - (iii) is, or is likely to become, insolvent; or
 - (iv) has failed to comply with a directive issued to it; or
 - (v) is in breach of any term or condition of its licence; or
 - (vi) has furnished the Commission with any false, inaccurate, or misleading information; or
- (b) the licensee –
 - (i) is compulsorily wound up; or
 - (ii) has passed a resolution for voluntary winding up; or

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- (iii) is dissolved; or
 - (c) the licensee, or an officer or shareholder of the licensee, is convicted of any offence involving dishonesty by a court in the Cook Islands or any other country; or
 - (d) a receiver, liquidator, statutory manager, or other insolvency administrator is appointed in respect of the licensee's banking business; or
 - (e) possession is taken of any of the licensee's property by, or on behalf of, the holder of a debenture secured by a registered charge; or
 - (f) in the opinion of the Commission, a person who is not a fit and proper person to have an interest in, or to be concerned with the management of, the licensee –
 - (i) has a share or interest in the licensee, either equitable or legal; or
 - (ii) is an officer of the licensee; or
 - (g) in the opinion of the Commission, the licensee, or a subsidiary or holding company of the licensee, has refused or failed to cooperate with a compliance inspection undertaken by the Commission.
- (2) Enforcement action may consist of all or any of the following –
- (a) the imposition of terms or conditions on the licensee;
 - (b) the revocation or suspension of the licence of the licensee under section 14;
 - (c) the appointment of an examiner to carry on an investigation under section 21;
 - (d) the appointment of a qualified person to audit the licensee on the conduct of its banking business;
 - (e) the appointment of a court-appointed manager under section 25.
- (3) To avoid doubt, the procedures set out in section 12(3) to (5) do not apply to the imposition of terms or conditions under this section.
- (4) The Commission may publish details of any action taken under subsection (2) on its public website.

21. Appointment of examiner - (1) The Commission may, by notice in writing, appoint an examiner to investigate and report to the Commission on a licensee or any of its subsidiaries if –

- (a) the Commission determines that the appointment of an examiner is necessary for the effective consolidated supervision of the licensee; or
- (b) the Commission intends to take enforcement action under section 20 against the licensee; or
- (c) a written request for an investigation is made to the Commission by –
 - (i) shareholders holding not less than one-third of the total voting stock in the licensee; or
 - (ii) depositors holding not less than one-tenth of the gross amount of the deposit liabilities of the licensee.

(2) If a request for an investigation is made under subsection (1)(c), the Commission may refuse to appoint an examiner until the shareholders or depositors provide security for the costs of the investigation to the satisfaction of the Commission.

(3) An investigation in accordance with subsection (1) may be made in respect of –

- (a) the nature, management, conduct, or state of the licensee's banking business or any aspect of it; and
- (b) the ownership and control of the licensee.

(4) An examiner appointed under subsection (1) may exercise any of the powers conferred on the Commission by section 17.

(5) As soon as practicable after the conclusion of an investigation, the examiner must submit a full report of the investigation to the Commission.

(6) The Commission may require the costs and expenses of, and incidental to, the investigation to be paid by the licensee.

22. Directive to remedy practices - (1) The Commission may issue a directive to a licensee if the Commission is of the opinion that the licensee –

- (a) is following unsound or unsafe practices in the conduct of its banking business that are –
 - (i) likely to jeopardise its obligations to its depositors or other creditors; or
 - (ii) likely to adversely affect the operation, stability, or reputation of the financial system of the Cook Islands; or
- (b) has contravened, or failed to comply with, the terms and conditions of its licence, a prudential statement, this Act, or the regulations.

(2) The directive may require the licensee –

- (a) to cease the practice, contravention, or non-compliance; and
- (b) to take such action (including action to replace or strengthen the licensee's management) as may be specified in the directive to correct the conditions resulting from the practice, contravention, or non-compliance.

23. Insolvency of licensee - (1) A licensee must immediately notify the Commission in writing if the licensee considers that it –

- (a) is insolvent; or
- (b) is likely to become insolvent; or
- (c) is likely to be unable to meet its obligations.

(2) Subsection (3) applies if –

- (a) a licensee notifies the Commission under subsection (1); or
- (b) the Commission is satisfied, or an auditor's report under section 49 or 50 or an inspection or examination under section 18 or 21 shows, that the licensee –
 - (i) is carrying on its banking business in a manner that is detrimental to the interests of its depositors, its creditors, or the public; or
 - (ii) is likely to be unable to meet its obligations when they fall due.

(3) If this subsection applies, the Commission must do 1 or more of the following –

- (a) order the licensee to take whatever action in relation to its banking business that the Commission may specify;
- (b) appoint a suitably qualified person to advise the licensee on the proper conduct of its banking business and report to the Commission as and when required by the Commission;
- (c) apply to the Court for the appointment of a court-appointed manager under section 25;
- (d) revoke or suspend the licensee's licence;
- (e) present a petition to the Court in accordance with the provisions of the Companies Act 1970-71 for the winding up of the licensee if sufficient grounds exist under that legislation.

(4) For the purposes of this section, the provisions of the Companies Act 1970-71 relating to the winding up of companies apply, with all necessary modifications, to licensees –

- (a) as if the licensees were incorporated as companies under the Companies Act 1970-71; and
- (b) except that, on the liquidation or winding up of a licensee, the depositors of a licensee that are residents of the Cook Islands must be paid prior to all other unsecured creditors of the licensee.

(5) Subsection (4)(b) overrides section 25(5)(b).

(6) If a liquidator is appointed under this section for a foreign licensee, the liquidator's powers apply to the licensee's –

- (a) operations in the Cook Islands; and
- (b) property, rights, assets, and liabilities, wherever they are located, that relate to its banking business in or from within the Cook Islands.

24. Adviser appointed under section 23 - (1) If an adviser is appointed under section 23(3)(b), the licensee must –

- (a) allow the adviser to access to its books, accounts, records, and other documents; and
- (b) provide all information and facilities necessary for the adviser to carry out his or her duties.

(2) The licensee must pay the adviser the remuneration specified by the Commission.

25. Appointment of a court-appointed manager - (1) The Commission may, by notice of motion, apply to the Court for an order that the Commission, or a person nominated by the Commission, be appointed as a court appointed manager of a licensee and each of its subsidiaries.

(2) The Court must not make an order unless satisfied that –

- (a) an appointment is necessary to protect the stability of the financial system of the Cook Islands; or
- (b) an appointment is necessary to protect the interests of the depositors or creditors of the licensee; or
- (c) it is in the public interest to make an appointment.

(3) An order made under subsection (1) may –

- (a) include any order in relation to the licensee that the Court would be able to make in relation to a company that is in liquidation under the Companies Act 1970-71, including a moratorium on actions or enforcement action against the licensee on such terms as the Court considers appropriate; and
- (b) provide that any subsidiary of the licensee is subject to control and management under this section in like manner to the licensee; and
- (c) fix and provide for the remuneration of the court-appointed manager; and
- (d) require any person it considers necessary to appear before the Court for the purposes of giving information, or producing records, concerning the licensee or the banking business carried on by the licensee.

(4) An order made under subsection (1) must provide for reports to be submitted by the court-appointed manager to the Court and to the Commission.

(5) Despite anything to the contrary in this Act, the Companies Act 1970-71, or the International Companies Act 1981-82, –

- (a) the expenses of a court-appointed manager must be paid prior to the claims of any other creditor of the licensee; and
- (b) except with respect to contracts entered into prior to 31 January 2011, the depositors of a licensee must be paid prior to all other unsecured creditors of the licensee, up to a maximum value of \$10,000 each.

26. Effect of appointment of a court-appointed manager - (1) From the date specified in the order appointing a court-appointed manager of a licensee and its subsidiaries, –

- (a) the management of the banking business of the licensee in and from within the Cook Islands, and of each of its subsidiaries, vests in the court-appointed manager to the exclusion of any officers of the licensee and its subsidiaries; and
- (b) a person must not transfer, dispose of, or otherwise deal with any property that belongs to, or is in the custody or control of, the licensee or its subsidiaries except with the consent of the court-appointed manager.

(2) If a court-appointed manager is appointed for a licensee or a subsidiary of the licensee that is already in liquidation or receivership, –

- (a) the liquidation or receivership ceases; and
- (b) the person appointed as liquidator or receiver is discharged.

(3) However, if the control and management of the licensee or subsidiary by the court-appointed manager ends, the Court may order that the liquidation or receivership is revised on the terms specified by the Court.

27. Powers of a court-appointed manager - (1) A court-appointed manager has –

- (a) the powers and authority specified by the Court; and
- (b) the powers to carry on, cease to carry on, or sell the banking business of the licensee, including –

- (i) all of the powers, rights, and authorities of the licensee and its members in general meeting that are necessary to take those actions; and
 - (ii) the power to petition the Court to wind up the licensee; and
 - (c) all of the powers of a liquidator under the Companies Act 1970-71 that are specified by the Court.
- (2) In exercising powers under this section, a court-appointed manager must have regard to the need to –
- (a) maintain or restore the stability of the financial system of the Cook Islands; and
 - (b) preserve the assets of depositors; and
 - (c) maintain the ranking of claims of creditors.
- (3) A court-appointed manager must comply with any directive relating to the exercise of its powers under this section unless the directive conflicts with an order of the Court.
- (4) A court-appointed manager may apply to the Court to seek directions in relation to the exercise of its powers under this section.
- (5) If a court-appointed manager is appointed for a foreign licensee, the manager's powers apply to the licensee's –
- (a) operations in the Cook Islands; and
 - (b) property, rights, assets, and liabilities, wherever they are located, that relate to its banking business in or from within the Cook Islands.

28. Cessation of court-appointed manager - (1) A licensee and its subsidiaries continue to be subject to the control and management of a court-appointed manager until –

- (a) all deposits with the licensee have been repaid; or
- (b) the Commission is satisfied that suitable provision has been made for their repayment.

(2) The Court, on the application of the Commission or of its own motion, may terminate the appointment of a court-appointed manager –

- (a) if the Court is satisfied that it is no longer necessary for the protection of the depositors or creditors of a licensee that the court-appointed manager remain in control of the licensee and each of its subsidiaries; or
- (b) if the Court determines that the court-appointed manager is not acting in conformance with applicable law, regulation, or instruction given by the Court or the Commission; or
- (c) for other reasonable cause.

PART 4

OBLIGATIONS AND RESTRICTIONS ON LICENSEES

29. Physical presence - (1) A licensee must, –

- (a) within 30 days after being issued with a licence, or such longer period as the Commission allows, occupy premises in the Cook Islands that have been approved by the Commission; and
- (b) maintain a physical presence in the Cook Islands while operating under the licence.

(2) The Commission must not give its approval to any premises unless it is satisfied that –

- (a) the premises are located at a fixed address in the Cook Islands; and
- (b) the licensee will carry on banking business under its licence from those premises; and
- (c) the licensee will maintain operating records at those premises, including financial statements relating to the banking business conducted under its licence; and
- (d) the employee or employees of the licensee will operate from those premises; and
- (e) those premises adequately symbolise the physical presence of the licensee in the Cook Islands.

(3) Within 30 days after being issued with a licence, or such longer period as the Commission allows, a licensee must appoint such employees, and have in place such facilities, as the Commission considers appropriate having regard to the nature and scale of the banking business to be carried on by the licensee under its licence.

(4) A licensee must not change the address of its premises in the Cook Islands without the prior written approval of the Commission.

(5) A licensee that contravenes subsection (1) or (3) commits an offence and is liable on conviction to a fine not exceeding \$50,000.

30. Maintenance of minimum capital - (1) A licensee must maintain at all times eligible capital –

- (a) of not less than the minimum proportion in relation to its assets, liabilities, and risk exposures as is specified in a prudential statement; or
- (b) of not less than the amount specified in a directive issued to the licensee (which must be greater than the amount specified in the prudential statement).

(2) A licensee must maintain at all times paid-up capital of not less than \$2,000,000.

(3) In issuing a directive to a licensee for the purposes of subsection (1)(b), the Commission may have regard to –

- (a) the scale and nature of the licensee's financial liabilities, including its deposits; and
- (b) the nature of the licensee's assets and the degree of risk associated with them; and
- (c) the nature of the banking business carried on by the licensee.

(4) The licensee must comply with the directive within 1 month after the directive is issued, or such longer period as the Commission allows.

(5) The Commission may, in writing, vary or revoke the directive.

(6) A licensee that contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding \$50,000.

(7) If either the eligible capital or the paid-up capital of a licensee is reduced below its minimum capital requirement, the licensee must, within 7 days after becoming aware of the reduction, advise the Commission in writing of the reduction.

(8) The Commission may issue prudential statements requiring foreign licensees to maintain capital with respect to liabilities in the Cook Islands that are comparable to the requirements in subsections (1) and (2).

31. Computation of minimum capital - (1) A licensee must compute its capital requirements under section 30 in the manner specified in a prudential statement.

(2) The prudential statement may specify different requirements for the computation and form of capital for different classes of licensees.

32. Keeping of accounting records - (1) A licensee must keep and maintain at its premises in the Cook Islands accounting records that are sufficient to –

- (a) show and explain its transactions; and
- (b) enable its financial position to be determined with reasonable accuracy at any time; and
- (c) enable it to prepare the financial statements and make the returns required by this Act; and
- (d) enable its financial statements to be audited in accordance with this Act.

(2) A licensee that contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$250,000.

33. Appointments - (1) A licensee must have at least 3 directors who are individuals, –

- (a) 1 or more of whom must be a resident of the Cook Islands; and
- (b) 1 or more of whom must be an independent director.

(2) Subsection (1)(a) does not apply to a foreign licensee.

(3) A licensee must not appoint a disqualified person as an officer in relation to the licensee's banking business conducted under its licence.

(4) A disqualified person must not –

- (a) accept an appointment as an officer of a licensee; or
- (b) if the person is already an officer of a licensee, continue as an officer.

(5) An officer of a licensee must not serve as an officer or employee of any other licensee in the Cook Islands without the prior written approval of the Commission.

(6) A licensee that contravenes subsection (1) or (3) commits an offence and is liable on conviction to a fine not exceeding \$100,000.

(7) An individual who contravenes subsection (4) or (5) commits an offence and is liable on conviction to a fine not exceeding \$50,000, or imprisonment for a term not exceeding 2 years, or both.

34. Commission may remove officers - (1) The Commission may issue a directive requiring a licensee to remove a person who is an officer of the licensee if the Commission is satisfied that the person –

- (a) is a disqualified person; or
- (b) does not meet 1 or more of any criteria for fitness and propriety that are specified by the Commission.

(2) Before issuing a directive under this section, the Commission must give written notice to the person and the licensee concerned, providing them with 7 days to make submissions on the matter.

(3) A directive issued under this section takes effect on the day specified in it, which must be at least 10 days after it is made.

(4) If the Commission issues a directive under this section, the Commission must give a copy of it to the person and the licensee concerned.

(5) Despite anything to the contrary in this section, if the Commission determines that it is necessary to protect the depositors and creditors of the licensee or the stability of the financial system of the Cook Islands, –

- (a) the requirements in subsections (2) and (3) do not apply; and
- (b) the person must be removed within 1 business day of receipt of the directive in subsection (4).

(6) A licensee that fails to comply with a directive issued under this section commits an offence and is liable on conviction to a fine not exceeding \$50,000.

(7) The Commission must publish a copy of a directive issued under this section on its public website and in a newspaper of local circulation.

35. Operations outside Cook Islands - (1) A licensee must not create a subsidiary or operate a branch, agency, or office in a country other than the Cook Islands without the prior written approval of the Commission.

(2) The Commission must not give its approval under subsection (1) unless it is satisfied that –

- (a) the foreign supervisory authority in the country in which the branch, agency, or office will be located has given its consent to the incorporation of the branch, agency, or office; and
- (b) the branch, agency, or office will be subject to adequate banking supervision; and
- (c) the branch, agency, or office will be engaged only in activities that are permissible for the licensee under this Act; and
- (d) the incorporation of the branch, agency, or office will not adversely affect the safety and soundness of the licensee; and
- (e) the Commission will have access to the information and documents it considers necessary to supervise the banking business carried on by the licensee in or from within the Cook Islands in accordance with this Act.

(3) The Commission may give its approval on the terms and conditions it considers appropriate.

(4) A licensee that contravenes subsection (1) or fails to comply with a term or condition of an approval commits an offence and is liable on conviction to a fine not exceeding \$50,000.

(5) Subsections (1) to (4) do not apply to a foreign licensee.

(6) However, a foreign licensee must not manage an office of the foreign licensee that is located in a country other than the Cook Islands through its Cook Islands operations without the prior written approval of the Commission.

36. Business name - (1) A licensee must not carry on banking business in or from within the Cook Islands under a name, description, or title that is different to the name, description, or title under which it is licensed without the prior written approval of the Commission.

(2) The Commission may, by notice in writing, require a licensee to change or cease using a name, description, or title within the time specified in the notice if the Commission is of the opinion that the name, description, or title under which the licensee is carrying on banking business –

- (a) is identical to the name, description, or title of another person, or so closely resembles the name, description, or title of another person that it is likely to mislead or deceive; or

- (b) is likely to suggest falsely the patronage of, or a connection with, some person of authority in the Cook Islands or another country; or
- (c) is likely to suggest falsely that the licensee –
 - (i) has special status in relation to, or derived from, the Government of any country; or
 - (ii) has the official backing of any Government; or
 - (iii) acts on behalf of any Government.

(3) A licensee that contravenes subsection (1) or fails to comply with a notice given under subsection (2) commits an offence and is liable on conviction to a fine not exceeding \$50,000.

37. Notice of changes - (1) A licensee must immediately give to the Commission full particulars, in writing, of an alteration that is made –

- (a) to its memorandum or articles of association; or
- (b) to any other instrument providing for its incorporation.

(2) The particulars must be verified by a statutory declaration made by a director of the licensee.

38. Transfer of dividends and profits - (1) A licensee must not declare or pay any dividend, or make any other transfer from its profits or reserves, if to do so would contravene the requirements of section 30.

(2) A foreign licensee must obtain the prior written approval of the Commission to transfer profits from the licensee's banking business in the Cook Islands to its headquarters, or a branch or office of the licensee, in another country if, as a result of that transfer, the licensee would not comply with the requirements of section 30 if the licensee's business in the Cook Islands was treated as if it were a subsidiary of the licensee.

39. Subsidiaries of licensees in Cook Islands - (1) Unless a licensee has the prior written approval of the Commission, the licensee must not –

- (a) create a subsidiary in the Cook Islands; or
- (b) conduct banking business in or from within the Cook Islands through a subsidiary; or
- (c) permit a subsidiary to carry on banking business in the Cook Islands.

(2) A licensee may apply for its licence to extend to a wholly owned subsidiary of the licensee.

(3) An application under subsection (2) must –

- (a) be made in writing to the Commission; and
- (b) be accompanied by evidence that the subsidiary is wholly owned by the licensee; and
- (c) provide a description of the type of banking business being, or to be, carried out by the subsidiary.

(4) The Commission may extend a licence to include a wholly owned subsidiary of a licensee –

- (a) if the Commission receives an application that complies with subsection (3); and
- (b) if the licensee and its subsidiary, on a consolidated basis, would meet the criteria for the issue of a licence under Part 2; and
- (c) subject to any terms and condition the Commission thinks fit.

40. Acquisition of banking businesses - (1) A licensee must consult with the Commission on, and obtain the prior written approval of the Commission for, the purchase or acquisition of all or any part of –

- (a) the banking business of another licensee; or
 - (b) the banking business of a person in the Cook Islands engaged in banking business; or
 - (c) a banking business in a country other than the Cook Islands.
- (2) Subsection (1)(c) does not apply to a foreign licensee.
- (3) The grounds on which the Commission may withhold its approval under subsection (1) include –
- (a) restraint of trade; and
 - (b) monopoly of business; and
 - (c) adverse effect on the soundness of the financial system in the Cook Islands; and
 - (d) the ability of the licensee and the banking business it proposes to acquire to meet the criteria for the issuance of a licence under section 7 and, if applicable, section 8 after the acquisition has been completed.

41. Restriction on disposition and acquisition of significant interest - (1) A person –

- (a) who owns or holds a significant interest in a licensee must not sell, transfer, charge, or otherwise dispose of any part of that interest unless the person and the licensee have both obtained the prior written approval of the Commission; and
 - (b) must not acquire a significant interest in a licensee unless the person and the licensee have both obtained the prior written approval of the Commission.
- (2) A licensee must not, unless it has obtained the prior written approval of the Commission, –
- (a) cause, permit, or acquiesce in a sale, transfer, charge, or other disposition referred to in subsection (1)(a); or
 - (b) issue or allot any shares or cause, permit, or acquiesce in any other reorganisation of its share capital that results in –
 - (i) a person acquiring a significant interest in the licensee; or
 - (ii) a person who already owns or holds a significant interest in the licensee increasing or decreasing the size of the person's interest.
- (3) The Commission must give its approval under subsection (1) or (2), on terms and conditions it considers appropriate, only if the Commission is satisfied that –
- (a) the licensee will continue to comply with section 8 after the action in question has occurred; and
 - (b) the action in question will not be detrimental to the safety, soundness, and reputation of the licensee or the stability of the financial system of the Cook Islands.
- (4) Nothing in this section applies to the disposition or acquisition of a significant interest by a foreign licensee in a country other than the Cook Islands.

(5) A person that contravenes subsection (1) or (2) commits an offence and is liable on conviction, –

- (a) if an individual, to a fine not exceeding \$50,000, or imprisonment for a term not exceeding 2 years, or both; or
- (b) in any other case, to a fine not exceeding \$100,000.

42. Restrictions on credit concentrations - (1) A licensee must not extend credit to a borrower or a group of connected borrowers without –

- (a) previously having advised the Commission if, as a result, the licensee's total exposure to that borrower or group will equal or exceed 10% of the licensee's eligible capital (a "large exposure"); or
- (b) the prior written approval of the Commission if, as a result, –
 - (i) the licensee's total exposure to that borrower or group will exceed 25% of the licensee's eligible capital; or
 - (ii) the aggregate large exposures of the licensee will exceed 400% of the licensee's eligible capital.
- (2) A licensee must immediately notify the Commission of –
 - (a) a breach of subsection (1)(b); and
 - (b) the remedial actions taken or planned to deal with the breach.
- (3) For purposes of this section, –
 - (a) a group of connected borrowers includes a borrower and any other person who is connected to the borrower through ownership of a significant interest, or a family relationship, in a way that results in the group representing a risk of credit concentration to the licensee; and
 - (b) the limits in subsection (1) apply on a consolidated basis if appropriate, as determined by the Commission.
- (4) Subsection (1)(a) does not apply to a foreign licensee.
- (5) Subsection (1)(b) does not apply to –
 - (a) transactions between banks or between branches of a bank; or
 - (b) the purchase of telegraphic transfers; or
 - (c) any advance or extension of credit to, or guaranteed by, the Government of the Cook Islands; or
 - (d) the purchase of bills of exchange or documents of title to goods if the vendor of those bills or documents is entitled to –
 - (i) payment on those bills or documents in a country other than the Cook Islands for exports from the Cook Islands; or
 - (ii) advances made against those bills or documents; or
 - (e) any extension of credit that is fully secured by cash or a deposit redeemable in cash if –
 - (i) there is a written agreement that is legally binding in all relevant countries between the licensee and the person lodging the cash or deposit as collateral; and
 - (ii) the written agreement establishes the direct and unconditional right of the licensee to the cash deposit.
- (6) For the purposes of subsection (5)(e), –
 - (a) a common law or bankers' right of set-off is insufficient on its own to satisfy that paragraph; and

- (b) the currency in which the collateral is lodged may differ from that of the exposure against which it is held only if –
 - (i) the Commission has given its prior written approval; and
 - (ii) the currency is valued at current market exchange rates with a margin approved by the Commission.

(7) A licensee that contravenes subsection (1)(b) or (2) commits an offence and is liable on conviction to a fine not exceeding \$50,000.

43. Restrictions on loans to licensee-related parties - (1) Credit granted to a licensee-related party must be –

- (a) approved by a manager of the licensee; and
 - (b) on terms that are no less favourable to the licensee than the terms offered to the public in the ordinary course of business.
- (2) A licensee must not extend credit to a licensee-related party –
- (a) without the prior written approval of the Commission if, as a result, the licensee's total exposure to all licensee-related parties will equal or exceed 10% of the licensee's eligible capital; or
 - (b) if, as a result, the licensee's total exposure to all licensee-related parties will equal or exceed 25% of the licensee's eligible capital.
- (3) The Commission may –
- (a) require a licensee to obtain appropriate collateral for any credit extended to a licensee-related party; and
 - (b) deduct any credit extended to a licensee-related party from the calculation of a licensee's eligible capital.
- (4) This section does not apply to a foreign licensee.
- (5) In this section, –
- “licensee-related party” means a person who has 1 or more of the following relationships –
- (a) the person is a director of the licensee; or
 - (b) the person has a direct or indirect significant interest in the licensee; or
 - (c) the person is an officer of an entity to whom paragraph (b), (g), or (h) applies; or
 - (d) the person is the licensee's consultant; or
 - (e) the person is a relative of a person to whom paragraph (a), (b), (c), or (d) applies; or
 - (f) an entity in which a person to whom paragraph (a), (b), (c), (d), or (e) applies is an officer; or
 - (g) an entity in which a person to whom paragraph (a), (b), (c), (d), or (e) applies has, alone or with others, directly or indirectly, a significant interest; or
 - (h) an entity in which the licensee has, alone or with others, directly or indirectly, a significant interest; or
 - (i) an entity in which an entity with a significant interest in the licensee has, directly or indirectly, a significant interest

“relative”, in relation to a person, means –

- (a) any spouse, partner, parent, child, brother, or sister of that person; or
- (b) any spouse, partner, parent, child, brother, or sister of a person to whom paragraph (a) applies.

(6) A licensee that contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding \$50,000.

44. Other restrictions on advances and credit facilities - (1) A licensee and its subsidiary must not make an advance or a credit facility against the security of its own shares.

(2) A licensee and its subsidiary must not make an unsecured advance or credit facility to an officer or employee of the licensee, or permit an unsecured advance or credit facility to an officer or employee of the licensee to be outstanding, if the total amount of the advance or credit facility exceeds the officer’s or employee’s annual salary.

(3) This section does not apply to a foreign licensee.

(4) In this section, “unsecured advance or credit facility” means –

- (a) advances or credit facilities made without security; or
- (b) if an advance or credit facility is made with non-marketed securities, any part of the advance or credit facility that exceeds 4/5 of the licensee’s valuation; or
- (c) if an advance or credit facility is made with any other security, any part of the advance or credit facility that exceeds 4/5 of the market value of the assets constituting that security.

(5) A licensee or a subsidiary of a licensee that contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$50,000.

45. Equity investments - (1) Subsection (2) applies to the acquisition by a licensee, individually or with 1 or more other parties, of shares in a company if –

- (a) the value of the shares exceeds 5% of the licensee’s eligible capital; or
- (b) the shares exceed 5% of the total voting stock of the company.

(2) An acquisition to which this subsection applies must –

- (a) have the prior written approval of the Commission before it is made; and
- (b) be made in accordance with any conditions the Commission may specify.

(3) Subsection (2) does not apply to –

- (a) the acquisition and disposal of shares by a licensee as a mortgagee or nominee; or
- (b) any shareholding that a licensee acquires in the course of the satisfaction of debts due to it; or
- (c) any shareholding held by a licensee in a subsidiary for the execution of nominee or executor functions; or
- (d) a foreign licensee; or
- (e) the acquisition of shares in a transaction approved under section 40.

(4) If a licensee acquires shares as set out in subsection (3)(b), those shares must be disposed of within a reasonable period determined by the Commission after –

- (a) consultation with the licensee; and
- (b) taking into account relevant commercial factors.

(5) For the purposes of subsection (1), a shareholding acquired or held by a licensee includes share capital acquired or held by a subsidiary of the licensee for the subsidiary's own account, whether or not the subsidiary is licensed under this Act.

(6) A licensee that contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding \$50,000.

46. Licensee must not have correspondent banking relationship with shell banks - (1)
A licensee must not enter into a correspondent banking relationship with a person if the licensee does so reckless as to whether –

- (a) the person is a shell bank; or
- (b) the person is a financial institution that has a correspondent banking relationship with a shell bank.

(2) A licensee must, within 20 business days (or any longer period the Commission allows), terminate a correspondent banking relationship with a person if the licensee becomes aware that the person is a shell bank.

(3) Subsection (4) applies if –

- (a) a licensee has a correspondent banking relationship with a financial institution; and
- (b) the licensee becomes aware that the financial institution has a correspondent banking relationship with a shell bank.

(4) If this subsection applies, the licensee must, within 20 business days (or any longer period the Commission allows), –

- (a) terminate its correspondent banking relationship with the financial institution; or
- (b) request the financial institution to terminate its correspondent banking relationship with the shell bank.

(5) A licensee must, within 20 business days (or any longer period the Commission allows), terminate its correspondent banking relationship with a financial institution if –

- (a) a licensee makes a request of the financial institution in accordance subsection (4)(b); and
- (b) the financial institution does not comply with the request within 20 business days after the request was made.

(6) Before a licensee enters into a correspondent banking relationship with a financial institution, the licensee must carry out an assessment of the risk that the licensee may reasonably face that the relationship might (inadvertently or otherwise) involve or facilitate –

- (a) money laundering; or
- (b) financing of terrorism.

(7) If a licensee has a correspondent banking relationship with a financial institution, the licensee must carry out regular assessments of the risk that the licensee may reasonably face that the relationship might (inadvertently or otherwise) involve or facilitate –

- (a) money laundering; or
- (b) financing of terrorism.

(8) Subsection (7) applies to all correspondent banking relationships regardless of whether they were entered into before, on, or after 1 December 2011.

(9) In this section, –

“correspondent banking relationship” means a relationship that involves a financial institution (“financial institution A”) providing banking services to another financial institution (“financial institution B”), where –

- (a) financial institution A carries on an activity or business at, or through, a permanent establishment of financial institution A in a country; and
- (b) financial institution B carries on an activity or business at, or through, a permanent establishment of financial institution B in another country; and
- (c) the relationship relates, in whole or in part, to those permanent establishments

“physical presence in that country”, in relation to a company, means –

- (a) the company carries on banking business at a place in the relevant country; and
- (b) at least 1 full time employee of the company performs banking related duties at that place

“shell bank” means a company that –

- (a) is incorporated in a country other than the Cook Islands; and
- (b) is authorised to carry on banking business in that country; and
- (c) does not have a physical presence in that country; and
- (d) is not an affiliate of another company that –
 - (i) is incorporated in that country; and
 - (ii) is authorised to carry on banking business in that country; and
 - (iii) has a physical presence in that country.

(10) For the purposes of the definition of “shell bank” in subsection (9), a company is an affiliate of another company if –

- (a) the company is a subsidiary of the other company; or
- (b) at least 1 individual has a significant interest in both companies; or
- (c) both companies are under common control.

PART 5

AUDIT, DISCLOSURE, AND TAX EXEMPTIONS

47. Appointment of approved auditor - (1) A licensee must appoint 1 or more persons (whether as individuals or as members of a firm) to be the auditor of the licensee.

(2) However, a licensee must not appoint an auditor without the prior written approval of the Commission.

(3) The Commission must not give its approval unless the Commission is satisfied that the auditor –

- (a) is qualified to act as an auditor; and
- (b) is sufficiently experienced in auditing banking business; and
- (c) has no financial interest in the licensee, other than as a depositor; and
- (d) is not a shareholder, officer, agent, or employee of the licensee.

(4) The Commission may appoint an auditor for a licensee and fix the remuneration to be paid by the licensee to the auditor if the licensee fails –

- (a) to appoint an approved auditor; or

- (b) to fill a vacancy for an auditor with an approved auditor.
- (5) A licensee must give notice in writing to the Commission if the licensee proposes to terminate the appointment of an approved auditor.
- (6) A person ceases to be the auditor of a licensee if that person –
 - (a) acquires a financial interest in the licensee, other than as a depositor; or
 - (b) becomes a shareholder, officer, agent, or employee of the licensee.
- (7) A licensee that contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$50,000.

48. Financial reporting to Commission - (1) All licensees must submit reports, financial statements, and other information on their activities on a regular basis to the Commission in the form, and containing the information, specified by the Commission.

(2) The Commission may require reports from the licensee on both an individual and a consolidated basis.

(3) If it is necessary for the effective consolidated supervision of a licensee's activities, the Commission may request reports from –

- (a) any subsidiary, holding company, branch, agency, or office of the licensee; or
- (b) any company in the same group of companies as the licensee.

49. Audited financial reports - (1) A licensee must obtain an auditor's report on the financial statements of the licensee and its subsidiaries for each financial period of the licensee.

(2) The auditor must state in the report –

- (a) whether the auditor has obtained all information and explanations that, to the best of the auditor's knowledge, were necessary for the purposes of the audit; and
- (b) whether, in the auditor's opinion, proper books of account have been kept by the licensee and its subsidiaries; and
- (c) whether, in the auditor's opinion, the balance sheet and the profit and loss account of the licensee and its subsidiaries are in agreement with the books of account and returns of the licensee and its subsidiaries; and
- (d) whether, in the auditor's opinion, the balance sheet of the licensee and its subsidiaries gives a true and fair view of the state of affairs of the licensee and its subsidiaries for the period covered by the report; and
- (e) whether, in the auditor's opinion, the profit and loss account of the licensee and its subsidiaries gives a true and fair view of the profit or loss of the licensee and its subsidiaries for the period covered by the report; and
- (f) if the auditor requests an explanation or information from officers or agents of the licensee or its subsidiaries, whether, in the auditor's opinion, the explanation or information is satisfactory.

(3) The following documents must be presented at the annual general meeting of the shareholders of a licensee –

- (a) the licensee's financial statements; and

- (b) the licensee's auditor's report; and
- (c) the licensee's directors' report.
- (4) The licensee must provide copies of its financial statements and its auditor's report to the Commission within –
 - (a) 4 months after the close of the licensee's financial year; or
 - (b) a further time period approved by the Commission in writing.

50. Duty to disclose - (1) The approved auditor of a licensee must, as soon as practicable, report to the Commission any information that the auditor obtains in the course of auditing the licensee or its subsidiaries if, as a result of that information, the auditor is of the opinion that –

- (a) the licensee is –
 - (i) insolvent; or
 - (ii) likely to become insolvent; or
 - (iii) likely to be unable to meet its obligations; or
 - (iv) in serious financial difficulties; or
- (b) a criminal offence involving fraud or dishonesty may have been committed; or
- (c) serious irregularities have occurred, including irregularities that may place the interests of depositors and creditors at risk; or
- (d) losses have been incurred that substantially reduce the capital of the licensee; or
- (e) the licensee is unable to confirm that the claims of creditors are adequately covered by the licensee's assets; or
- (f) the licensee has failed to comply with a directive or prudential statement.

(2) The approved auditor of a licensee must, if requested to do so by the Commission, –

- (a) discuss an audit of the licensee directly with the Commission; and
- (b) provide any additional information regarding an audit of the licensee that the Commission may require.

(3) The auditor must, before disclosing any information to the Commission under subsection (1) or (2), take reasonable steps to inform the licensee that the auditor intends to disclose the information.

(4) No civil, criminal, or disciplinary proceedings lie against an auditor arising from the disclosure in good faith of information to the Commission in accordance with this section.

(5) An auditor that contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$50,000.

51. Licensee to provide Commission with report - (1) After consultation with a licensee, the Commission may, by notice in writing, require the licensee to provide the Commission with a report prepared by its auditor, or a person specified by the Commission, on all or any of the following –

- (a) its opinion of the licensee's asset quality;
- (b) the adequacy of the licensee's provisions for losses;
- (c) the adequacy of the licensee's accounting and control system;
- (d) its opinion of the sufficiency of the licensee's liquidity;

- (e) any other matters concerning the licensee that are specified by the Commission.
- (2) The costs of the report must be borne by the licensee.
- (3) No civil, criminal, or disciplinary proceedings lie against an auditor arising from the disclosure in good faith of information to the Commission in accordance with a notice issued under this section.

52. Audit exemption for foreign licensee - A foreign licensee is exempt from sections 49 and 51 if –

- (a) the licensee obtains a report on the annual financial statements of the licensee made by a duly qualified auditor in accordance with the laws of the country in which the licensee is incorporated; and
- (b) a copy of that report, the audited financial statements of the licensee, and the report of the directors of the licensee is provided to the Commission as soon as practicable after they are completed; and
- (c) the Commission is satisfied that the audit was carried out in accordance with international auditing standards.

53. Disclosure of information by Commission - (1) Subsection (2) applies to –

- (a) the Commission; and
- (b) employees and officers of the Commission; and
- (c) examiners; and
- (d) all other persons acting under the authority of the Commission.

(2) A person to whom this subsection applies must not disclose any information relating to a protected person if the information has been acquired in the discharge of duties, or in the performance of functions, or in the exercise of powers under this Act.

(3) However, subsection (2) does not apply if –

- (a) the disclosure is required or authorised by the Court; or
- (b) the disclosure is made for the purpose of discharging any duty, performing any function, or exercising any power under this or any other Act; or
- (c) the disclosure is made with the express or implied consent of the protected person; or
- (d) the disclosure is made as required by or under a warrant; or
- (e) the information disclosed is, or has been, available to the public from another source; or
- (f) the information disclosed is in the form of a summary, or in statistics, expressed in a manner that does not enable the protected person to whom the information relates to be identified; or
- (g) the disclosure is made to a law enforcement authority or a foreign supervisory authority in accordance with subsection (4); or
- (h) the disclosure is otherwise required, or authorised, by or under any law.

(4) Information must not be disclosed in accordance with subsection (3)(g) unless the Commission is satisfied that –

- (a) the law enforcement authority or foreign supervisory authority is subject to adequate legal restrictions on further disclosure; and
- (b) the information disclosed is reasonably required by the law enforcement authority or foreign supervisory authority for the purpose of its regulatory or law enforcement functions.

(5) If information is disclosed to a person in accordance with subsection (3), that person may disclose that information, subject to any applicable restrictions on further disclosure contained in any law, for the purpose of discharging any duty, performing any function, or exercising any power under this or any other Act.

(6) A person that contravenes this section commits an offence and is liable on conviction, –

- (a) if an individual, to a fine not exceeding \$50,000, or imprisonment for a term not exceeding 2 years, or both; or
 - (b) in any other case, to a fine not exceeding \$250,000.
- (7) In this section, “protected person” means –
- (a) a person who has applied for a licence under this Act; or
 - (b) a licensee; or
 - (c) a depositor or other customer of a licensee.

54. Disclosure of protected information - (1) A person must not disclose protected information or any other information relating to –

- (a) the banking business of a licensee; or
 - (b) a depositor or other customer of a licensee.
- (2) However, subsection (1) does not apply if –
- (a) the disclosure is required or authorised by the Court; or
 - (b) the disclosure is made for the purpose of discharging any duty, performing any function, or exercising any power under this or any other Act; or
 - (c) the disclosure is made as part of a suspicious transaction report under the Financial Transactions Reporting Act 2003; or
 - (d) the disclosure is made with the express or implied consent of the licensee or person concerned; or
 - (e) the disclosure is made as required by or under a warrant; or
 - (f) the information disclosed is, or has been, available to the public from another source; or
 - (g) the disclosure is otherwise required, or authorised, by or under any law of the Cook Islands; or
 - (h) the disclosure is made to the Commission or a law enforcement agency in the Cook Island and the person making the disclosure believes on reasonable grounds that the disclosure is reasonably necessary for the investigation or prosecution of a criminal offence; or
 - (i) the disclosure is made to a law enforcement authority or a foreign supervisory authority under a treaty, memorandum of understanding, or similar agreement between the Cook Islands and another country.

(3) If information is disclosed to a person in accordance with subsection (2), that person may disclose that information, subject to any applicable restrictions on further disclosure contained in any law, for the purpose of discharging any duty, performing any function, or exercising any power under this or any other Act.

(4) A person that contravenes this section commits an offence and is liable on conviction, –

- (a) if an individual, to a fine not exceeding \$50,000, or imprisonment for a term not exceeding 2 years, or both; or
- (b) in any other case, to a fine not exceeding \$250,000.

45(1). (5) Subsection (1) does not apply to a person referred to in subsection

(6) In this section, “protected information” means –

- (a) whether or not a person has an account with a licensee;
- (b) the name in which an account of a depositor or other customer of a licensee stands;
- (c) the balance and history of any such account;
- (d) the amount or other details of any individual transaction undertaken by any licensee for a depositor or other customer of the licensee.

55. Exemption from taxes and stamp duty - (1) Despite anything contained in any other Act, if a licensee is incorporated or registered under the International Companies Act 1981-82, –

- (a) no income tax, duty, or any other direct or indirect tax or impost is payable in the Cook Islands on the income, profits, gains, interest, earnings, or dividends earned or paid in respect of the international banking business of an international licensee; and
- (b) no estate, inheritance, succession, or gift tax, rate, duty, levy, or other charge is payable in the Cook Islands with respect to any shares, debt obligations, or other securities in connection with the international banking business of an international licensee; and
- (c) no duty, levy, tax, or other charge is payable in the Cook Islands in respect any bill of exchange, promissory note, or any other document, instrument, or certificate executed by, for, or in connection with the international banking business of an international licensee.

(2) The banking business of a licensee is zero-rated for the purposes of the Value Added Tax Act 1997.

(3) In this section, “international licensee” means a person who has been issued with an international banking licence under section 9.

PART 6

MISCELLANEOUS

56. Offences - (1) A person that, with intent to deceive, makes a representation that the person knows to be false, or does not believe to be true, to the Commission, an approved auditor, an examiner, or a court-appointed manager concerning a licensee or the licensee’s business commits an offence and is liable on conviction, –

- (a) if an individual, to a fine not exceeding \$50,000, or imprisonment for a term not exceeding 2 years, or both; or
 - (b) in any other case, to a fine not exceeding \$250,000.
- (2) An officer or employee, or a former officer or employee, of a licensee or a person who holds information on behalf of a licensee who knowingly –
- (a) makes a false or misleading entry in any book or record in relation to the licensee or the licensee's business; or
 - (b) makes or provides any false or misleading statement, report, return, document, or information in relation to the licensee or the licensee's business; or
 - (c) omits an entry, or alters or conceals an entry, in any book or record in relation to the licensee or the licensee's business so as to mislead; or
 - (d) conceals or destroys within 6 years of its creation any information, book, voucher, record, report, return, minute, or document relating to the accounts, transactions, affairs, or business of the licensee so as to mislead;–
- commits an offence and is liable on conviction to a fine not exceeding \$50,000, or imprisonment for a term not exceeding 2 years, or both.
- (3) An officer or employee, or a former officer or employee, of a licensee or a person who holds information on behalf of a licensee who obstructs or attempts to obstruct –
- (a) an approved auditor in the proper performance of the auditor's duties in relation to the licensee or the licensee's business; or
 - (b) the Commission or an examiner in an examination of the licensee, or any branch, agency, office, or subsidiary of the licensee; or
 - (c) an examiner or court-appointed manager in the proper performance of his or her duties in relation to the licensee or the licensee's business; –
- commits an offence and is liable on conviction to a fine not exceeding \$50,000, or imprisonment for a term not exceeding 2 years, or both.
- (4) A person that –
- (a) fails to comply with a requirement of this Act, the regulations, a prudential statement, a directive, or a notice issued under this Act; or
 - (b) aids or abets, or counsels or procures, any person to commit an offence under this Act,–
- for which a penalty is not provided in this Act, commits an offence and is liable on conviction to a fine not exceeding \$250,000.

57. Court to have jurisdiction - (1) The Court has jurisdiction in any proceedings arising under this Act.

(2) The Attorney-General is empowered to institute proceedings to prevent and restrain any breach of this Act and to prosecute offences committed under this Act.

(3) The Court may, at any time during the course of any proceedings arising under this Act and before giving judgment, make any temporary restraining order or prohibition it considers just in the circumstances.

(4) This section does not limit the powers of the Court.

58. Performance injunctions - (1) Subsection (2) applies if a person refuses or fails, or proposes to refuse or fail, to perform as the person is required by –

- (a) this Act or the regulations; or
- (b) a term or condition imposed by the Commission; or
- (c) a prudential statement; or
- (d) a directive or other similar order of the Commission.

(2) The Court may grant an injunction requiring the person to perform as required on the terms and conditions specified by the Court in its discretion.

59. Bank holidays - (1) If the Commission considers it necessary or expedient in the public interest, it may, by issuing a directive, declare any day to be a non-business day for licensees.

(2) In the event of a cyclone, earthquake, or other natural disaster, the Commission may declare, in such manner as it considers appropriate, any day to be a non-business day for licensees.

(3) A declaration under subsection (2) may relate to all or any part of the Cook Islands.

(4) Any day declared to be a non-business day is taken to be a bank holiday, but is not to be regarded as a public holiday.

(5) A licensee is not obliged on a day declared to be a non-business day to make a payment or to do any other act that the licensee would not be required to make or do on a public holiday.

(6) The obligation to make the payment or to do the act must be satisfied on the next day that is not a Saturday, Sunday, bank holiday, or public holiday.

60. Protection of term bank etc - (1) A person (other than a licensee) must not use in the name, description, or title under which the person is carrying on business in the Cook Islands –

- (a) the term “bank” or a derivative of the word “bank” in any language; or
- (b) any other word that indicates that the person is conducting banking business; –

unless the Commission has given its prior written approval to the use.

(2) The prior written approval of the Commission must be obtained for the incorporation or registration of a company in the Cook Islands that has as part of its name or description the words “banking”, “savings and loan”, or their equivalents in any language.

(3) Approval given by the Commission in accordance with subsection (2) does not in any way imply that a licence will be issued if the company applies for a licence under section 6.

(4) This section does not apply to an association of licensees, or their employees, that is incorporated for the protection of their common interests.

(5) A person that contravenes subsection (1) commits an offence and is liable on conviction, –

- (a) if an individual, to a fine not exceeding \$50,000, or imprisonment for a term not exceeding 2 years, or both; or
- (b) in any other case, to a fine not exceeding \$250,000.

61. Indemnity from liability - No action lies against the Commission, an employee or officer of the Commission, an examiner, or any other person acting under the authority of the Commission in respect of any act done in good faith in the discharge of any duty, the performance of any function, or the exercise of any power under this Act.

62. Court proceedings - (1) Civil proceedings under this Act to which a licensee is a party or that relate to a licensee are to be heard in camera, unless the Court otherwise orders.

(2) Any documents produced or evidence given in civil proceedings under this Act must not be disclosed to a person if that person is not a party to those proceedings unless the Court otherwise orders.

(3) If a notice of legal proceedings under this Act is served on a licensee, a copy of the notice must be served on the Commission.

(4) This section does not apply to criminal proceedings under this Act or any other enactment.

63. Retention of documents - (1) This section applies to a document referred to in subsection (2) that is received by a licensee before, on, or after 1 December 2011 (a "specified document").

(2) A licensee must retain –

- (a) all cheques and bank drafts drawn on the licensee and that are in its possession; and
- (b) all bills of exchange and promissory notes made payable at the licensee and that are in its possession; and
- (c) such other documents as the Commission may specify.

(3) A specified document must be retained for 6 years from –

- (a) the date of the specified document if it is payable on demand; or
- (b) its due date in any other case; or
- (c) such other date as the Commission may specify.

(4) A licensee is taken to comply with subsection (2) if –

- (a) a copy of a specified document is made by the licensee on microfilm, microfiche, tape, disc, or in any other electronic or photographic storage media; and
- (b) the copy is retained by the licensee for the same period that applies to the original under subsection (3).

(5) A specified document must not be destroyed within 6 years after a demand for its delivery has been made to the licensee by a person entitled to do so.

(6) Despite any other Act or law, if the original of a specified document is not available, a copy of it made in accordance with this section is taken to be admissible as evidence in any legal proceedings to the same extent as the original would have been admissible.

64. Regulations - The Queen's Representative may, by Order in Executive Council, on the advice of the Minister, make regulations for all or any of the following purposes –

- (a) prescribing fees and charges to be paid under this Act;
- (b) prescribing surcharges for late payment of fees and charges to be paid under this Act;
- (c) prescribing forms and procedures required for the purposes of this Act;

- (d) prescribing all other matters required or permitted by this Act to be prescribed or regulated for:
- (e) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.

65. Prudential statements - (1) The Commission may issue written prudential statements for all or any of the following purposes –

- (a) specifying activities that constitute banking business for the purposes of the definition of banking business in section 4(1):
- (b) specifying the eligible capital requirements of a licensee:
- (c) requiring foreign licensees to maintain capital with respect to liabilities in the Cook Islands that are comparable to the requirements in section 30(1) and (2):
- (d) specifying the manner in which the capital requirements of a licensee must be computed:
- (e) providing for the prudential supervision of the banking business of –
 - (i) all licensees; or
 - (ii) a specified class or classes of licensees:
- (f) specifying the manner in which an act must be done if –
 - (i) an act is required or permitted to be done under this Act; and
 - (ii) no form is prescribed or procedure is laid down for that act in this Act or the regulations:
- (g) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.

(2) All prudential statements issued by the Commission must be published and maintained on the Commission's public website.

(3) An act done in accordance with a prudential statement is valid.

66. Written directives - (1) The Commission may issue written directives for all or any of the following purposes –

- (a) specifying how a person who holds funds in contravention of section 5(1) must repay those funds:
- (b) for the purposes set out in section 22:
- (c) specifying the manner in which a court-appointed manager must exercise its powers under section 27:
- (d) specifying the eligible capital requirements of a licensee in accordance with section 30(1)(b):
- (e) requiring a licensee to remove a person who is an officer of the licensee as set out in section 34:
- (f) restricting the banking business that may be undertaken by a licensee:
- (g) specifying all other matters required or permitted by this Act to be specified in a directive:
- (h) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.

- (2) An act done in accordance with a written directive is valid.

67. Repeal of Banking Act 2003 and effect - (1) The Banking Act 2003 is repealed.

(2) Every order, direction, appointment, directive, guideline, and other act or thing that is lawfully made under, made in accordance with, or done under the Banking Act 2003 and is in force immediately prior to 1 December 2011 –

- (a) continues to have effect according to its terms; and
- (b) is deemed to be made under, made in accordance with, or done under the corresponding provision of this Act.

68. Transitional matters - (1) Every person who, immediately prior to 1 December 2011, –

- (a) held a domestic banking licence issued under the Banking Act 2003 is deemed to hold a domestic banking licence issued under section 9 of this Act; and
- (b) held an international banking licence issued under the Banking Act 2003 is deemed to hold an international banking licence issued under f this Act.

(2) Every person and licence referred to in subsection (1) is subject to –

- (a) this Act; and
- (b) the same terms, conditions, and directives issued by the Commission that applied to the person or licence under the Banking Act 2003 immediately prior to 1 December 2011.

(3) Every term, condition, and directive to which subsection (2)(b) applies must be treated as if it were made under the corresponding provision of this Act.

(4) Despite anything to the contrary, all licences issued under the Banking Act 2003 (other than those to which subsection (1) applies) are revoked on 1 December 2011.

(5) Any annual licence fee paid in accordance with the Banking Act 2003 for a domestic banking licence or an international banking licence for a period that falls on or after 1 December 2011 is deemed to be paid for, or on account of, the annual licence fee that must be paid in accordance with this Act for that licence for that period.

69. Banking Act 2003 continues to apply in some circumstances - (1) Any action that is taken against a licensee or any other person in relation to a matter that occurred under the Banking Act 2003 before 1 December 2011 must be taken under the Banking Act 2003, even if that action is taken on or after 1 December 2011.

(2) All matters that, on 1 December 2011, had been started under the Banking Act 2003 but had not been completed, must be completed under the Banking Act 2003 (and all relevant regulations made under that Act).

(3) This section applies despite –

- (a) sections 67(1) and 71; and
- (b) anything to the contrary in this Act.

70. Updated references - Unless the context otherwise requires, all references in an enactment or document to –

- (a) the Banking Act 2003 must be read as a reference to this Act; and
- (b) the Banking (Fees) Regulations 2004 must be read as a reference to the Banking (Fees) Regulations 2011.

71. Banking (Fees) Regulations 2004 revoked - The Banking (Fees) Regulations 2004 are revoked.

This Act is administered by the Financial Supervisory Commission