

CHAPTER 217A OFFSHORE BANKING ACT

• Act • Subsidiary Legislation •

ACT

Act No. 13 of 2003

Amended by

Act No. 1 of 2008

ARRANGEMENT OF SECTIONS

PART I

Preliminary

1. Short title.
2. Interpretation.
3. Statement of purpose and construction.

PART II

Administration

4. Administration of this Act.
5. Duties of the Central Bank.

PART III

Licensing of Offshore Banks

6. Prohibition on offshore banking.
7. Necessity for licence.
8. Eligible company.
9. Content of application.
10. Special requirement for foreign banks, etc.
11. Examination of applicant.
12. Granting of offshore banking licence.
13. Grant of trust licence.
14. Duration of licence and payment of fees.
15. Conditions for the grant and retention of licence.
16. Other conditions of licence.
17. Duty of authorised agent.
18. Classes of licences.
19. Restrictions on offshore banking licence.

PART IV

Capital Requirements

20. Capital requirements.
21. Special deposit.
22. Reserve fund.

PART V

Investigation and Supervision of Licensees

- 23. Special examination.
- 24. Power of search.
- 25. Powers of Minister.
- 26. Condition precedent to revocation.
- 27. Consolidated supervision.
- 28. Restrictions on advances, credit facilities, guarantees, etc.
- 29. Restrictions regarding shares generally.
- 30. Restriction on distribution of dividend.
- 31. Restriction on operation outside of Grenada.
- 32. Restriction on use of “bank”.
- 33. Surrender of licence.
- 34. Information sharing.
- 35. Interpretation.

PART VI

Directors

- 36. Qualification of directors and senior officers.
- 37. Disqualification of director.
- 38. Declaration of interest and conflict of interest of directors.

PART VII

Auditors, Audits and Returns

- 39. Approved auditor.
- 40. Prohibited auditors.
- 41. Returns.
- 42. Submission of balance sheet.
- 43. Appointment of approved auditor.
- 44. Content of report and related matters.
- 45. Protection of auditor, examiner, etc.
- 46. Production of books.
- 47. Remedial action.
- 48. Accounting standards.

PART VIII

Winding-up

- 49. Application of this Part.
- 50. Voluntary winding-up.
- 51. Commencement of voluntary winding-up.
- 52. Notice of winding-up.
- 53. Settlement of claims.
- 54. Distribution of remaining assets.
- 55. Interruption of winding-up.
- 56. Seizure in other cases.
- 57. Duty of Minister.
- 58. Power of High Court.
- 59. Notice of application.
- 60. Appointment of custodian.
- 61. Function of custodian.
- 62. Inventory of assets.
- 63. Re-organisation.

- 64. Content of plan.
- 65. Application for order by custodian.
- 66. Compulsory winding-up.
- 67. Termination of service contracts.
- 68. Right of lessor.
- 69. Statement of accounts.
- 70. Claims.
- 71. Objections.
- 72. Distribution of assets.
- 73. Priority of claims.
- 74. Distribution among shareholders.
- 75. Abandoned funds.
- 76. Completion of winding-up.

PART IX

Exemptions from Taxes and Duties

- 77. Tax exemption on profit, etc.
- 78. Tax exemption on transfer of assets.
- 79. Withholding tax and report on dividends.
- 80. Trust property exemption.
- 81. Guarantees.
- 82. Service charge, etc.
- 83. Customs duty.
- 84. Employee benefits.

PART X

Special Offences

- 85. Misleading advertising.
- 86. False statements and obstruction.
- 87. False or misleading information.
- 88. General penalty.

PART XI

Miscellaneous and Transitional

- 89. Power of Authority to require insurance.
- 90. Right of appeal.
- 91. Certificate of standing.
- 92. Criminal liability of directors.
- 93. Immunity.
- 94. Disclosure by auditor.
- 95. Guidelines and related matters.
- 96. Regulations.
- 97. Jurisdiction of Magistrate.
- 98. Forms.
- 99. Repeal.
- 100. Transitional.
- 101. Commencement.
- First Schedule Due Diligence Obligations
- Second Schedule Approved Auditors

CHAPTER 217A
OFFSHORE BANKING ACT

An Act to revise and consolidate the law relating to offshore banking in Grenada.

[Act No. 13 of 2003 amended by Act No. 1 of 2008.]

[1st December, 2007.]

PART I

Preliminary

1. Short title

This Act, may be cited as the Offshore Banking Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“advertisement” means any form of advertising whether notified or published—

- (a) in a newspaper, magazine, journal or other periodical publication;
- (b) by the display of posters or notices;
- (c) by means of circulars, brochures, pamphlets or handbills;
- (d) by exhibition of photographs or cinematograph films;
- (e) by way of sound broadcasting; or
- (f) by way of the Internet or other media;

“affiliate”, in relation to a company, means that—

- (a) one company is the subsidiary of another company or both are subsidiaries of the same holding company or each of them is controlled by the same person;
- (b) two companies are affiliated with the same company at the same time;

“associate”, means, when used to indicate a relationship with any person—

- (a) a company of which that person beneficially owns or controls, directly or indirectly, shares or securities convertible into shares carrying more than fifteen per cent of the voting rights or a currently exercisable option or right to purchase those shares or convertible securities;
- (b) a partner of the person acting on behalf of a partnership of which they are partners;
- (c) a trust or estate in which that person has a substantial beneficial interest or in respect of which he or she serves as a trustee or in a similar capacity;
- (d) a spouse or child of that person; or
- (e) a relative of that person or of the spouse of that person if the relative has the same residence as that person;

“Authority” means the Grenada Authority for the Regulation of Financial Institutions established under the Grenada Authority for the Regulation of Financial Institutions Act;

“bank” means a person carrying on banking business;

“banking business” means the business of receiving (other than from a bank or trust company) and holding in a current, savings, deposit or similar account money that is payable by cheque or order and capable of being invested by way of advances to customers or otherwise;

“capital” means paid up capital and disclosed reserves;

“Central Bank” means Eastern Caribbean Central Bank established by Article 3 of the Agreement establishing the Eastern Caribbean Central Bank the text of which is set out in the Schedule to Eastern Caribbean Central Bank Agreement Act, Chapter 85;

“company” means a company registered under the International Companies Act, Chapter 152;

“Court” means the High Court;

“financial year” means in relation to a licensee under this Act—

- (a) the period not exceeding fifty-three weeks at the end of which the balance is struck;
- (b) if no such balance is struck, or if a period in excess of fifty-three weeks is used, then a calendar year;

“licence” means an offshore banking licence granted under section 12;

“licensed financial institution” has the same meaning as in the Banking Act, Chapter 26A;

“licensee” means a company licensed under this Act to engage in offshore banking business or trust business;

“Minister” means the Minister of Finance;

“offshore bank” means any company that carries out exclusively offshore banking business or trust business, or both;

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

“principal office” means the office in Grenada of a licensee from which its business is carried on;

“qualified foreign bank or other financial institution” means a foreign bank or other financial institution which—

- (a) at the commencement of this Act is licensed to conduct domestic banking business within the jurisdiction in which it is incorporated; and
- (b) has a minimum capitalisation as prescribed by the Minister;

“trust” has the same meaning as in section 2 of the International Trust Act, Chapter 152C;

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

3. Statement of purpose and construction

(1) The purposes of this Act are—

- (a) to carry out stringent regulation and supervision of licensees;
- (b) to provide incentives by way of tax reduction, exemptions and benefits for international companies; and
- (c) to encourage the development of Grenada as a creditable and responsible international financial centre.

(2) The Act shall be given such fair, large and liberal construction and interpretation as will best ensure the attainment of its purposes.

PART II

Administration

4. Administration of this Act

Subject to this Act, the Authority shall be generally responsible for the administration of this Act including the on-site and off-site examination and supervision of licensees in conjunction with the Central Bank.

5. Duties of the Central Bank

(1) The Central Bank shall assist the Authority in the administration of this Act and in this regard shall perform such advisory, supervisory and regulatory duties as prescribed by this Act or as requested by the Authority.

(2) The Authority shall, from time to time, consult the Central Bank with respect to the administration of this Act.

(3) For the purposes of subsection (1) the Central Bank shall perform the following functions—

- (a) examine regular or special returns and particulars that may be called for from time to time from any licensee for the purpose of satisfying itself whether the provisions of the Act are being complied with and that the financial position of the business of the licensee is sound;
- (b) examine accounts and annual audited accounts;
- (c) maintain a general review of offshore financial services in Grenada; and
- (d) keep the Minister fully and promptly informed concerning the exercise, discharge and performance of those powers, duties and functions conferred on him or her under this Act.

(4) For the purpose of discharging its functions and duties under subsection (3), the Central Bank shall be entitled to—

- (a) have access to such books, records, vouchers, documents, minutes and customer account records pertaining to the assets and liabilities and business of the licensee;
- (b) have access to such securities of any licensee;
- (c) request such information, matter or thing from any person he or she has reasonable grounds to believe is carrying on offshore banking business in contravention of section 6; and
- (d) call upon the manager of the licensee or any similar person, or any officer designated by either of them, for such information or explanation,

as the Central Bank reasonably requires for the purpose of enabling it to exercise its powers under this Act.

(5) Where the Central Bank is satisfied that there is evidence of illegal activity by any licensee and for any reason is unable to obtain the information required from any licensee he or she may on the order of a Magistrate obtain the information from that institution as to—

- (a) the name and title of an account of a depositor or settlor; and

(b) any other information it may require.

(6) The Minister may in writing authorise any person by name or office to assist the Central Bank in the performance of its functions under this Act.

(7) If it appears to the Minister that there are reasonable grounds for suspecting that an offence against this Act has been or is being committed by any person, the Attorney-General may, apply to the Court for an order to take such appropriate action as he or she considers necessary in the interest of the depositors or of the beneficiaries of any trust, or other creditors of that person.

(8) Any person who fails to comply with any request made pursuant to subsection (4) by the Central Bank or any person authorised under subsection (6) commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for six months.

PART III

Licensing of Offshore Banks

6. Prohibition on offshore banking

(1) No person shall engage in offshore banking and or trust business from within Grenada, whether such business is carried on within or outside Grenada, unless such a person is a company registered or incorporated in Grenada and has been granted a licence under this Act for the purpose.

(2) No person, except an international company that has been granted a licence, shall carry on trust business from within Grenada, unless such person is a company registered or incorporated in Grenada and has been granted a licence under this Act for such purpose.

(3) No licence shall be granted under subsection (2) unless the applicant is qualified as a trust corporation as defined in section 2 of the International Trusts Act, Chapter 152C.

(4) Notwithstanding anything to the contrary contained in any enactment, a person and any associate of such person who through a company or otherwise purports to carry on offshore banking or trust business, or both without a licence commits an offence and shall be liable on summary conviction to a fine of two million dollars or to imprisonment for five years.

7. Necessity for licence

(1) A company desirous of commencing an offshore banking business or trust business from within Grenada shall apply to the Minister for a licence.

(2) An application under subsection (1) must be submitted through the Authority.

8. Eligible company

A body corporate is an eligible company if—

- (1) it is incorporated in accordance with the International Companies Act, Chapter 152, is a qualified foreign bank, or other financial institution as defined in section 2;
- (2) its objects or business activities are restricted to offshore banking or trust business whether within or outside of Grenada;
- (3) its memorandum and articles are acceptable to the Authority;

- (4) its authorised and paid up shares capital accord with the requirements of section 20;
- (5) it provides the Authority with the names and addresses and other particulars of identification with respect to every shareholder of the company;
- (6) notwithstanding anything contained in the International Companies Act, has at least two directors, all of whom must be natural persons and one of whom must be a citizen of and resident in, Grenada.

9. Content of application

(1) Every applicant for a licence under this Act must—

- (a) show that it is an eligible company;
- (b) give the names, nationalities, addresses and other particulars of its directors;
- (c) give particulars of the offshore banking or trust business it proposes to do from within Grenada;
- (d) give the names, addresses and amount of shareholding of each of its shareholders and in the case of corporate shareholder, give the names and addresses and amount of shareholding of the ultimate beneficial owner of the corporate shareholder, and in the case of a trust, the beneficiary;
- (e) give a statement of the name, address, qualification and experience of its Chief Executive Officer;
- (f) provide such other information of a financial or other nature as the Authority may require in any particular case;
- (g) be in the prescribed form and accompanied by the prescribed application fee.

(2) An application for a licence by an eligible company must be accompanied by a certified copy of the memorandum and articles of association of the applicant.

(3) An application for a licence and all documents submitted pursuant to this Act in support of the application must be signed by all of the directors of the company.

(4) An application for a licence by a qualified foreign bank or other financial institution must, apart from the requirements of subsection (1), be accompanied by such documents as are specified in section 10.

(5) The Authority shall, before giving consideration to any application for a licence, first submit a copy of every such application to the Central Bank to ascertain—

- (a) the validity of the documents submitted in support of the application;
- (b) the character of the business of the applicant;
- (c) the experience of the person or persons who are to constitute its management;
- (d) any other matter as may be required by the Authority.

(6) The Authority shall supply such further information and data as the Central Bank may reasonably require for the proper conduct of this investigation under subsection (5).

(7) The Central Bank shall submit a report of its findings to the Authority within eight weeks of its receipt of the application.

10. Special requirement for foreign banks, etc.

(1) A qualified foreign bank or other financial institution seeking a licence under this Act must, in addition to satisfying the application requirements under section 9, produce—

- (a) a certificate showing that the primary banking supervisor of the jurisdiction, in which it is incorporated and licensed has no objection to its application for a licence to conduct banking business in Grenada; and
- (b) evidence satisfactory to the Central Bank that it is subject to comprehensive supervision on a consolidated basis by the appropriate authorities in its home country.

11. Examination of applicant

(1) On receipt of an application from an eligible company for a licence under this Act, the Authority shall cause the Central Bank to carry out such investigation of the applicant company, its financial circumstances and any associates or affiliates of the applicant company as the Authority considers necessary in the public interest.

(2) In particular the Authority shall require an examination of—

- (a) the financial status and history of the applicant company, its directors, its beneficial owners, associates or affiliates as defined in section 2;
- (b) the character and experience of the directors thereof;
- (c) the adequacy of its capital for the purpose of the business it intends to carry on;
- (d) the needs of the persons it intends to serve;
- (e) its earning prospects and its prospects as an employer.

(3) Where the Authority requests the Central Bank to carry out an investigation, such investigation shall be carried out and a recommendation made to the Authority.

12. Granting of offshore banking licence

(1) Subject to this Act, where an application is made under section 7, the Minister may, within a reasonable time after the receipt thereof, upon payment of the prescribed fee, grant the applicant an offshore banking licence or trust licence; but if the Minister is of the opinion that it would be undesirable in the public interest that the licence should be granted he or she may refuse to grant it.

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

(3) Subject to section 15, in granting a licence under this Act the Minister shall have regard to—

- (a) the recommendations in this regard from the Central Bank and the Authority;
- (b) whether or not the applicant, its directors, shareholders and senior officers are fit and proper persons;
- (c) the financial reputation and standing of the applicant;
- (d) the applicant's record in international business;
- (e) the satisfactory nature of records preceding the date of the application;
- (f) the financial net worth of each of the shareholders, associates, or affiliates of the company applying for a licence under this Act, such net worth to be in excess of three million dollars, Eastern Caribbean Currency, in cash or readily negotiable instruments as independently confirmed to the satisfaction of the Minister;
- (g) the character and standing of all the directors or proposed directors of the applicant; and

(h) any other requirements he or she may in consultation with any financial advisers determine from time to time.

(4) The grant of a licence under this Act shall be published in the *Gazette*.

(5) Every licensee shall prominently display the licence granted under this Act on the premises where the business is carried on.

13. Grant of trust licence

The Minister may when granting a licence under this Act or at any time thereafter, after consultation with the Central Bank, upon payment of the prescribed fee and upon such conditions as the Minister may specify, endorse the licence to the effect that the holder thereof is authorised to engage in trust business.

14. Duration of licence and payment of fees

A licence issued under this Act shall be valid for a period of twelve months from the date of issue thereof and must be renewed within fourteen days of such expiration by the payment of the prescribed fee.

15. Conditions for the grant and retention of licence

No licence shall be granted to a company or allowed to be retained by a company unless—

- (a) it has a principal office in Grenada;
- (b) it has obtained prior approval of the Authority for the appointment of two individuals as its authorised agent and alternate authorised agent and where the agent is a body corporate of the appointment of such a company;
- (c) changes to be effected in relation to the address of its principal office or of its authorised agents are notified in advance and approved in writing by the Authority;
- (d) it conducts its business in a manner consistent with the interest of depositors and the public;
- (e) it maintains capital adequacy of such percentage as may be determined from time to time by Order of the Minister;
- (f) it provides adequate provisions against loan losses, devaluation of currency and deposit losses;
- (g) it establishes and maintains an accounting system to the satisfaction of the Authority;
- (h) it complies with any conditions relating to the structure and operation of the company which may be required by a direction issued by the Authority;
- (i) it reports to the Minister, within a reasonable time, any substantive changes in its activities or any adverse developments, including breaches of law or regulations made hereunder;
- (j) it complies with guidelines issued by the Central Bank as required by section 95(4);
- (k) it receives the approval from the Authority, with respect to the establishment of branches, subsidiaries, mergers or acquisitions;
- (l) it complies with anti-money laundering guidelines issued by the Supervisory Authority under the Proceeds of Crime Act, Chapter 256A; and
- (m) it complies with the due diligence obligations contained in the First Schedule.

16. Other conditions of licence

(1) It is a condition of a licence under this Act that—

- (a) any voting shares of the licensee's capital will be in registered form;
- (b) the licensee will not, without the approval of the Authority acting on the recommendation of the Central Bank—
 - (i) enter into a merger, amalgamation or consolidation,
 - (ii) transfer, otherwise than in the ordinary course of its business, the whole or any substantial part of its assets or liabilities,
 - (iii) change its name from that set out in its licence,
 - (iv) alter its memorandum or articles of association, or
 - (v) transfer any of its shares;
- (c) the licensee may not knowingly in the course of its business accept any deposit for the account of a resident of Grenada or keep a resident of Grenada as a customer for any of its offshore banking services; or
- (d) the licensee that is a qualified foreign bank or other financial institution shall, in the manner and to the extent prescribed, separate activities in Grenada and keep separate records of its offshore banking activities and shall permit and assist in an audit of all its undertakings in Grenada by auditors approved by the Authority.

(2) Before giving an approval to any matter mentioned in subsection (1), the Minister shall carry out such of the investigations specified in section 11 as he or she thinks appropriate.

(3) Subsection (1)(a) and (b) does not apply to a licensee that is a qualified foreign bank or other financial institution.

17. Duty of authorised agent

(1) The authorised agents of a licensee shall reside in Grenada and in their capacity as representatives of the licensee ensure compliance with any requirement of this Act and the regulations and act as intermediaries between the licensee and the Minister or the Authority, as the case may be.

(2) The Minister may revoke an approval given under section 15(b) which must be notified in the *Gazette*.

18. Classes of licences

(1) A licence granted under this Act shall be in one of the following categories—

- (a) a Class I offshore banking licence for the purpose of carrying on offshore banking business;
- (b) a Class II offshore banking licence for the purpose of carrying on offshore banking business subject to the restrictions on that business specified in section 19 and subject to the further restriction that the licensee shall not engage in offshore banking business with persons other than those listed in any undertaking accompanying the application for the licence;
- (c) a Class I trust licence for the purpose of carrying on trust business as defined in section 2 of this Act; and
- (d) a Class II trust licence for the purpose of carrying on trust business as defined in section 2 of this Act with the restriction that the licensee shall not

undertake trust business for persons other than those indicated on the application for the licence.

(2) The Minister may, upon granting a Class I trust licence, extend the licence to include any terms and conditions as recommended by the Central Bank.

19. Restrictions on offshore banking licence

A licensee shall not—

- (a) conduct offshore banking business or trust business with any person resident in Grenada other than another licensee, or an international company;
- (b) invest in any asset that represents a claim on any person resident in Grenada except a claim resulting from—
 - (i) a transaction with another licensee or international company,
 - (ii) the purchase of bonds or other securities issued by the Government, a statutory corporation or a company in which the Government is the sole or majority beneficial owner, or
 - (iii) carry on any business in Grenada other than the business for which the offshore banking or trust licence has been granted.

PART IV

Capital Requirements

20. Capital requirements

(1) No licence shall be granted to a company unless it has fully paid up capital in Eastern Caribbean Dollars, or the equivalent in a convertible currency, as follows—

- (a) in respect of a Class I licence, six million dollars;
- (b) in respect of a Class II licence, three million dollars;
- (c) in respect of a Class I trust licence, two million dollars; and
- (d) in respect of a Class II trust licence, one million dollars,

or such other amounts as the Minister by Order prescribes.

(2) For the purposes of subsection (1), documentary evidence of the capital must be certified by a qualified accountant and must be supplied by the Authority.

(3) Every licensee shall maintain its affairs in such a way that its capital adequacy ratio shall be not less than such amount as the Minister by Order prescribes.

(4) Where the paid-up capital and reserves of a licensee are deficient in terms of subsection (1) or (2), the Minister, may, on the recommendation of the Authority, after consultation with the Central Bank, from time to time grant to the licensee in writing such period of time as he or she considers reasonable to enable the licensee to make good the deficiency.

(5) The Minister may, on the advice of the Central Bank require a licensee to increase its fully paid up capital to such greater amount as he or she may determine having regard to the nature of the offshore banking business or trust business, being, or sought to be, undertaken.

21. Special deposit

(1) Subject to this section, every licensee shall make a special deposit with the Authority in the following amounts—

- (a) in the case of a Class I or Class II offshore banking licence, two hundred and seventy thousand dollars; and
- (b) in the case of a Class I or Class II trust licence, one hundred and fifty thousand dollars.

(2) The special deposit for the purposes of subsection (1) shall be made in Eastern Caribbean Currency or an appropriate equivalent in a convertible currency approved by the Minister.

(3) A deposit made under this section must be refunded twelve months after the cessation of business or of the revocation of the licence of the licensee if the Authority is satisfied that there are no outstanding claims, queries or investigations with respect to such licensee and a written request is submitted to the Authority for the refund.

(4) The Authority may, upon satisfactory proof submitted to it concerning a claim against a licensee following its cessation of business or the revocation of the licence of the licensee with respect to a debt for goods or services supplied by persons in Grenada, satisfy the debt or part thereof from the deposit after claims have been received during a period not exceeding ten months from the date on which the request for refund was received.

(5) All claims against a licensee must be submitted within three months of the cessation of business of the licensee or of the revocation of the licence of the licensee.

(6) The Authority must supply the licensee with a financial statement relating to any debt satisfied under subsection (4).

22. Reserve fund

(1) Subject to subsection (2), every licensee shall after its first year of operation maintain a fund and shall, out of the net profits each year and before any dividend is declared, transfer to that fund a sum equal to ten per centum of such profits or such other amount as the Minister by Order prescribes, whenever the amount of the reserve fund is less than the issued paid up capital of the company.

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

PART V

Investigation and Supervision of Licensees

23. Special examination

(1) The Central Bank may carry out or cause to be carried out an examination of the affairs of any licensee from time to time or whenever in its judgement such examination is necessary or expedient in order to determine that the licensee is in a sound financial condition and that the requirements of this Act have been complied with in the conduct of its business.

(2) For the purpose of determining the condition of a licensee and its compliance with this Act, the Central Bank may at any time examine or cause to be examined any of its affiliates in Grenada to the same extent that an examination may be made of the licensee.

(3) An auditor, officer or employee of a licensee being subject to an examination shall produce to an examiner appointed by the Central Bank under this section at such time as the examiner fixes, all books, minutes, cash, securities, vouchers and other documents

and records relating to the assets, liabilities business generally of the licensee and shall give the examiner such information concerning its affairs and business as he or she may request.

(4) The Central Bank may assess a licensee for the reasonable expenses of conducting an examination under subsections (1) and (2).

24. Power of search

(1) If a Magistrate is satisfied by information on oath given by an officer of the Central Bank, or by a person authorised by the Central Bank that—

- (a) there is reasonable ground for suspecting that an offence against this Act has been or is being committed and that evidence of the commission of the offence may be found at any premises specified in the information, or in any vehicle, vessel or aircraft so specified in the information, or in any vehicle, vessel or aircraft so specified; or
- (b) any books, records, vouchers, documents, cash or securities which ought to have been produced under section 23(3) and have not been produced are to be found at any premises or any vehicle, vessel or aircraft,

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

(2) The person authorised by any such warrant to search any premises or any vehicle, vessel or aircraft may search every person who is found in or whom he or she has reasonable ground to believe to have recently left or is about to enter those premises or that vehicle, vessel or aircraft, as the case may be, and may seize any books, records, vouchers, documents, cash or securities found in the possession of any such person or in such premises or in such vehicle, vessel or aircraft which he or she has reasonable grounds for believing ought to have been produced under section 23(3).

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

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

(5) No female shall, pursuant to any warrant issued under this Act, be searched except by another female.

25. Powers of Minister

(1) Whenever the Minister is of the opinion that a licensee—

- (a) is or appears likely to become unable to meet its obligations as they fall due;
- (b) is carrying on business in a manner detrimental to the public interest or the interest of its depositors or of the beneficiaries of any trust or its creditors;
- (c) has contravened any provision of this Act or the Proceeds of Crime Act, Chapter 256A;
- (d) has failed to comply with any conditions of its licence;
- (e) is carrying on offshore banking business in such a manner which will affect Grenada adversely as an offshore banking centre; or

- (f) had been granted a licence upon a wrong assumption or suppression of a material fact,

he may forthwith do all or any of the following—

- (i) subject to section 26, revoke the licence,
- (ii) insert new conditions in the licence or amend or revoke any existing conditions,
- (iii) require the substitution of any officer of the licensee,
- (iv) at the expense of the licensee, appoint a person to advise the licensee on the proper conduct of its affairs and to report to him or her within three months of the date of his or her appointment,
- (v) at the expense of the licensee, appoint a person to make a special examination under conditions of secrecy or to assume control over the affairs of the licensee (or in the case of a licensee that is licensed under the Banking Act, Chapter 26A, to assume control of the offshore banking affairs of the licensee) with like power or a receiver appointed under the Bankruptcy Act, Chapter 27, or
- (vi) require such action to be taken by the licensee as he or she considers necessary in the circumstances.

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

(3) On receipt of the notice referred to in subsection (2), the licensee shall cease to effect any transactions save those which are necessary to meet the day to day expenditure of the institution including the payment of any salary or wages.

(4) Where a licensee referred to in subsection (3) is also licensed under the Banking Act, Chapter 26A, it shall cease its offshore banking transactions only.

(5) If any person effects any transactions in contravention of subsection (3), he or she commits an offence and shall be liable on summary conviction to a fine equivalent to the amount of funds or assets which were transferred from the licensee by that transaction.

(6) If the licence of the licensee to which a notice is issued under subsection (2) is not revoked within a period of ninety days from the date of such notice the notice issued shall be deemed to have been cancelled on expiry of the period of ninety days.

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

(8) On receipt of a report under subsection (7) the Minister may—

- (a) revoke the appointment of the person appointed under subsection (1)(iv) or (v);
- (b) extend the period of the appointment of the person appointed;
- (c) subject to such conditions as he or she may impose, allow the licensee to organise its affairs in such manner as may be approved by him or her; or
- (d) revoke the licence and, in the case of a licensee not licensed under the Banking Act, Chapter 26A, apply to the Court for an order that the business of the licensee be wound-up in accordance with Part VIII of this Act.

(9) Notwithstanding anything contained in this Act, the Minister may revoke a licence if the licensee—

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

(10) Where the Minister revokes a licence under this section, the revocation shall be made by Order and published—

- (a) twice in the *Gazette*;
- (b) in one newspaper in circulation in Grenada; and
- (c) if considered necessary by the Minister, in one newspaper outside of Grenada.

26. Condition precedent to revocation

Before the exercise of the power to revoke a licence under section 25, the Minister shall refer the matter to the Central Bank and shall act in accordance with the recommendation tendered by the Central Bank.

27. Consolidated supervision

The Authority may in collaboration with the Central Bank enter into arrangements with other regulatory bodies outside of Grenada for the purpose of carrying out consolidated supervision of licensees and related or affiliated companies.

28. Restrictions on advances, credit facilities, guarantees, etc.

(1) A licensee shall not directly or indirectly—

- (a) subject to subsection (3), grant to any person or to any group of companies or of persons which group or persons are under the control or influence of one and the same person or body of persons, any advances or credit facilities or give any guarantee so that the total value of the advances, credit facilities or guarantees in respect of such person or group of companies or persons, is at any time more than twenty-five per cent of the aggregate amount of the licensee's unimpaired capital and reserves; but the limitation upon the foregoing transaction shall not apply in respect of thereof if such transactions—
 - (i) are upon, or with respect to drafts or bills of exchange drawn in good faith against existing assets, or upon the licensee's acceptance, or bills of exchange of the kinds and maturities authorised by regulations made by the Minister after consultation with the Central Bank or upon commercial or business paper actually owned by the person discounting or selling the same with or to such licensee and endorsed without limitation, or guaranteed by such person,
 - (ii) are secured by collateral, fully covered by insurance, having an ascertainable market value or otherwise having such a value as collateral as found in good faith by an officer of such licensee of at least twenty per cent more than the amount of obligations secured thereby, or
 - (iii) represent loans to or guaranteed by the government or its boards or agencies, or local government bodies;
- (b) grant or permit to be outstanding unsecured advances unless such have been approved by its board and the Central Bank has been notified thereof in advance—

- (i) to the members of its board whether such advances are obtained by them jointly or severally,
 - (ii) to any person in which it or any one or more of its directors have any interest as a director, partner, manager, agent, member or otherwise,
 - (iii) to any person who owns, controls or has the power to vote more than ten per cent of any class of voting securities of the licensee,
 - (iv) to any person serving as auditor under section 43 or as an examiner under section 23,
 - (v) to any person, whose relationship to another licensee in which a correspondent account is maintained, is within any of the categories described in subparagraphs (i) to (iv);
- (c) grant any advance or credit facility against the security of its own shares;
 - (d) grant or permit to be outstanding or unsecured, credit facilities of an aggregate amount in excess of ten per cent of the unimpaired capital and reserve.

(2) Any advances, extensions or guarantees of credit to any person under (1)(a) or within any of the categories described in subsection (1)(a)(i) to (v) shall be made on substantially the same terms, including interest rates and collateral, as applicable, as those prevailing or comparable with another person.

(3) The qualifications for the purposes of subsection (1)(a) are—

- (a) the exceptions permitted by subsection (1)(a)(i), (ii) and (iii) may be limited or suspended from time to time by a directive from the Central Bank;
- (b) licensees shall report on a quarterly basis to the Central Bank, in the approved form, all exposures equal to or in excess of ten per cent of their unimpaired capital and reserves; and
- (c) no licensee may incur exposures in excess of ten per cent that in total exceed eight hundred per cent of its unimpaired capital and reserves or such lesser percentage as the Central Bank prescribes.

29. Restrictions regarding shares generally

(1) Notwithstanding anything contained in the International Companies Act, Chapter 152, no shares of a licensee shall be issued and no issued shares or beneficial interest in shares of any licensee shall be transferred or disposed of in any manner without the prior written consent of the Minister after he or she has consulted the Central Bank.

(2) All licensees shall submit an annual report to the Authority with respect to persons who own five per cent or more of the total voting rights of the licensee containing—

- (a) their names and addresses; or
- (b) if they are nominees, the names and addresses of the beneficial owners for whom the shares are held or other ownership interests.

(3) A licensee shall not directly or indirectly, except with the approval and subject to such terms and conditions as the Minister may impose, after consultation with the Central Bank, acquire or continue in the acquisition of any ownership interest in any financial, commercial, agricultural, industrial or other undertaking except such interest as a financial institution of debts due to it which shall be disposed of as soon as possible thereafter; but this subsection shall not apply to the purchase and sale of shares or stocks for trust account or upon the order and for the account of a customer without recourse.

30. Restriction on distribution of dividend

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

31. Restriction on operation outside of Grenada

(1) No licensee may operate outside of Grenada a subsidiary branch, agency or representative office without the prior written approval of the Minister after he or she has consulted the Central Bank.

(2) An application for the purposes of subsection (1) must be made to the Minister through the Authority, at least six months prior to the date of the proposed operation outside of Grenada.

32. Restriction on use of “bank”

(1) No company shall, except with the approval of the Minister under this Act or under the authority of any other enactment, be licensed, or continued to be licensed, by a name which contains the words “bank”, “trust”, “trust company”, “trust corporation”, “savings” or “savings and loan” or any of their derivatives, either in English or in any other language, in the description or title under which such company is carrying on business from within Grenada.

(2) The Minister may require the production of such information and particulars as may be necessary for the purposes of subsection (1).

(3) The Minister may refuse to grant a licence to a company or, if the company is already in possession of a licence, he or she may revoke the licence if, in his or her opinion, the company is carrying on or appears likely to carry on offshore banking business or trust business, as the case may be, under a name that—

- (a) is identical with that of any company, firm or business house, whether within or outside Grenada or which so nearly resembles that name as to be calculated to deceive;
- (b) is calculated to suggest, falsely, the patronage of or connection with some person or authority, whether within or outside Grenada; or
- (c) is calculated to suggest, falsely, that the company—
 - (i) has special status in relation to, or derived from the Government,
 - (ii) has the official backing of or acts on behalf of the Government of or any department, branch, agency or organ of the Government, or any officer thereof, or
 - (iii) is recognised in Grenada as a national or central bank or trust company.

33. Surrender of licence

(1) A licensee that has ceased to carry on business in respect of which the licence was granted may apply to the Minister to surrender its licence if—

- (a) it has ceased to carry on the business, and produces evidence that it has repaid all deposits and has transferred all trust assets held or administered by it; or
- (b) it is being wound-up voluntarily and produces evidence that it is solvent able forthwith to repay all other deposits held by it and all its other creditors and has transferred all trust assets held or administered by it, and the Minister may thereupon approve the surrender.

(2) In the case of an application under subsection (1)(b), the Attorney-General may apply to the Court for an order that the licensee be wound-up by the Court; and where the Attorney-General makes an application for the winding-up of a licensee under this subsection, the Court shall consider such application.

34. Information sharing

Notwithstanding anything contained in this Act or any other enactment, the Authority or the Central Bank, as the case may be, may share information on any licensee or a qualified foreign bank or other financial institution doing business in Grenada with other supervisory agencies or provide access to the offices of such licensee or qualified foreign bank or other financial institution in order to assess their safety and soundness, subject to any agreement on the protection of confidentiality between the Authority or the Central Bank.

35. Interpretation

For the purposes of this Part, “beneficial owner” or “beneficial ownership” in relation to shares means the person entitled to the rights in such shares which are normal incidents to the ownership of such shares.

PART VI

Directors

36. Qualification of directors and senior officers

(1) Notwithstanding anything contained in the International Companies Act, Chapter 152, no licensee shall at any time have less than two directors all of whom must be natural persons, and one of whom must be a citizen of and resident in Grenada.

(2) A licensee shall before the appointment of a director or chief executive officer, apply to the Minister for his or her written approval; but the Minister shall not approve a person to be a director unless he or she is satisfied that the person is a fit and proper person to hold such office.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or imprisonment for two years or both.

37. Disqualification of director

(1) A director of a licensee is disqualified to be a director or if he or she is already a director shall cease to be a director, if—

- (a) he becomes bankrupt or suspends payment to his or her creditors;
- (b) he is convicted in Grenada or elsewhere of an offence triable on indictment;
- (c) he becomes of unsound mind; or
- (d) the licence of a licensee of which he or she is a director is revoked.

(2) A person who performs the duties of or acts as a director of a licensee after he or she is disqualified by virtue of subsection (1) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or imprisonment for five years, or both.

38. Declaration of interest and conflict of interest of directors

(1) Every director of a licensee who is in any manner directly or indirectly interested in loans, advances, contracts or transactions from that licensee shall as soon as possible declare the nature of his or her interest to the board or other body responsible for the management of that licensee and shall cause such declaration to be circulated immediately to all the members of the board.

(2) For the purposes of subsection (1), a declaration by a director of a licensee to the effect that he or she is to be regarded as interested in any loan, advance, contract or other transaction, which may after the date of the notice, be made by the licensee shall be deemed to be a sufficient declaration of interest in relation to any loan, advance, contract or other transaction so made if—

- (a) it specifies the nature and extent of his or her interest; and
- (b) his interest is not different from, or greater in extent than, the nature and extent so specified in such notice at the time any advance is made.

(3) Every director of a licensee who holds any office or possesses any property, whereby, whether directly or indirectly, duties or interest might be created in conflict with his or her duties or interests as such director in Grenada shall declare the fact, nature, character and extent of the conflict at the first meeting of the board held—

- (a) after he or she becomes a director of the licensee; or
- (b) if already a director, after he or she commences to hold office or to possess the property.

(4) Every director of a licensee who qualifies as an interested director under this section shall cause to be brought and read any declaration made under subsection (1) or (3) at the next meeting of the board after it is given, and shall cause to be recorded any declaration made under this section in the minutes of the meeting at which it was made or at which it was brought up or read.

(5) A director who contravenes subsection (1) or (3) commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of one year, or to both.

PART VII

Auditors, Audits and Returns

39. Approved auditor

(1) For the purposes of this Act an approved auditor is an individual who satisfies the Authority that he or she is—

- (a) within one of the categories specified in the Second Schedule and in good standing thereof;
- (b) entitled to practice in Grenada;
- (c) a fit and proper person; and
- (d) approved by the Central Bank based on paragraphs (a) to (c).

(2) The Minister may by Order amend the Second Schedule so as to add any recognised professional qualification or to delete any professional qualification that is obsolete.

40. Prohibited auditors

An individual is prohibited from being an auditor under this Act—

- (a) if he or she has any proprietary interest in the licensee;

- (b) if he or she is a director, or agent of the licensee or of an affiliate of the licensee;
- (c) if he or she is an officer or employee of the Government or a statutory board; or
- (d) if he or she is an employee of the Central Bank.

41. Returns

(1) Every licensee shall in relation to its operations submit to the Authority and the Central Bank in English, in the approved form, statements of assets and liabilities and profit and loss at the close of the last business day of each quarter within thirty days of the end of each quarter.

(2) The Authority or the Central Bank may require a licensee to submit such further information as it may deem necessary for the proper understanding of any statement or return furnished by that institution within the period and in such manner as the Authority or the Central Bank requires.

(3) Notwithstanding subsection (1), the Authority may by notice served in that behalf require any licensee to submit to it within such period as may be specified, a statement of the assets and liabilities as at a date specified by it in the notice.

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

(5) A licensee which fails to comply with subsection (1), (2) or (3) or with any requirement of the Authority thereunder or furnishes information which is false or misleading commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to a further fine of one thousand dollars for each day or part thereof during which the offence continues after a first or subsequent conviction under this subsection.

42. Submission of balance sheet

(1) A licensee shall, not later than three months after the close of each financial year or such longer period as the Authority may, in any particular case permit, submit to the Authority and the Central Bank copies of its balance sheet, profit and loss and cash flow statements, and the full names of the senior officers, directors and shareholders of the licensee.

(2) The balance sheet and profit and loss account for the purposes of subsection (1) shall bear on their face the certificates of an auditor who is an approved auditor in accordance with section 39(1).

(3) For the purposes of subsection (2), the licence date shall be deemed to be the date of commencement of operations for the purpose of determining the due date for the first set of audited accounts unless previously agreed otherwise with the Authority.

(4) A licensee which contravenes subsection (1) commits an offence and shall be liable on summary conviction to a fine of five thousand dollars and to a further fine of one thousand dollars for each day or part thereof during which the offence continues after a first or subsequent conviction under subsection (1).

43. Appointment of approved auditor

(1) Every licensee shall appoint an approved auditor whose duties shall be to prepare for the shareholders of that licensee a report upon the annual balance sheet, profit and loss accounts and cash flow statements.

(2) It is the duty of the auditor to note in his or her report any instances where the operations of the licensee might not in the opinion of the auditor be in compliance with the requirements of this Act or any regulations made hereunder, the conditions of the licensee's licence or its memorandum or articles of association.

(3) A copy of the report of the auditor shall be displayed by the licensee in a conspicuous place at its office in Grenada.

(4) A licensee shall give written notice to the Central Bank if—

- (a) it fails to appoint or if it terminates the appointment of an auditor within ninety days of the issue of its licence; or
- (b) it fails to appoint or if it terminates the appointment of an auditor within ninety days of the annual general meeting,

and the notice, shall state the reasons for its failure to appoint an auditor or the reasons for the termination of the appointment; as the case may be.

(5) An auditor of a licensee shall forthwith give written notice to the Central Bank if he or she—

- (a) resigns before the expiration of his or her term of office; or
- (b) does not seek re-appointment.

(6) If the licensee fails to appoint an approved auditor under subsection (1), or at any time fails to fill a vacancy for such auditor, the Central Bank may appoint an approved auditor and shall fix the remuneration to be paid by that licensee.

(7) An auditor appointed under subsection (6) shall—

- (a) have all the powers of an auditor approved by the licensee to carry out an audit;
- (b) report to the Central Bank; and
- (c) comply with the requirements of section 23(3).

(8) Without prejudice to anything contained in subsection (6), if the Central Bank has reasonable grounds for being dissatisfied with the annual report of an auditor appointed by a licensee, the Central Bank may appoint another auditor to make an independent report.

(9) An auditor appointed under subsection (8) shall be paid such remuneration by the licensee as the Central Bank determines.

44. Content of report and related matters

(1) In every report upon the annual balance sheet, the auditor shall state whether in his or her opinion, the balance sheet is full and fair and properly drawn up, whether it exhibits a true and correct statement of the affairs of the licensee, and in any case in which the auditor has called for explanation or information from the officer or agents of the licensee, whether this is satisfactory.

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

(3) Where in the case of a licensee incorporated outside of Grenada, the Minister is satisfied that at report upon the annual balance sheet and accounts of that licensee has been duly made by an auditor in accordance with the laws of the jurisdiction in which the licensee is incorporated and a copy of the report together with the report of directors of

the licensee is sent to the Minister, he or she may exempt the licensee from the requirement of this section.

(4) If the report of an approved auditor under subsection (1) or a report of the directors has been made in a language other than English, certified translations shall accompany the report.

(5) Every licensee shall within four months of the end of its financial year publish in the *Gazette* a true and accurate statement of its accounts of all its operations as certified by its auditors; and the statement shall be signed by the manager or by another officer of the licensee as may from time to time be authorised by the licensee to sign such statement on behalf of the licensee.

(6) If a licensee fails to comply with the requirements of subsection (5) within four months of the end of its financial year, it shall be liable to a penalty of one thousand dollars for every day of such default except when an extension of the period has been granted by the Minister.

45. Protection of auditor, examiner, etc.

An auditor, officer or employee of a licensee or an examiner under section 23 who is required under this Part, or otherwise, to make any disclosure to the Central Bank or to a person authorised by the Central Bank, shall not, by reason of making that disclosure, be regarded as being in breach of his or her duty to the licensee.

46. Production of books

(1) Without prejudice to anything contained in section 23(3), every licensee in respect of which an examination has been ordered under section 23 shall produce to the person appointed under that section at such times and in such places as the person may specify (being times and places which, in the opinion of such person would not be detrimental to the conduct of the normal daily business of the licensee) any books in its possession or custody relating to its business, and shall give within such time as the person may specify, such oral or written information concerning its business as may be required.

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

47. Remedial action

(1) When the Central Bank is of the opinion that an examination of a licensee indicates that the licensee is carrying on its business in an unlawful manner or is in an unsound financial condition, the Central Bank may—

- (a) require that the licensee immediately take such remedial measures as it considers necessary; and
- (b) appoint a person who in its opinion has had training and experience in the business of the licensee concerned, to advise the licensee on the action to be taken to remedy the situation; or
- (c) recommend to the Minister that the licence of the licensee be suspended for a period not exceeding three months.

(2) A person appointed under subsection (1)(b) shall be paid such remuneration as the Central Bank may determine, which remuneration shall be charged to the licensee concerned.

48. Accounting standards

Accounting standards for the purposes of this Act must comply with internationally accepted accounting standards.

PART VIII

Winding-up

49. Application of this Part

Notwithstanding anything contained in any other enactment the winding-up of all licensees shall be in accordance with this Part.

50. Voluntary winding-up

(1) Except with the prior written approval of the Minister given after consultation with the Central Bank, no licence may be wound-up voluntarily.

(2) Approval for a voluntary winding-up of a licensee may be given by the Minister only if he or she is satisfied that—

- (a) the licensee is solvent and has sufficient assets to repay its depositors and other creditors without delay; and
- (b) subject to subsection (3), the winding-up has been approved by the holders of at least two-thirds of the outstanding voting shares of the licensee.

(3) Where the Minister finds in respect of a licensee that there is imminent danger of its insolvency, the Minister may on the advice of the Central Bank waive the requirement for shareholder approval of the winding-up of the licensee voluntarily, if—

- (a) the winding-up is to be effected in whole or in part through the sale of any of the assets of the licensee to another licensee; and
- (b) the deposit liabilities of the licensee to be wound-up are to be assumed by that other licensee.

51. Commencement of voluntary winding-up

When the licensee receives the approval of the Minister to its voluntary winding-up, the licensee shall—

- (a) cease to do business immediately and retain only such staff as is necessary for an orderly winding-up;
- (b) repay its depositors and other creditors; and
- (c) wind-up all operations undertaken before the receipt of the approval to wind-up.

52. Notice of winding-up

(1) Within thirty days of the receipt of the approval of the Minister to the winding-up, a notice of voluntary winding-up, which must contain the prescribed information, shall be sent by the licensee in the prescribed manner or by personal service, to the depositors and creditors of the licensee and other persons having any interest in the funds or other property.

(2) The notice described in subsection (1) shall also be published in the *Gazette* and placed in a conspicuous place on the premises of each office or branch of the licensee to be wound-up.

53. Settlement of claims

(1) The approval of the Minister to the voluntary winding-up of a licensee does not adversely affect the rights of a depositor or other creditor of the licensee to settlement in full of his or her claim nor the rights of any person having an interest in the funds or property of the licensee to settlement of that interest.

(2) All claims made by persons described in subsection (1) shall be settled by the licensee concerned within such time as the Minister after consultation with the Central Bank may determine.

54. Distribution of remaining assets

(1) The assets of a licensee being voluntarily wound-up that remain after settlement of the claims described in section 53 are to be distributed among the shareholders of the licensee in proportion to their respective rights.

(2) Notwithstanding subsection (1), no distribution of the remaining assets of a licensee may be made—

- (a) before all claims of depositors and other creditors have been settled or, in the case of a disputed claim, before the licensee had deposited with the Authority sufficient funds to meet any liability that could arise under that claim;
- (b) before any funds that are payable to a depositor or other creditor who has not made his or her claim have been deposited with the Authority; or
- (c) before any funds or property held by the licensee that could not be returned, in accordance with section 53 to the persons who have an interest therein have been deposited with or transferred to the Authority together with the relevant records.

55. Interruption of winding-up

(1) If the Minister determines that the assets of a licensee that is being voluntarily wound-up are not sufficient for the full discharge of the obligations of the licensee or that the completion of such a winding-up is being unduly delayed, the Minister may seize the management and control of the licensee by posting a notice to that effect on the premises of the licensee and by putting persons appointed by the Central Bank into the offices of the licensee.

(2) When the Minister seizes the management and control of a licensee under subsection (1), he or she shall immediately begin proceedings for the compulsory winding-up of the licensee or its re-organisation, in accordance with this Act.

56. Seizure in other cases

(1) Notwithstanding section 55, the Minister may direct the Central Bank to seize the management and control of a licensee in any of the following circumstances, namely—

- (a) when the realisable value of the licensee's assets is less than the aggregate of its liabilities and capital accounts or the licensee's financial condition suggests that it will shortly be in that circumstance;
- (b) when its business is being conducted in an imprudent manner or is not being conducted in accordance with this Act;
- (c) when the licensee refuses to submit to inspection of its records or operations by an auditor appointed under section 43 or an examiner appointed under section 23; or
- (d) when its licence has been revoked or suspended under this Act.

(2) A seizure of the management and control of a licensee under this section is effected by placing a notice to that effect on the premises of the licensee and by putting persons appointed by the Central Bank into the offices of the licensee.

(3) A licensee aggrieved by a seizure under this section may institute proceedings in the High Court for recovery of the administration and control of the institution and the High Court shall make such order in respect thereto as to it seems just and consistent with the purposes of this Act.

57. Duty of Minister

Within thirty days after the Minister has seized the administration and control of a licensee under this Act, the Minister shall make application to the High Court—

- (a) for the compulsory winding-up of the licensee; or
- (b) for the re-organisation of the licensee.

58. Power of High Court

The High Court may in respect of proceedings by the Minister under section 57 order—

- (a) compulsory winding-up of the licensee;
- (b) the re-organisation of the licensee subject to such terms and conditions as the Court may determine; or
- (c) the return of the management and control of the licensee to its shareholders, directors and officers subject to such safe-guards or conditions, if any, as the Court may consider for the purposes of this Act.

59. Notice of application

The Minister shall after he or she makes an application to the High Court under section 57 in relation to a licensee, immediately give notice of the application to—

- (a) the directors and shareholders of the licensee; and
- (b) the depositors and other creditors of the licensee.

60. Appointment of custodian

If the High Court orders the compulsory winding-up or re-organisation of a licensee pursuant to an application under section 57, the High Court shall appoint a custodian to be responsible to the Court and to supervise the winding-up or re-organisation of the licensee.

61. Function of custodian

(1) In respect of the licensee for of which he or she has been appointed, the custodian has the exclusive power and duty to manage and control the affairs of the licensee.

(2) Without limiting his or her powers or duties under subsection (1), the custodian may, in respect of the licensee for which he or she has been appointed—

- (a) continue or discontinue its operations;
- (b) stop or limit the payment of its obligations;
- (c) employ staff;
- (d) execute any instrument in its name;

- (e) initiate, defend and conduct in its name any action or proceeding to which the licensee is or might be a party;
- (f) end the seizure of the licensee by restoring it to its directors and shareholders; and
- (g) re-organise or wind-up the licensee in accordance with this Act.

62. Inventory of assets

(1) The custodian shall after assuming management and control of a licensee, make an inventory of its assets and forward a copy of the inventory to the Registrar of the High Court.

(2) The copy of the inventory forwarded to the Registrar shall be kept available at all reasonable times for the inspection of interested persons.

63. Re-organisation

(1) Where the re-organisation of a licensee has been ordered by the High Court, the custodian shall develop a plan or re-organisation and deliver a copy thereof to each of the depositors and other creditors of the licensee who under the plan would not receive full restitution or payment of their claims.

(2) The copy of the re-organisation plan must be accompanied by a notice requiring that objections to the plan be delivered to the custodian not later than thirty days after the last of the copies have been delivered under subsection (1).

(3) If within the time limited therefor by subsection (2) the custodian does not receive objections in writing to the re-organisation from persons who in the aggregate hold at least one-third of the total amount of deposits and other liabilities of the licensee, the custodian may carry out the re-organisation plan referred to in subsection (1).

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

(5) The High Court may extend the time limited by subsection (2) and upon cause shown may exempt the custodian from delivering the plan to some or all of the persons mentioned in subsection (1).

64. Content of plan

A re-organisation plan developed by the custodian of a licensee must, so far as it is practicable to do so—

- (a) be equitable to all classes of depositors;
- (b) provide for bringing in new funds to establish adequate ratios between—
 - (i) capital and deposits, and
 - (ii) liquid assets and deposits; and
- (c) provide for the removal of any directors or any officer or employee responsible for the circumstances that led to the seizure of the licensee.

65. Application for order by custodian

If, in the course of the re-organisation of a licensee, it appears to the custodian that circumstances render the plan or its execution undesirable, he or she may apply to the High Court for an Order—

- (a) to modify the plan; or
- (b) to wind-up the licensee compulsorily.

66. Compulsory winding-up

(1) Where the High Court under section 58 or 65 orders the compulsory winding-up of a licensee, the custodian appointed by the Court may, subject to subsection (2), perform the functions of the licensee.

(2) The custodian of a licensee described in subsection (1) may not, without an Order of the High Court to do so—

- (a) sell any assets or transfer any property of the licensee that has a value exceeding one hundred thousand dollars;
- (b) create a security interest in any asset or property of the licensee in favour of a creditor who extends a new credit to the licensee;
- (c) compromise or release any claim the amount of which exceeds one hundred thousand dollars; or
- (d) pay any claim other than one in respect of an obligation incurred by the custodian in the exercise of his or her winding-up functions before the schedule referred to in section 70(c) has been approved by the High Court.

67. Termination of service contracts

Subject to any other law governing conditions of employment, the custodian of a licensee that has been ordered by the High Court to be compulsorily wound-up shall terminate not later than nine months after the Order of the High Court—

- (a) any employment contract of the licensee;
- (b) any contract for services to which the licensee is party; and
- (c) any obligations of the licensee as a lessee of property.

68. Right of lessor

A lessor of any property referred to in section 67—

- (a) must be given notice of not less than ninety days of the intended termination of the obligations of a licensee thereunder;
- (b) has no claim for rent thereunder other than rent accrued on the date of the termination of the obligation of the licensee; and
- (c) has no right to damages by reason only of any termination of the obligations of the licensee, notwithstanding any term of the lease to the contrary.

69. Statement of accounts

(1) Within sixty days after an order for the compulsory winding-up of a licensee, the custodian shall deliver a statement of account to any depositors and other creditors.

(2) The statement of account is a statement of the nature and amount for which a claim of a person described in subsection (1) is shown on the books of the licensee.

(3) A notice specifying that any objection to the statement of account is to be made on a date specified in the notice, not being later than sixty days after the delivery of the notice, must accompany the statement of account.

(4) The High Court on application of the custodian for cause shown may exempt the custodian from delivering a statement of account to any person mentioned in subsection (1).

70. Claims

Not later than ninety days after the last day specified in the notice for filing claims against a licensee being compulsorily wound-up the custodian shall—

- (a) reject any claim, of which he or she doubts the validity;
- (b) determine the amount, if any, owing to each known depositor or other creditor and the priority of his or her claim under this Act;
- (c) prepare for filing with the High Court a schedule of the actions proposed to be undertaken for the purpose of the compulsory winding-up of the licensee;
- (d) notify each person whose claim is allowed in full; and
- (e) publish, once a week for three consecutive weeks in a newspaper of general circulation in Grenada—
 - (i) a notice of the date and place where the schedule referred to in paragraph (c) will be available for inspection, and
 - (ii) the date, not being earlier than thirty days from the date of the publication, on which the custodian will file the schedule with the High Court.

71. Objections

(1) Within twenty days of the filing of a schedule under section 70, a depositor or other creditor or shareholder of the licensee concerned, or other interested person, may file with the High Court any objection he or she has to any action proposed in the schedule referred to in section 70(c).

(2) After notice is served on the custodian and such interested parties as the High Court may require, the High Court shall hear the objection and make such Order thereon as it considers just in the circumstances.

(3) When the High Court allows an objection, the Order must set out the manner in which the schedule referred to in section 70(c) is to be modified.

72. Distribution of assets

(1) When a schedule has been filed under section 70 in respect of a licensee, the custodian may make a partial distribution to the claimants against the licensee whose claims are undisputed or allowed by the High Court, if the custodian establishes an adequate reserve for the payment of disputed claims against the licensee.

(2) As soon as practicable after all objections against the distribution proposed by the custodian have been heard and determined, final distribution of the assets of the licensee concerned shall be made by the custodian.

73. Priority of claims

(1) The following claims have priority against the general assets of a licensee being compulsorily wound-up under this Act—

- (a) firstly, the necessary and reasonable expenses incurred by the custodian in carrying out his or her functions under this Act;

- (b) secondly, the wages and salaries of the officers and employees of the licensee that accrued during the three months immediately preceding the seizure of the licensee under this Act;
- (c) thirdly, any monies owing to the Government of Grenada or the Authority, or both;
- (d) fourthly, the other deposits.

(2) After payment of all other claims against the licensee, with interest at such rate as the High Court determines, all remaining claims against the licensee that were not filed within the time limited therefor under this Act may then be paid.

(3) Where the amount available to pay the claims of any class of claimant specified in this section in respect of priorities is not sufficient to provide payment in full to claimants in that class, the amount available shall be distributed by the custodian on a *pro rata* basis among the claimants in that class.

74. Distribution among shareholders

The assets of a licensee being compulsorily wound-up that remain after the final distribution to claimants pursuant to section 72 shall be distributed by the custodian among the shareholders of the licensee in proportion to their respective rights.

75. Abandoned funds

(1) Any funds of licensee being compulsorily wound-up under this Act that remain unclaimed after the final distribution under section 73 and not subject to distribution under any other provision of this Act shall be deposited with the Authority by the custodian of the licensee.

(2) Funds deposited with the Authority under subsection (1) must be held by the Authority for ten years unless earlier claimed by a person entitled thereto.

(3) On the expiration of the ten years referred to in subsection (2) in respect of any funds, those funds remaining unclaimed become abandoned property and shall be paid into the Consolidated Fund.

76. Completion of winding-up

(1) When all the assets of a licensee being wound-up have been distributed or dealt with as required by this Act the custodian shall render an audited statement to the High Court.

(2) If the High Court is satisfied with the audited statement rendered by the custodian in respect of a licensee being wound-up it may by Order direct the person responsible for the registration of companies to strike the name of the licensee from the register of companies under the International Companies Act, Chapter 152, and publish notice thereof in the *Gazette*.

(3) When its name is struck off the register of companies the licensee is thereupon dissolved and its licence under this Act is deemed to be revoked.

PART IX

Exemptions from Taxes and Duties

77. Tax exemption on profit, etc.

(1) No income tax, capital gains tax or other direct tax or impost shall be levied in Grenada upon the profits or gains of a licensee in respect of the offshore banking it does from within Grenada.

(2) No income tax, capital gains tax or other direct tax or impost shall be levied in Grenada in respect of any dividends or earnings attributable to the shares or securities of a licensee that are beneficially owned by another licensee or by a person who is not a resident of Grenada.

(3) No estate, inheritance, succession or similar tax or impost shall be levied in Grenada in respect of any shares securities or assets of a licensee that are beneficially owned by a person who is not resident of Grenada.

(4) No tax, duty or impost shall be levied upon the increment in value of the property or other assets in Grenada of a licensee other than upon such of them as are distributed to residents of Grenada.

78. Tax exemption on transfer of assets

(1) No tax, duty or other imposts shall be levied upon a licensee or its shareholders in respect of the transfer of all or any part of its securities or other assets to another licensee or to a person who is not a resident of Grenada.

(2) Where a person who is not a resident of Grenada or a licensee transfers shares of a licensee that are held by that person or licensee, the transfer is exempt from the payment of any tax, duty or impost thereon.

(3) No income tax or capital tax and no other direct tax or impost shall be levied or collected in Grenada in respect of any dividends, interests or other returns from any shares, securities, deposits or other borrowings or a licensee of any assets managed by a licensee if the dividends, interest or other returns are in respect of shares, securities, deposits or other borrowings or assets beneficially owned by a person who is not a resident of Grenada; but the onus of establishing ownership lies upon the licensee.

79. Withholding tax and report on dividends

(1) Notwithstanding anything contained in the Income Tax Act, Chapter 149, but subject to subsection (2), no licensee needs to withhold any portion of any dividend, interest or other returns payable to any person in respect of that person holding shares of the licensee.

(2) All dividends, interest or other returns attributable to the shares or securities of or management of assets by a licensee that are payable to a resident of Grenada and known as such by the corporation shall be reported to the Commissioner of Inland Revenue.

80. Trust property exemption

When a trust is established by a settlor who is not a resident of Grenada, the trust is exempt from any tax, duty or impost in Grenada, if the funds of the trust consist solely of foreign currency or foreign securities and the trust is under the management of a licensee.

81. Guarantees

(1) When in the opinion of the Minister it is in the public interest to do so, the Minister may by agreement give such assurance or guarantees regarding the future taxing of a licensee as it may require before commencing to do offshore banking from within Grenada.

(2) An assurance or guarantee referred to in subsection (1) is subject to affirmative resolution of the House of Representatives.

82. Service charge, etc.

(1) When a tax levied in Grenada is in the nature of a service charge or utility charge for a service provided by the Government of Grenada, a licensee is not exempted from that charge under this Part.

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

83. Customs duty

The Minister may by Order exempt a licensee in respect of its business from all or so much of any duty payable under the Customs (Control and Management) Act, Chapter 75B, in respect of any goods imported by the licensee as the Minister deems expedient, if the licensee satisfies the Minister that the goods concerned are both not being made or manufactured in Grenada and are essential as equipment or fixtures for doing business from within Grenada, and are not merely goods that will be used up or expended in the ordinary course of business.

84. Employee benefits

(1) Where the Minister is satisfied that a licensee must use the services of specially qualified persons in order to do its business effectively from within Grenada and that—

- (a) it is unable to acquire those services in Grenada; and
- (b) it is unable to retain or hire those services from outside Grenada without special tax benefits being made available,

the Minister may authorise an offshore benefit provision for the employment of those specially qualified persons, subject to the relevant laws in this regard.

(2) An offshore benefit provision is one whereby a prescribed percentage of an employee's or contractor's salary or fees from a licensee—

- (a) is exempted from income tax or other tax in Grenada;
- (b) may be paid in a foreign currency in a trust account without being liable to income or other tax in Grenada as to the amount paid or any earning thereon; or
- (c) may be paid in some other prescribed manner in another currency or otherwise without being liable to income or other tax in Grenada,

notwithstanding any provision of the Income Tax Act, Chapter 149, or the Exchange Control Act, Chapter 93.

PART X

Special Offences

85. Misleading advertising

(1) A licensee that engages in advertising practices that are likely to mislead concerning—

- (a) the relationship of the licensee with the Government of Grenada, the Central Bank or any department or office thereof;
- (b) the true interest rate paid on deposits or charged on credit;
- (c) the true returns on the management of investments;

- (d) the insured or guaranteed status of deposits or of other liabilities or of investments managed it; or
- (e) its true financial condition or status,

commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or imprisonment for five years.

(2) A licensee shall, in respect of its business furnish the Authority and the Central Bank with copies of all of its advertisements—

- (a) six months after the first issue of its licence under this Act; and
- (b) thereafter at six months intervals.

(3) A licensee which contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of twenty five thousand dollars.

86. False statements and obstruction

A director, officer, employee or agent of a licensee, who with intent to deceive—

- (a) makes any false or misleading statement or entry in a book, account, record, report or statement of a licensee, or omits a statement or entry that should be made therein;
- (b) obstructs the carrying out by an auditor of his or her proper function under this Act; or
- (c) obstructs the examination of a licensee as required pursuant to this Act,

commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or imprisonment for five years, or to both.

87. False or misleading information

A licensee or any director or officer of a licensee who knowingly or wilfully supplies false or misleading information to the Minister, the Authority or any other person authorised under section 20(5) to assist the Authority, commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment not exceeding two years or both.

88. General penalty

A person who contravenes any provision of this Act for which no penalty is specifically provided, or of regulations made under this Act, commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or imprisonment for one year, or both.

PART XI

Miscellaneous and Transitional

89. Power of Authority to require insurance

Every holder of a licence under this Act shall effect a policy of insurance with a reputable insurance company against—

- (a) the dishonesty of employees of the licensee; and
- (b) loss of documents,

in such amount and of such nature as the Authority may determine to be fit and proper, having due regard to the nature and type of business carried on by the licensee, and in the event that the insurance is withdrawn, cancelled or not renewed, the licensee shall immediately notify the Authority and shall cease to carry on its business until the insurance has been reinstated or replaced.

90. Right of appeal

(1) A licensee or other person who is aggrieved by a decision of the Minister, the Central Bank or the Authority under this Act may, within thirty days of the delivery of such decision, appeal to the High Court on a point of law.

(2) The High Court shall have jurisdiction to hear and determine the appeal and its decision shall be final.

(3) An appeal under this section must be in accordance with Part 60 of the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000.

91. Certificate of standing

(1) Notwithstanding anything contained in the International Insurance Act, Chapter 152B, and the Company Management Act, Chapter 58B, the Authority shall, upon written request, in the approved form, of a licensee or its licensed registered agent and upon payment of the fee specified in subsection (3), issue, *mutatis mutandis*, a certificate of standing bearing the seal of the Authority certifying whether or not the licensee as named in the request is in compliance with sections 14, 15, 25, 41 and 42 of this Act, sections 13, 14, 15, 16, 17 and 18 of the International Insurance Act, Chapter 152B, or sections 8, 9, 12, 15 and 16 of the Company Management Act, Chapter 58B, as the case requires.

(2) No certificate shall be issued under this section with respect to a licensee if, as an international company, any of the matters specified in section 111(2) of the International Companies Act is in the affirmative.

(3) The fees for the purposes of subsection (1) are—

- (a) if the licensee operates as a bank, trust company or international insurance company, or is engaged in company management – five hundred dollars;
- (b) if the licensee is engaged in any two of the businesses specified in paragraph (a) – eight hundred dollars;
- (c) if the licensee is engaged in three or more of the businesses specified in paragraph (a) – one thousand two hundred dollars.

(4) The fees prescribed pursuant to subsection (3) may be amended by Order of the Minister published in the *Gazette*.

(5) For the purposes of this section, “licensee” means a bank, trust company, international insurance company or a company engaged in company management.

92. Criminal liability of directors

(1) Where an offence under this Act has been committed by a body of persons which is—

- (a) a body corporate, society or other body of persons, every person who at the time of the offence was a director, manager, secretary or other officer of the body corporate, society or other body of persons as well as that body corporate, society or other body of persons commits the offence;
- (b) a partnership or firm, every partner of the partnership or firm as well as that partnership or firm commits the offence and shall be liable to be proceeded against and punished accordingly.

- (2) It is a defence to charge under subsection (1) that—
- (a) the act constituting the offence took place without the knowledge or consent of the person charged; or
 - (b) he exercised all due diligence to prevent the commission of the offence.

93. Immunity

Notwithstanding anything contained in any other enactment, no prosecution shall lie against any officer, employee, servant or agent of the Authority or the Central Bank for any act which in good faith is done or is purported to be done by him or her under this Act.

94. Disclosure by auditor

An auditor, officer or employee of a licensee who is required to make any disclosure under this Act to the Central Bank or to a person authorised by the Central Bank, shall not, by reason of making that disclosure be regarded as being in breach of his or her duty to the licensee.

95. Guidelines and related matters

- (1) The Central Bank may issue guidelines to all licensees with respect to—
- (a) required policies, practices and procedures for the evaluation of the quality of assets and the adequacy of loan loss provisions and loan loss reserves; and
 - (b) subject to subsection (2), policies, procedures and systems for identifying, monitoring and controlling country risk and transfer risk, market risk, liquidity risk, interest rate risk, operational risk and such other risks as the Central Bank determines.
- (2) The Central Bank for the purpose of giving effect to subsection (1)—
- (a) impose specific limits, require appropriate reserves and levy a specific capital charge when warranted with respect to any risk mentioned in subsection (1)(b); and
 - (b) require all licensees to have in place adequate and comprehensive risk management processes to identify, measure, monitor and control all material risks and where appropriate to hold capital or reserves against these risks.
- (3) Without prejudice to anything contained in subsection (1), guidelines to licensees may relate to—
- (a) policies, practices and procedures for the prevention and detection of criminal activity;
 - (b) records to be kept on customer identification and individual transactions and the retention period for such documents;
 - (c) procedures to be followed concerning suspicious transactions;
 - (d) systems of loan classification, provisioning and write-offs;
 - (e) non-accrual of income on non-performing and impaired assets including the suspension and reversal of accrued interest.
- (4) It is a further condition of all licences that licensees must follow and give effect to all guidelines issued by the Central Bank.

96. Regulations

(1) The Minister, on the advice of Central Bank, may make regulations generally for the purpose of carrying out or giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of powers conferred by subsection (1), the Minister may make regulations for or in respect of—

- (a) capital adequacy;
- (b) risks and large exposures;
- (c) major acquisitions or investments by licensees;
- (d) classification and concentrations of loans and other assets;
- (e) the treatment of interest;
- (f) the extent and control of advertising by licensees;
- (g) records to be kept at the principal office;
- (h) the forms to be used for the purposes of this Act;
- (i) all matters required by this Act to be prescribed; and
- (j) new money instruments.

97. Jurisdiction of Magistrate

Notwithstanding anything contained in any other enactment, a Magistrate shall have jurisdiction under this Act with respect to the offences created thereunder notwithstanding the fact that the amount of the fine exceeds the monetary limit placed by law on a Magistrate.

98. Forms

Without prejudice to anything contained in this Act, the forms prescribed thereunder must be used for the purposes of the Act.

99. Repeal

The Offshore Banking Act, 1996, is hereby repealed.

100. Transitional

(1) All existing valid licences issued under the Offshore Banking Act, 1996, shall continue in force but shall be subject to this Act.

(2) All existing valid licenses under the Offshore Banking Act, 1996, must be in full compliance with the requirements of this Act not later than one year after the commencement thereof.

101. Commencement

This Act comes into force on the 1st day of December, 2007.

First Schedule

OFFSHORE BANKING ACT

Due Diligence Obligations

[Section 15(m).]

ARTICLE 1

Application

1. This Schedule is mandatory for all licensees as defined in section 2 of the Offshore Banking Act, Chapter 217A.
2. This Schedule in no way changes the bank's obligation to observe banking confidentiality.
3. This Schedule is not intended to—
 - (a) incorporate foreign currency, fiscal or their economic regulations into the Laws of Grenada and declare them to be applicable to the international banks unless this is already the case under existing international treaties and the Laws of Grenada;
 - (b) affect the current legal practice in the field of international law;
 - (c) change existing civil law relationship between the bank and the customer.
4. Grenada legislation and judicial practice as well as the treaties Grenada has concluded with other countries represent the guiding principle for the international banks and/or trust corporations in Grenada.
5. This Schedule lays down in a binding way the valid rules of good conduct for international banks or trust companies management according to the code of professional ethics and is not intended to impede normal banking or trust service relationships.
6. For the purpose of this Schedule the word "bank" means any international bank or trust company licensed under the Offshore Banking Act, Chapter 217A.

ARTICLE 2

Forbidden Acts

1. Acts contrary to this Schedule are—
 - (a) the opening and maintaining of accounts and deposits without having ascertained the identity of the entitled party;
 - (b) the renting of safe-deposit boxes without having observed necessary care;
 - (c) the active aiding and abetting of capital flight or obtaining fiscal returns from any recognised criminal acts.
2. The Schedule is intended to ensure the careful clarification of a bank customer's identity and to permit thereby the efficient accomplishment of the bank's obligation to testify and furnish information as provided for in the Laws of Grenada.

ARTICLE 3

Observance of care in Accepting Funds

1. The bank undertakes not to open bank accounts or securities deposits nor to effect fiduciary investments unless it has ascertained with such care as can be reasonably expected in the circumstances the identity of the person entitled the funds to be credited or to be invested.
2. When opening an account or deposit or concluding a fiduciary operation the identity of the contracting party as well as that of the beneficial owner will be established in accordance with the guidelines set forth in this Schedule.
3. In the case of transactions for large amounts at bank counters, the identity of the contracting party will be confirmed.
4. The scope of the bank's obligation under this Schedule includes—

- (a) the obligation to check identity for the opening of accounts, saving books and deposits of any kind whatsoever, irrespective of whether they are maintained under the name of the customer or under a number; and
- (b) in the case of cash transactions at bank counters (exchange, purchase and sale of precious metals, cash subscriptions to bank issued medium-term notes and bonds, cashing cheques, etc.) the obligation to check the identity of the contracting party applies to transactions exceeding ten thousand dollars or the equivalent in a convertible currency.

5. Identification of the contracting party—

- (a) for individuals—
 - (i) in the case of personal appearance of the Customer, the bank will check the identity, of any contracting party having no fixed domicile or being domiciled abroad by means of an driving licence, etc. and ascertained by the customer furnishing a written recommendation—
 - (1) from another customer, or trustworthy individual known to the bank, or
 - (2) from a bank listed in a recognised publication of banks (Bankers Almanac and Year Book, The Banker's World Directory, Polk's World Bank Directory, etc.),
 - (ii) where the customer relationship is initiated by correspondence, the bank will request certification of the foreign contracting party's signature from a bank, or from another customer or trustworthy individual known to it,
 - (iii) confirmation of the address of domicile is to be obtained by postal delivery or by some other equally valid method;
- (b) for legal entities and companies—
 - (i) the domicile of legal entities is to be verified by obtaining confirmation of the address indicated by way of postal delivery or some other equally valid document (for example, Certificate of Incorporation),
 - (ii) identity checking of such a contracting party is to be effected by way of an extract from a commercial register or from some other equally valid document (for example, Certificate of Incorporation).

6. All care which can be reasonably expected will be exercised in identifying the beneficial owner of assets to be deposited at the time of opening the account or deposit, however, the bank may assume that the contracting party and the beneficial owner are identical unless unusual observations are made in which case—

- (a) for individuals; if the contracting party declares himself or herself to be acting on behalf of a third party, the bank will obtain the third party's full name, address and country of domicile;
- (b) for legal entities and companies; if the contracting party acts for the account of a legal entity or company, the bank will register the firm's name, address and country of domicile.

7. In cases of doubt the procedure according to Article 4 will be followed, particularly when the details as to identity appear to be doubtful or when there are indications which give doubt as to the contracting party being identical with the beneficial owner.

8. The bank will ensure that its internal control department and its auditing firm can check as to whether identification procedures are being carried out.

9. Appropriate records will be kept of the name, address and country of domicile of all contracting parties as well as of the means used to establish identity. Copies of any documents obtained in the case of legal entities will be preserved in accordance with the record keeping provisions in the Anti-Money Laundering Guidelines issued by the Supervisory Authority.

10. The details specified as to the identity of the beneficial owner or of the individuals controlling a company will be preserved in accordance with the record keeping provisions of the Anti-Money Laundering Guidelines issued by the Supervisory Authority.

ARTICLE 4

Procedure in Cases of Doubt

1. In cases of doubt, when opening accounts or deposits, the bank will require a written declaration from the customer as to whether he or she is acting for his or her own account for the account of a third party and in the latter case, for whose account.

2. Doubt is considered justified in cases such as when—

- (a) opening a new account or taking a deposit a Power of Attorney is requested for a person not recognisable as being closely enough related to the account holder (for example, to a foreigner), or if any other unusual aspects arise;
- (b) the opening of an account or deposit is requested by a person whose financial situation is known to the bank and the assets handed over or to be remitted are beyond the limits of the person's financial situation;
- (c) the opening of an account or a deposit is requested by a person domiciled abroad, who has been introduced to the bank but, at the same time a Power of Attorney is given to a person who is not recognisable as being in a sufficiently close relationship to the account holder;
- (d) the opening of an account or a deposit is requested by a person domiciled abroad, who has been introduced to the bank and whose financial situation is known to the bank and the assets handed over or remitted are beyond the person's financial situation;
- (e) the opening of an account or deposit is requested by a person domiciled abroad who has not been recommended to the bank and the discussion the bank has with the customer at the time of opening the account or deposit bring to light unusual aspects;
- (f) the opening of an account or a deposit is requested by a person domiciled abroad by way of correspondence.

3. Where serious doubt remains as to the accuracy of the customer's written declaration, which cannot be eliminated by further clarification, the bank will decline the request for the opening of the account or deposit.

ARTICLE 5

Persons Bound by Professional Secrecy

1. Where a customer acts through a person domiciled or with a registered office in Grenada who is bound by legally protected professional secrecy the bank will obtain from such a person a written declaration to the effect that the beneficial owner is known to him or her and that no forbidden transaction within the meaning of this Schedule is being concluded.

2. A written declaration is waived in the case of accounts and deposits of domestic and foreign banks unless requested by the Minister of Finance.

ARTICLE 6

Observance of Care in Renting Safe-Deposit Boxes

1. When a safe-deposit box is rented, the identity of the renter will be ascertained.
2. The bank undertakes to rent safe-deposit boxes only to persons whose trustworthiness gives no cause for doubt after having observed all care which can be reasonably expected under the circumstances.
3. This Article is applicable to persons and companies.
4. The trustworthiness of the renter can be considered as proven when—
 - (a) he or she already maintains a business relationship with the bank;
 - (b) he or she is known personally to an employee of, or member of, the management of the bank;
 - (c) he or she is introduced by a customer, or by another bank;
 - (d) no firm indication exists of the safe-deposit box being rented for illegal purposes.

ARTICLE 7

Prohibition of Aiding Capital Flight

1. The bank undertakes not to knowingly assist in the illegal transfer of capital.
2. The following are considered as active assistance—
 - (a) meeting customers outside the offices of the bank with a view to accepting illegal funds;
 - (b) participation in the organisation of compensation transactions abroad when it is known to the bank that the compensation serves the purpose of capital flight;
 - (c) active cooperation with persons and companies known to be organising capital flight or giving assistance to such, by—
 - (i) remitting orders,
 - (ii) promising commission,
 - (iii) maintaining their accounts when it is known to the bank that such accounts are used for assisting capital flight,
 - (iv) referring customers to persons and companies indicated under paragraph (c).
3. Capital flight is an unauthorised transfer of capital in the form of foreign currency, banknotes or securities from a country prohibiting or restricting such transfers abroad by its residents.

ARTICLE 8

Fiscal Returns from Criminal Activities

1. The bank undertakes not to assist customers in enjoying any fiscal rewards from criminal activities—
 - (a) including but is not limited to the laundering of proceeds from the sales of drugs or any other banned substance;
 - (b) fiscal rewards from the theft or illegal manipulation of monetary markets; or
 - (c) gun running or the proceeds of assisting illegal immigration.

2. The bank undertakes to maintain customer profiles of sufficient depth that will enable them to recognise a change in the pattern of their customers' financial activities and undertake to report any such activity to the Minister of Finance.

ARTICLE 9

Misleading Attestation and Similar Acts

1. The bank will not support attempts of their customers to deceive authorities in Grenada or abroad, either by way of incomplete or in any other way misleading attestations.

2. The bank will not remit incomplete or in any way misleading attestations to customers themselves or on their request directly to authorities in Grenada or abroad.

3. The following are considered as "authorities" — tax authorities, customs officers, monetary and bank supervisory authorities.

4. These prohibitions specifically cover special attestations to authorities at the customer's request.

5. The bank will not alter routine advices such as account and deposit statements, credit and debit advices, settlement notes for foreign exchange transactions, coupon and stock exchange transactions for the purpose of deception.

6. The bank will not provide incomplete attestations which omit relevant facts that are presented contrary to the truth.

7. Attestations are misleading when, with a view to deceiving authorities, facts are presented contrary to the truth such as—

- (a) false date, false amounts, fictitious rates or by establishing credit or debit advices bearing false indications about the titulary of the account; or
- (b) attestation as to fictitious claims or debts (irrespective of whether the attestation corresponds to the ledgers of the bank or not).

8. It is not necessary to indicate on statements of account or deposit that other accounts or deposits are maintained for the same customer.

ARTICLE 10

Numbered Accounts and Numbered Deposits

1. This Schedule will apply without restriction to accounts and deposits maintained under numbers or passwords.

2. Confirmation as to the total business relationship with a customer are to include accounts and deposits maintained under numbers or passwords, as well as fiduciary accounts and deposits.

ARTICLE 11

Dissolution of Business Relations

1. The bank undertakes to break off a relationship with a customer when in the course of business with him or her suspicion arises as to the details on the beneficial owner of the funds credited or invested or on the renter of a safe-deposit box being inexact.

2. The current relationship is to be terminated as quickly as is possible without violating the contract with the customer, if the bank discovers that the customer on opening the account or deposit intentionally made false statements as to the beneficial owner.

3. If the bank is prevented from reaching the customer owing to mailing instructions, it can postpone, the dissolution of the relationship to the next visit of the customer or to the next occasion of mailing correspondence.

ARTICLE 12

Control by Auditors

The bank undertakes to—

- (a) instruct and authorise its auditors to check as to compliance with this Schedule at the time of their regular audit by way of random tests; and
- (b) report any breach or reasonable suspicion of a breach to the Minister of Finance who will investigate all reported breaches of this Schedule.

Second Schedule

OFFSHORE BANKING ACT

Approved Auditors

[Section 39(1).]

1. A member firm of any overseas associate of a member firm of the Institute of Chartered Accountants of England and Wales.

2. A member firm or an overseas associate of a member firm of the Institute of Chartered Accountants of Scotland.

3. A member firm or an overseas associate of a member firm of the Institute of Chartered Accountants of Ireland.

4. A member firm or an overseas associate of a member firm of the American Institute of Certified Public Accountants.

5. A member firm or an associate of a member firm of the Canadian Institute of Chartered Accountants.

6. A member of the Chartered Association of Certified Accountants.

7. A member of the Certified General Accountant's Association of Canada.

8. A member of the Institute of the Chartered Accountants of the Caribbean.

9. A person who—

- (a) is in the opinion of the Minister suitably qualified for such an appointment by reason of his or her knowledge and experience; and
- (b) was in practice in Grenada as an auditor at the commencement of this Act,

and who the Minister after consultation with the recognised supervisory body, permits, by instrument in writing, to be appointed as an auditor for the purposes of this Act.

CHAPTER 217A **OFFSHORE BANKING ACT**

SUBSIDIARY LEGISLATION

No Subsidiary Legislation
