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BANKS AND TRUST COMPANIES LAW

(2000 Second Revision)

Law 4 of 1989 consolidated with Laws 20 of 1993, 28 of 1993, 16 of 1996 (part), 10 of 1998, 12 of 1999 and 3 of 2000.

Revised under the authority of the Law Revision Law (1999 Revision).

Originally enacted-

Law 4 of 1989-15th March, 1989
Law 20 of 1993-24th September, 1993
Law 28 of 1993-29th November, 1993
Law 16 of 1996-20th September, 1996
Law 10 of 1998-17th June, 1998
Law 12 of 1999-10th June, 1999
Law 3 of 2000-14th July, 2000.

Consolidated and revised this 29th day of August, 2000.

Note (not forming part of the Law): This revision replaces the 2000 Revision which should now be discarded.

BANKS AND TRUST COMPANIES LAW

(2000 Second Revision)

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BANKS AND TRUST COMPANIES LAW

(2000 Second Revision)

1. This Law may be cited as the Banks and Trust Companies Law (2000 Second Revision). Short title

2. In this Law- Definitions

“authorised agent” means a person so designated by a bank or trust company under paragraph (b) of section 5(2);

“Authority” means the Cayman Islands Monetary Authority established under section 3(1) of the Monetary Authority Law (2000 Revision) and includes any employee of the Authority acting under the Authority’s authorisation; 2000 Revision

“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 on current, savings, deposit or other similar account money which is repayable by cheque or order and may be invested by way of advances to customers or otherwise;

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

“Court” means the Grand Court;

“Governor” means the Governor in Council or such person (being a member of Executive Council) whom he may, by order, designate to perform, subject to such conditions and qualifications as he may impose, such of his powers under section 6 (excluding the proviso) or section 7(4), as may be specified;

“licence” means a licence granted under section 5;

“licensee” means a person holding a licence under this Law;

“net worth” means excess assets over liabilities as presented under applicable generally accepted accounting principles subject to adjustment for non-admitted assets as determined by the Authority;

“trust business” means the business of acting as trustee, executor or administrator; and

“trust company” means a company carrying on trust business.

- Extent of Law 3. (1) This Law has effect in addition to and not in derogation of any other provisions having the force of law in the Islands.
- (2) This Law does not apply to the Cayman Islands Civil Service Association Co-operative Credit Union Limited.
- Licence required to carry on banking or trust business 4. (1) No banking business may be transacted from within the Islands, whether or not such business is carried on in the Islands, except by a person who is in possession of a valid licence granted by the Governor authorising him to carry on such business.
- (2) No trust company may carry on trust business from within the Islands, whether or not such business is carried on in the Islands, unless it is in possession of a valid licence granted by the Governor authorising it to carry on such business.
- (3) Whoever contravenes this section is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year, and in the case of a continuing offence to a fine of one thousand dollars for each day during which the offence continues.
- Application to be made to Governor 5. (1) Any person desirous of carrying on banking business and any company desirous of carrying on trust business from within the Islands shall make application to the Governor for the grant of a licence. Every such application shall be in writing and shall be sent to the Authority accompanied by such information and particulars and details as may be prescribed together with the prescribed application fee (which the Authority shall forward to the Financial Secretary for the benefit of the revenue and which shall be refunded if the licence is granted), and the Governor may, if satisfied that the carrying on of such business will not be against the public interest, grant a licence to such person or company subject to such terms and conditions, if any, as he may deem necessary.
- (2) A licence shall not be granted to a bank or trust company unless it has-
- (a) a place of business in the Islands, approved by the Authority, which will be its principal office in the Islands; and
 - (b) two individuals or a body corporate, approved by the Authority, resident or incorporated in the Islands to be its agent in the Islands.
- (3) Where, in accordance with paragraph (b) of subsection (2), a licensee has appointed two individuals in the Islands to act as its agent in the Islands, the licensee may appoint them to act either separately or jointly.
- (4) A licensee shall not-

- (a) cease to have a principal office in the Islands;
- (b) change its principal office in the Islands without the prior approval of the Authority;
- (c) cease to have an authorised agent under paragraph (b) of subsection (2), or
- (d) change its agent (or, where the licensee has appointed two individuals to be its agent, either of them) without the prior approval of the Authority.

(5) Licences granted under subsection (1) shall be granted either for carrying on of-

- (a) banking business within and outside the Islands but subject to such conditions as may be imposed by the Governor, known as “A” licences;
- (b) banking business with the restrictions on that business mentioned in subsection (6), known as “B” licences;
- (c) trust business within and outside of the Islands but subject to such conditions as may be imposed by the Governor, known as Trust licences;
- (d) banking business with the restrictions on that business mentioned in subsection (6), and incorporating a further restriction that the licensee shall not receive or solicit funds by way of trade or business from persons other than those listed in any undertaking accompanying the application for the licence, known as Restricted “B” licences;
- (e) trust business with the restriction that the licensee shall not undertake trust business for persons other than those listed in any undertaking accompanying the application for the licence, known as Restricted Trust licences; or
- (f) trust business under a Trust licence to a licensee which is a wholly-owned subsidiary of another licensee and where the sole purpose of that subsidiary is to act as its nominee, known as Nominee (Trust) licences.

Any conditions imposed pursuant to this subsection may, at any time, be varied or revoked by the Governor.

(6) The holder of a “B” licence shall not-

- (a) take deposits from any person resident in the Islands, other than another licensee, or an exempted or an ordinary non-resident company which is not carrying on business in the Islands;
- (b) invest in any asset which represents a claim on any person resident in the Islands, except a claim resulting from-

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- (i) a loan to an exempted or an ordinary non-resident company not carrying on business in the Islands;
 - (ii) a loan by way of mortgage to a member of its staff or to a person possessing or being deemed to possess Caymanian status under the Immigration Law (2000 Revision) for the purchase or construction of a residence in the Islands to be owner-occupied;
 - (iii) a transaction with another licensee; or
 - (iv) the purchase of bonds or other securities issued by the Government, a body incorporated by statute, or a company in which the Government is the sole or majority beneficial owner; or
- (c) without the written approval of the Governor, carry on any business in the Islands other than one for which the “B” licence has been obtained.

(7) Every person to whom a licence is first granted shall, at the date of such grant, pay the prescribed fee to the Financial Secretary for the benefit of the revenue.

(8) Every holder of a licence shall, on or before every 15th day of January after the first grant of the licence, pay the prescribed annual fee to the Financial Secretary for the benefit of the revenue:

Provided that, unless the Authority waives the same, there shall be payable to the Financial Secretary for the benefit of the revenue by a licensee who fails to pay the prescribed annual fee by that date a surcharge not exceeding one-twelfth of that fee for every month or part of a month that the fee is not paid.

(9) Whenever it is considered to be in the public interest, the Governor may refuse to grant a licence.

Shares not to be issued or transferred without approval of Governor

6. (1) No shares in a company which is a licensee under this Law shall be issued, and no issued shares shall be transferred or disposed of in any manner, without the prior approval of the Governor:

Provided that the Governor may exempt any licensee from the provisions of this section, subject to such terms and conditions, if any, as he may deem necessary.

(2) In subsection (1) the reference to shares being transferred or disposed of includes not only the transfer or disposal of the legal interest in the shares but also the transfer or disposal of any beneficial interest in the shares.

7. (1) Except in the case of a Restricted “B” licence, or a Restricted Trust licence, or a Nominee (Trust) licence, a licence shall not be granted to a bank or trust company unless it has a net worth of not less than four hundred thousand dollars or its equivalent in other currencies, or such greater sum as may be determined by the Governor.

Net worth requirements

(2) A Restricted “B” licence or a Restricted Trust licence shall not be granted to a bank or trust company unless it has a net worth of not less than twenty thousand dollars or its equivalent in other currencies, or such greater sum as may be determined by the Governor.

(3) A Nominee (Trust) licence shall not be granted to a trust company unless such trust company furnishes a guarantee from the licensee of which it is a wholly-owned subsidiary for liabilities of up to two hundred thousand dollars or its equivalent in other currencies, or such greater sum as may be determined by the Governor.

(4) When he has reasonable cause to believe that there are grounds for doing so, the Authority may require a licensee to increase its net worth by increasing its paid-up capital to such greater sum as it may determine for the nature of the banking business or trust business, current or proposed.

(5) A licensee shall at all times maintain the net worth required by this section unless exempted by the Governor.

8. (1) Except with the approval of the Governor, no person, other than a licensee, shall-

Use of word “bank”, etc.

- (a) use or continue to use 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 person is carrying on business from within the Islands, whether or not such business is carried on in the Islands;
- (b) make or continue to make any representation in any billhead, letter, letterhead, circular, paper, notice, advertisement or in any other manner whatsoever that such person is carrying on banking business or trust business; or
- (c) in any manner whatsoever solicit or receive deposits from the public.

(2) Except with the approval of the Governor, no company shall be registered, or continue to be registered, 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 the Islands. whether or not such business is carried on in the Islands.

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

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

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

- (a) is identical with that of any company, firm or business house, whether within the Islands or not, 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 the Islands or not; or
- (c) is calculated to suggest, falsely, that such bank or trust company has a special status in relation to or derived from the Government, has the official backing of or acts on behalf of the Government, of any department, branch, agency or organ of Government, or of any officer thereof, or is recognised in the Islands as a national or central bank or trust company.

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

Accounts
2000 Revision

9. (1) Every licensee incorporated under the Companies Law (2000 Revision) shall have its accounts audited annually or at such other times as the Governor or the Authority may require by an auditor, who shall be a chartered accountant, certified public accountant or some other professionally qualified accountant, approved by the Authority.

(2) The audited accounts shall be forwarded to the Authority within three months of the end of the financial year of the licensee, unless prior written approval for an extension has been granted by the Authority.

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(3) Every licensee not incorporated under the Companies Law (2000 Revision) shall provide a copy of the audited annual accounts of its head office to

the Authority within three months of the end of the financial year of such parent company, unless prior approval for an extension has been granted by the Authority.

(4) When a licensee incorporated under the Companies Law (2000 Revision) changes its auditor, the Authority may require the former auditor to explain the circumstances responsible for such change.

10. A licensee incorporated under the Companies Law (2000 Revision) shall not, without the prior written approval of the Authority-

Certain prohibitions on licensee

- (a) open outside the Islands a subsidiary, branch, agency or representative office; or
- (b) change its name.

11. (1) A licensee shall at no time have less than two directors.

Number and approval of directors

(2) Unless exempted from such a requirement by the Authority, a licensee shall, before the appointment of a director or other senior officer, apply to the Authority for his written approval of such appointment.

(3) Approval granted under subsection (2)-

- (a) *ipso facto* lapses if the director or senior officer becomes bankrupt or is convicted of an offence involving dishonesty; and
- (b) may be revoked by the Authority, with the approval of the Governor.

(4) Approval granted under paragraph (b) of section 5(2) may be revoked by the Authority, with the approval of the Governor.

12. (1) It is the duty of the Authority-

Powers and duties of Authority

- (a) to maintain a general review of banking practice in the Islands;
- (b) whenever it thinks fit or when so required by the Governor, to examine, by way of the receipt of regular returns or in such other manner as it thinks necessary, the affairs or business of any licensee carrying on business in or from within the Islands for the purpose of satisfying itself that this Law is being complied with and that the licensee is in a sound financial position and, whenever it thinks fit or when so required by the Governor, to report to the Governor the results of every such examination;
- (c) when required by the Governor, to assist in the investigation of any offence against the laws of the Islands which it has reasonable grounds to believe has or may have been committed by a licensee or by any of its directors or officers in their capacity as such; and

(d) to examine accounts and audited annual accounts forwarded to it under section 9 and to report on them to the Governor whenever it thinks fit or when so required by the Governor.

(2) The Authority may-

- (a) examine and make recommendations to the Governor with respect to applications for licenses;
- (b) examine all proposals and make recommendations to the Governor in respect of the exercise of his powers under sections 13, 14 and 15; and
- (c) act as the adviser to the Governor and take all necessary action, including, with the approval of the Governor, originating applications to the Grand Court, to ensure the proper and just implementation of every provision of this Law.

(3) In the performance of its functions under this Law, the Authority is entitled at all reasonable times-

- (a) to have access to such books, records, vouchers, documents, cash and securities of any licensee; and
- (b) to request any information, matter or thing from any person who it has reasonable grounds to believe is carrying on banking or trust business in the Islands in contravention of section 4(1) or (2),

as the Authority may reasonably require for the purpose of enabling it to perform its functions under this Law.

(4) The Authority may, in writing, authorise any other person to assist the Authority in the performance of its functions under this Law.

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

Powers of Governor

13. (1) Whenever the Governor 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, the interest of its depositors or of the beneficiaries of any trust, or other creditors;
- (c) has contravened this Law; or
- (d) has failed to comply with a condition of its licence,

he may forthwith do any of the following-

- (i) revoke the licence;
- (ii) impose conditions, or further conditions, as the case may be, upon the licence and may amend or revoke any such condition;
- (iii) require the substitution of any director or 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 the Authority thereon within three months of the date of his appointment;
- (v) at the expense of the licensee, appoint a person to assume control of the licensee's affairs who shall, *mutatis mutandis*, have all the powers of a person appointed as a receiver or manager of a business appointed under section 18 of the Bankruptcy Law (1997 Revision); and
- (vi) require such action to be taken by the licensee as he considers necessary. 1997 Revision

(2) Notwithstanding section 20(1), a licensee may, within seven days of the decision, apply to the Governor for a reconsideration of his decision to revoke a licence under paragraph (i) of subsection (1).

(3) A person appointed under subparagraph (iv) or (v) of subsection (1) or whose appointment has been extended under paragraph (b) of subsection (4) shall from time to time at his discretion and in any case within three months of the date of his appointment or of the extension of his appointment (as the case may be), prepare and furnish a report to the Governor and the Authority of the affairs of the licensee and of his recommendations thereon.

- (4) On receipt of a report under subsection (3), the Governor may-
- (a) revoke the appointment of the person appointed under subparagraph (iv) or (v) of subsection (1);
 - (b) extend the period of his appointment;
 - (c) subject to such conditions as he may impose, allow the licensee to reorganise its affairs in a manner approved by him; or
 - (d) revoke the licence and apply to the Court for an order that the licensee be forthwith wound up by that Court in which case the provisions of the Companies Law (2000 Revision) relating to the winding up of a company by that Court shall, *mutatis mutandis*, apply. 2000 Revision

(5) Notwithstanding any provisions herein, the Governor may revoke a licence if the licensee-

- (a) has ceased to carry on banking business or trust business; or
- (b) goes into liquidation or is wound up or otherwise dissolved.

(6) Whenever the Governor revokes a licence under sub-paragraph (i) of subsection (1), paragraph (d) of subsection (4) or subsection (5) he shall cause notice of such revocation to be gazetted, and may also cause such notice to be published (whether within the Islands or elsewhere) in such newspaper or other publication as he may consider necessary in the circumstances.

Governor may apply to Court

14. The Governor may, in any case in which a licensee, or a person who has at any time been a licensee, is being wound up voluntarily, apply to the Court if he considers that the winding up is not being conducted in the best interests of its depositors, the beneficiaries of any trust, or other creditors, and the Court shall make such order as it shall consider appropriate.

Surrender of licence

15. (1) A licensee which has ceased to carry on the business in respect of which the licence was granted may apply to the Governor to surrender its licence if it -

- (a) has ceased to carry on such business, and produces evidence that it has repaid all deposits held by it and has transferred all trust assets held or administered by it: or
- (b) is being wound up voluntarily and produces evidence that it is solvent and able forthwith to repay all deposits held by it and all its other creditors and has transferred all trust assets held or administered by it,

and the Governor may thereupon approve the surrender.

(2) In the case of an application under paragraph (b) of subsection (1) the Governor may apply to the Court for the licensee to be wound up either by that Court or subject to its supervision, and on the making of such an order the provisions of the Companies Law (2000 Revision) relating to the winding up of a company by or subject to the supervision of that Court shall, *mutatis mutandis*, apply.

Chief Justice may make rules

16. The Chief Justice may make rules governing the procedure in relation to applications to the Court under section 12(5), paragraph (d) of section 13(4), section 14 and section 15(2).

Power of search

17. (1) If a Justice of the Peace is satisfied by information on oath given by the Authority or by a person authorised under section 12(4) to assist him either that-

- (a) there is reasonable ground for suspecting that an offence against this Law has been or is being committed and that evidence of the commission of the offence is to be found at any premises

specified in the information, or in any vehicle, vessel or aircraft so specified; or

- (b) any books, records, vouchers, documents, cash or securities which ought to have been produced under section 12(3) and have not been produced are to be found at any such premises or in any such vehicle, vessel or aircraft,

he may grant a search warrant authorising the Authority or such person authorised under section 12(4) or any constable of the rank of Inspector or above, together with any other person named in the warrant and any other constables to enter 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 such premises or, as the case may be, such vehicle, vessel or aircraft.

(2) The person authorised by any such warrant to search any premises or any vehicle, vessel or aircraft may search every person who is found in or whom he has reasonable grounds to believe to have recently left or to be about to enter those premises or that vehicle, vessel or aircraft, as the case may be, and may seize any books, records, vouchers, documents, cash or securities found in the possession of any such person or in such premises or in such vehicle, vessel or aircraft which he has reasonable grounds for believing ought to have been produced under section 12(3):

Provided that no female shall, in pursuance of any warrant issued under this subsection, be searched except by a female.

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

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

18. Any licensee or any director or officer of a licensee who knowingly or wilfully supplies false or misleading information to the Governor or the Authority is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year.

False or misleading information

19. Whoever contravenes any provision or requirement of this Law for which no offence is specifically created is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year.

Offences

Appeals

20. (1) An appeal lies to the Court from any decision of the Governor-
- (a) revoking a licence under section 8(5), subparagraph (i) of paragraph (d) of section 13(1), or section 13(4) or (5);
 - (b) withdrawing any approval under section 8(4); or
 - (c) requiring a licensee to take certain steps which the Governor may specify under section 13.

(2) An appeal against the decision of the Governor shall be on motion. The appellant within twenty-one days after the day on which the Governor has given his decision shall serve a notice in writing signed by the appellant or his attorney-at-law on the Governor of his intention to appeal and of the general ground of his appeal:

Provided that any person aggrieved by a decision of the Governor may, upon notice to the Governor, apply to the Court for leave to extend the time within which the notice of appeal prescribed by this section may be served and the Court upon hearing of such application may extend the time presented by this section as it deems fit.

(3) The Governor shall, upon receiving the notice of appeal, transmit to the Clerk of the Court without delay a copy of the decision and all papers relating to the appeal:

Provided that the Governor is not compelled to disclose any information if it is considered that the public interest would suffer by such disclosure.

(4) The Clerk of the Court shall set the appeal down for argument on such day, and shall cause notice of the same to be published in such manner, as the Court may direct.

(5) At the hearing of the appeal the appellant shall, before going into the case, state all the grounds of appeal on which he intends to rely and shall not, unless by leave of the Court, go into any matters not raised by such statements.

(6) The Court may adjourn the hearing of an appeal and may, upon the hearing thereof confirm, reverse, vary or modify the decision of the Governor or remit the matter with the opinion of the Court thereon to the Governor.

(7) An appeal against a decision of the Governor shall not have the effect of suspending the execution of such decision.

Immunity

21. Neither the Governor, the Authority nor any member of the Executive Council shall be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions under this Law, unless it is shown that the act or omission was in bad faith.

22. The Governor may make regulations-

Regulations

- (a) to prescribe the information, particulars and references which may be prescribed under section 5(1) or 8(3);
- (b) to control the form of advertising by licensees;
- (c) to prescribe fees payable under section 5(7) and (8); and
- (d) generally for carrying this Law into effect.

Publication in consolidated and revised form authorised by the Governor in Council this 29th day of August, 2000.

Carmena Watler
Clerk of Executive Council