



BERMUDA

BERMUDA MONETARY AUTHORITY ACT 1969

1969 : 57

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PART I
PRELIMINARY

Interpretation

- 1 (1) In this Act, unless the context otherwise requires—
- “Authority” means the Bermuda Monetary Authority established under section 2;
 - “Board” means the Board of Directors of the Authority constituted under section 4;
 - “Chairman” means the Chairman of the Board appointed under section 4E;
 - “coin” means coin issued in Bermuda by the Authority;
 - “company” means a company to which the Companies Act 1981 applies;
 - “credit union” has the meaning assigned to it in the Credit Unions Act 2010;
 - “currency notes” means notes issued in Bermuda by the Authority;
 - “Deputy Chairman” means the Deputy Chairman of the Board;
 - “documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to produce a copy of the information in legible form;
 - “dollar” means the Bermudian dollar;
 - “executive Chairman” means the person appointed under section 4E(1)(a);
 - “executive member” means a person appointed under section 4F, and includes an executive Chairman;
 - “financial crime” means any offence which involves—
 - (a) dishonesty or fraud;

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- (b) unlawful activity connected with a financial market;
- (c) dealing with the proceeds of “criminal conduct” as defined by the Proceeds of Crime Act 1997; or
- (d) “terrorist financing”, as defined in the Anti-Terrorism (Financial and Other Measures) Act;

“financial institution” means a person, body or entity specified in the Third Schedule;

“freely convertible” in relation to any currency, means freely convertible, in the hands of a non-resident holder of the currency, into gold or any other currency;

“holding company” has the meaning given in the Companies Act 1981;

“institution” has the meaning given in the Banks and Deposit Companies Act 1999;

“Minister” means the Minister of Finance;

“non-executive Chairman” means the person appointed under section 4E(1)(b);

“non-executive member” means a member of the Board other than an executive member, and includes a non-executive Chairman”;

“officer” in relation to the Authority includes director and secretary;

“public body” has the meaning given in section 3(2);

“resident” means a person who is deemed to be resident under regulation 3 of the Exchange Control Regulations 1973;

“specified securities” means securities denominated in any freely convertible currency or in Special Drawing Rights of the International Monetary Fund being—

- (a) securities issued or guaranteed by the Government of the country of issue being a country whose currency is freely convertible; or
- (b) securities issued or guaranteed by the International Bank for Reconstruction and Development; or
- (c) quoted securities of an approved corporation; and in this paragraph—

“quoted securities” means securities, including debentures and fully paid shares, quoted on a stock exchange recognized by the Minister for the purposes of this paragraph; and

“approved corporation” means a company or corporation having in the opinion of the Authority shareholders’ equity of a value of not less than \$100,000,000 at the time of the investment; or

- (d) securities issued or guaranteed by any organization recognized by the Minister as an international organization for the purposes of this paragraph; or

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- (e) securities issued by a government sponsored enterprise recognised by the Minister for this purpose;

“sterling” means the pound sterling;

“subsidiary company” has the meaning given in the Companies Act 1981.

(2) For the purposes of this Act—

(a) *[repealed]*

(b) “financial year” means the financial year of the Authority but in the case of a financial institution it means the financial year of the particular financial institution.

(3) *[repealed]*

[section 1 amended by 1990:52 effective 12 July 1990; “bank” and “deposit company” deleted, and “holding company”, “institution” and “subsidiary company” inserted, by 1999:48 s.3 effective 1 January 2000; “Chairman” substituted, “General Manager” deleted, and “Deputy Chairman”, “non-executive member” and “officer” inserted, by 2001:34 s.3 effective 1 January 2002; “financial crime” inserted by 2004:1 s.3 effective 10 March 2004; “Chairman” and “specified securities” amended, “non-executive member” substituted, “executive Chairman”, “executive member” and “non-executive Chairman” inserted, by 2006:27 s.3 effective 27 December 2006; subsections (2)(a) and (3) repealed by 2006:37 s.75(1)(a) effective 7 March 2007; Section 1 subsection (1) amended by 2009 : 50 s. 22 effective 15 January 2010; subsection (1) “credit union” amended by 2010 : 43 s. 47 effective 1 January 2011]

PART II

CONSTITUTION

Establishment of Bermuda Monetary Authority

2 (1) There shall be established an Authority to be known as “the Bermuda Monetary Authority” which shall have such powers and shall perform such functions as are assigned to it by this Act or any other Act and the Regulations made thereunder.

(2) The Authority shall be a body corporate having perpetual succession and a common seal and, subject to this Act, shall have power to acquire, hold and dispose of movable and immovable property of whatever kind and to enter into contracts and to do all things necessary for the purpose of its functions.

(3) The Authority may sue and be sued in its corporate name and may for all purposes be described by that name.

(4) The seal of the Authority shall be authenticated by the signature of the Chairman and one other director authorized to act in that behalf and shall be judicially and officially noticed.

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(5) All documents, other than those required by law to be under seal, made by, and all decisions of, the Board may be signified under the hand of the Chairman or any officer authorized to act in that behalf.

[section 2 amended by 1990:52 effective 12 July 1990; subsection (1) amended by 1999:48 s.3 effective 1 January 2000; subsection (5) amended by 2006:27 s.16 & Sch effective 27 December 2006]

Principal objects

3 (1) The principal objects of the Authority shall be—

- (a) to issue and redeem notes and coins;
- (b) to supervise, regulate and inspect any financial institution which operates in or from within Bermuda;
- (ba) to promote the financial stability and soundness of financial institutions;
- (bb) to supervise, regulate or approve the issue of financial instruments by financial institutions or by residents;
- (bc) to assist with the detection and prevention of financial crime;
- (bd) to assist foreign regulatory authorities in the discharge of their functions;
- (be) to perform the duties conferred on it by section 5 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;

[Due to an error in lettering, paragraph (bd) as indicated in s.21 of the Proceeds of Crime Amendment Act 2007 has been re-lettered as "(be)" under the power of the Computerization and Revision of Laws Act 1989 section 11 paragraph (f); law title in paragraph (be) updated under the power of the Computerization and Revision of Laws Act 1989 section 11 paragraph (e)]

- (c) to foster close relations between financial institutions themselves and between the financial institutions and the Government;
- (d) in accordance with any statutory provision in that behalf to manage exchange control and regulate transactions in foreign currency or gold on behalf of the Government;
- (e) to advise and assist the Government and public bodies on banking and other financial and monetary matters; and
- (f) to perform such functions as may be necessary to fulfil such principal objects.

(2) In this Act "public body" means a body designated for the purposes of this Act by the Minister by instrument in writing as a body having public purposes.

(3) The Authority, in the course of its general responsibilities for the supervision, regulation and inspection of financial institutions, shall have regard to the need for financial institutions to be alert to the risk that they may be used in connection with financial crime

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and to the consequent need to have appropriate arrangements in place to monitor and control its incidence.

[section 3 subsection (1)(bc) inserted by 2002:39 s.2 effective 30 December 2002; subsection (3) inserted by 2004:1 s.4 effective 10 March 2004; subsection (1)(bd) inserted by 2008:3 s.3 effective 25 March 2008; subsection (1)(be) inserted by 2007:25 effective 15 November 2008; subsection (1)(be) repealed and replaced by 2008:49 s.39(2) effective 1 January 2009]

Board of Directors

4 (1) There shall continue to be a Board of Directors of the Authority which shall consist of—

- (a) the Chairman;
- (b) not more than two executive members;
- (c) the chief executive officer (where appointed under section 4F(1)); and
- (d) ten members appointed by the Minister from persons with experience of the financial services industry.

(2) The Minister shall appoint a Deputy Chairman from the non-executive members of the Board.

(3) Part 1 of the First Schedule shall have effect with respect to the tenure and qualifications of office of the non-executive members of the Board, and Part 2 of the First Schedule shall have effect with respect to the procedure for meetings of the Board.

(4) Except for paragraph 9, Part 1 of the First Schedule shall not apply to a non-executive Chairman.

[section 4 amended by 1990:52 effective 12 July 1990; by 1999:48 s.5 effective 1 January 2000; repealed and replaced by 2001:34 s.4 effective 1 January 2002; subsection (1) substituted, and (4) inserted, by 2006:27 s.4 effective 27 December 2006; Section 4 subsection (1)(d) amended by 2010 : 2 s. 2 effective 25 February 2010]

Functions of the Board

4A The functions of the Board shall be to manage the affairs and business of the Authority, and to determine the policy objectives and strategy of the Authority.

[section 4A inserted by 1990:52 effective 12 July 1990; amended by 1999:48 s.6 effective 1 January 2000; and repealed and replaced by 2001:34 s.5 effective 1 January 2002]

Immunity from suit

4B (1) No action, suit, prosecution or other proceeding shall be brought or instituted personally against an officer, servant or agent of the Authority in respect of any act done bona fide in pursuance or execution or intended execution of this Act or any other Act and regulations made thereunder.

(2) Where any officer is exempt from liability by reason only of subsection (1), the Authority shall be liable to the extent that it would be if that officer were a servant or agent of the Authority.

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(3) Neither the Authority nor any person who is, or is acting as, an officer, servant or agent of the Authority is liable in damages for anything done or omitted in the discharge or purported discharge of the Authority's functions under this Act or any other Act and regulations made thereunder unless it is shown that the act or omission was in bad faith.

(4) For the purposes of this section, "agent" includes an auditor, accountant or other person who by or under any statutory provision is under a duty to give notice of, or report on, any fact or matter to the Authority for the purposes of its functions.

[section 4B inserted by 2000:31 s.3 effective 22 August 2000; repealed and replaced by 2001:34 s.6 effective 1 January 2002; subsection (4) inserted by 2006:27 s.5 effective 27 December 2006]

Functions to be carried out by non-executive members

4C (1) The functions mentioned in subsection (2) shall be performed by a committee of the Board consisting of all the non-executive members of the Board.

(2) The functions mentioned in subsection (1) are—

- (a) keeping under review the question whether the Authority is discharging its functions in accordance with the policy objectives and strategy determined by the Board;
- (b) keeping under review the question whether the Authority's internal financial controls secure the proper conduct of its financial affairs; and
- (c) determining the remuneration and other terms of service of the executive members of the Board.

(3) At a meeting of the committee the quorum shall be five.

(4) A non-executive Chairman or, where no such person has been appointed, the Deputy Chairman, shall chair the committee.

(5) Subject to subsections (3) and (4), the committee shall determine its own procedure.

(6) The committee may delegate any of its functions to two or more of its members.

(7) The committee shall prepare a report on the performance of its functions in the course of the preceding year and shall include its report in the annual report prepared under section 28.

[section 4C added by 2001:34 s.7 effective 1 January 2002; subsections (2)(c) and (4) substituted, and (7) inserted, by 2006:27 s.6 effective 27 December 2006]

Delegation of Authority's powers and duties

4D (1) The Authority may, by instrument in writing, delegate to—

- (a) an officer or servant of the Authority; or
- (b) a committee constituted by the Board from persons who are officers or servants of the Authority,

any function or power vested in the Authority.

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- (2) A delegation under subsection (1) may—
- (a) be made subject to such conditions, qualifications and exceptions as the Authority may prescribe in the instrument of delegation;
 - (aa) authorise the delegate to subdelegate all or any of the delegated functions or powers to persons falling within paragraph (a) or (b) of subsection (1);
 - (b) be revoked or varied by a subsequent instrument.

(3) The Authority may perform any function or exercise any power notwithstanding that it has delegated it to some other person or committee.

[section 4D added by 2001:34 s.8 effective 1 January 2002; subsection (2)(aa) inserted by 2006:41 s.3 effective 5 January 2007]

Chairman

4E (1) Subject to this section, the Minister shall appoint a person with proven experience of the financial services industry to be—

- (a) an executive member of the Board and its Chairman (“executive Chairman”); or
- (b) a non-executive member of the Board and its Chairman (“non-executive Chairman”).

(2) A person appointed executive Chairman shall, by virtue of such appointment, be the chief executive officer of the Authority.

(3) A person is disqualified for appointment as Chairman if—

- (a) he is a member of either House of the Legislature; or
- (b) he is a director or an officer of, or is employed by, a person licensed by the Authority.

(4) An appointment made under subsection (1) shall be for a term of not less than three years and not more than five years, and may be renewed.

(5) A person appointed as Chairman shall vacate his office if he becomes a person to whom subsection (3)(a) or (b) applies.

(6) The Minister acting after consultation with the Authority may terminate the appointment of the Chairman if he is satisfied that—

- (a) he has become bankrupt, that his estate has been sequestered or that he has made an arrangement with or granted a trust deed for his creditors; or
- (b) he is unable or unfit to discharge his functions as Chairman.

[section 4E added by 2001:34 s.9 effective 1 January 2002; and repealed and replaced by 2006:27 s.7 effective 27 December 2006]

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Executive members

4F (1) Subject to this section, the Authority shall appoint the other executive members of the Board and may appoint one of their number to be the chief executive officer of the Authority.

(2) The Authority shall not appoint a person to be chief executive officer at any time during which the Chairman is an executive Chairman.

(3) A person appointed chief executive officer of the Authority shall, subject to the directions of the Authority, administer its affairs.

(4) An appointment made under subsection (1) shall not have effect until it has been approved by the Minister.

(5) A person is disqualified for appointment as executive member if—

(a) he is a member of either House of the Legislature; or

(b) he is a director or an officer of, or is employed by, a person licensed by the Authority.

(6) An executive member shall vacate his office if he becomes a person to whom subsection (5)(a) or (b) applies.

(7) The Minister acting on the advice of the Authority may terminate the appointment of an executive member if he is satisfied that the executive member—

(a) has become bankrupt, that his estate has been sequestered or that he has made an arrangement with or granted a trust deed for his creditors; or

(b) is unable or unfit to discharge his functions as an executive member of the Authority.

[section 4F added by 2001:34 s.10 effective 1 January 2002; and repealed and replaced by 2006:27 s.8 effective 27 December 2006]

4G *[section 4G added by 2001:34 s.11 effective 1 January 2002; repealed by 2006:27 s.9 effective 27 December 2006]*

Employment of officers, servants and agents

5 The Authority shall, subject to such terms and conditions as it thinks fit, employ such officers, servants and agents as the Authority considers necessary for the due performance of the Authority's functions.

[section 5 repealed and replaced by 2001:34 s.12 effective 1 January 2002]

General Manager

6 *[Repealed]*

[section 6 repealed by 2001:34 s.13 effective 1 January 2002]

PART III
CAPITAL AND RESERVES

Authorized capital of Authority

7 (1) The authorized capital of the Authority shall be \$2,400,000 which shall be subscribed at such times and in such amounts as the Authority, with the approval of the Minister, may require.

(2) Subject to the approval of the House of Assembly signified by resolution the authorized capital of the Authority may from time to time be increased by resolution of the Board.

[section 7 subsection (1) amended by 2006:27 s.16 & Sch effective 27 December 2006]

General reserve

8 (1) The Authority shall establish and maintain a General Reserve to which, subject to subsection (2), there shall be transferred at the end of each year an amount representing the net profit or from which there shall be deducted an amount representing the net loss of the Authority after taking into account the expenses of its operation and after provision has been made for bad and doubtful debts, depreciation in assets and other contingencies.

(2) Transfers to the General Reserve pursuant to subsection (1) shall be made in the manner following:

- (a) so long as that Reserve amounts to less than 10% of the demand liabilities of the Authority at the end of the year in which any net profit was earned the whole of such net profit shall be transferred to that Reserve;
- (b) so long as that Reserve is equal to or exceeds 10%, but is less than 15% of such liabilities, there shall be transferred to that Reserve one half of the net profit or such smaller amount as will make the Reserve equal to fifteen per centum of the said liabilities;
- (c) where that Reserve is equal to or exceeds 15% of the said liabilities, further transfers may be made with the agreement of the Minister.

(3) Where any net profit remains after provision is made pursuant to subsections (1) and (2) the Authority may, with the approval of the Minister, apply any portion thereof for the purpose of subscribing the paid up capital of the Authority and the remainder of such net profit shall be transferred to the Consolidated Fund.

(4) If in any year the Authority should make a net loss which exceeds the amount of the General Reserve at the end of that year, a sum equivalent to the amount by which such net loss exceeds that Reserve shall be paid to the Authority from the Consolidated Fund.

(5) For the purposes of subsection (2), "demand liabilities" does not include demand deposits placed with the Authority which consist of public funds.

[section 8 subsection (3) amended by 2006:27 s.16 & Sch effective 27 December 2006]

PART IV
CURRENCY

Establishment of currency of Bermuda

9 (1) There is hereby established a currency of Bermuda the unit of which shall be the Bermudian dollar which shall be divided into one hundred cents.

(2) As from 6 February 1970—

(a) every contract, document, sale, payment, bill, note, instrument and security for money and every transaction, dealing, proceedings, matter and thing whatsoever related to money or involving the payment of or liability to pay any money which, but for this Act would have been deemed to be made, executed, signed, entered into, done and had in relation to pounds, shillings and pence, shall, in Bermuda, be deemed instead to be made, executed, signed, entered into, done and had in and in relation to the currency of Bermuda;

(b) in every statutory provision including this Act a reference to pounds, shillings, pence or fractions of a penny shall be construed as a reference to the equivalent sum in the currency of Bermuda.

(3) Where any conversion into the currency of Bermuda under this section would result in a fraction of a cent, then—

(a) if that fraction amounts to half a cent or more, it shall be regarded as one cent; and

(b) if that fraction amounts to less than half a cent, it shall be ignored.

(4) For the purposes of subsection (2) the Bermudian dollar shall have the parity with sterling in force at 6 February 1970.

Parity of Bermuda dollar

10 (1) The parity of the Bermudian dollar shall be equivalent to such amount of sterling, or of any other national or international currency, or of gold, as the Governor, acting in accordance with the Articles of Agreement of the International Monetary Fund, may by Order, made in accordance with this section, prescribe.

(2) An Order shall come into operation at the time and on the day on which it is subscribed in writing by the Governor or at such time, being not earlier than 24 hours from the time at which it is so subscribed, as may be specified in such Order.

(3) An Order shall be given such publicity as soon as may be after it is subscribed in writing by the Governor as, in the opinion of the Governor, is likely to bring the Order to the notice of such persons as are immediately affected thereby and, notwithstanding the foregoing, shall be published in the Gazette.

(4) An Order may be made on a public holiday within the meaning of the Public Holidays Act 1947 [*title 28 item 8*].

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Sole right to issue notes and coins

11 (1) The Authority, subject to this Act and any statutory instrument made under this Act, may provide and issue currency notes and coins in Bermuda.

(2) No person other than the Authority shall issue currency notes, bank notes or coins, or any documents or tokens payable to bearer on demand being documents or tokens having the appearance of currency notes or coins; and any person who issues such currency notes, bank notes, coins, documents or tokens, without prejudice to the Criminal Code [*title 8 item 31*], commits an offence.

Punishment on summary conviction: a fine of \$10,000 or imprisonment for six months or both;

Punishment on conviction on indictment: a fine of \$25,000 or imprisonment for two years or both.

[section 11(2) amended by 1999:48 s.7 effective 1 January 2000]

Issue of currency

12 The Authority shall from time to time as circumstances may require—

- (a) arrange for the printing of notes and the minting of coins for circulation in Bermuda; and
- (b) arrange for the safe custody of unissued stocks of notes and coins and for the preparation, safe custody and destruction of plates and paper for the printing of notes and dies for the minting of coins.

Regulations as to form of notes and coins

13 The Minister may, on the recommendation of the Authority, by regulation prescribe—

- (a) the denominations (being multiples or fractions of a dollar), forms and designs, of the currency notes and coins to be issued by the Authority;
- (b) the devices to be borne by such notes and coins;
- (c) the manner of authentication of such notes; and
- (d) the standard weight and composition of such coins and the amount of tolerance and variation which shall be allowed therein.

Issue and redemption of currency notes

14 The Authority shall on demand by any person at its place of business in Bermuda issue and redeem currency notes against dollars, and may, upon such demand as aforesaid, in its discretion issue and redeem currency notes against any other currency which may be included in the reserve of external assets pursuant to section 19:

Provided that—

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- (a) the requirements of this paragraph shall have effect in relation to the fixing of rates of exchange for sterling or any other currency in respect of spot transactions, that is to say—
 - (i) the Authority shall obtain the Minister's approval for a rate before fixing the rate;
 - (ii) a rate shall not in any event diverge by more than one percentage point on either side from the parity of the currency of Bermuda prescribed under section 10; and
- (b) the Authority shall not be obliged in respect of any one transaction to buy or sell sterling or any other currency for an amount less than \$20,000 or such other amount (whether more or less than that amount) as the Authority may fix as a minimum amount for such purpose, so, however, that notice of every minimum amount so fixed shall be published in the Gazette as soon as possible after it is fixed; and
- (c) nothing in this section shall require the Authority to issue currency of Bermuda so that at any time the amount of currency issued and available is in the opinion of the Authority in excess of that required as a normal current medium of exchange.

Legal tender

15 (1) Currency notes shall be legal tender at their face value for the payment of any sum.

(2) Coins shall be legal tender at their face value up to an amount not exceeding \$100 in the case of coins of a denomination of not less than one dollar, and up to an amount not exceeding \$5 dollars in the case of coins of a denomination of less than one dollar.

[see GN 200/1990 as to calling in of \$1 note and 50 cent coin which ceased to be legal tender after 30 April 1990]

Calling in of currency notes or coins

16 (1) Notwithstanding section 15 the Authority may, on giving not less than one month's notice in the Gazette, call in any currency notes or coins on the payment of the face value thereof and any such notes or coins which have been so called in shall cease to be legal tender on the expiration of such notice.

(2) Where any currency notes or coins have been called in under subsection (1) the Authority may in its discretion, upon such conditions and subject to such restriction as the Authority may think fit, at any time during the 10 years following the expiration of the notice pay to any person presenting to the Authority such currency notes or coins the face value thereof.

(3) A coin which has been impaired, diminished in size or lightened otherwise than by fair wear and tear or which has been defaced by stamping, engraving or piercing (whether the coin has or has not been thereby damaged or lightened) shall not be legal tender.

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Damaged notes or coins

17 No person shall be entitled to recover from the Authority the value of any damaged, mutilated or imperfect currency note or coin or any coin which has ceased to be legal tender by virtue of section 16(3), but notwithstanding the foregoing the Authority may, as of grace and subject to such conditions and limitations as it may see fit, refund the value of such currency note or coin.

Exemption from stamp duty

18 The Authority shall not be liable for the payment of any stamp duties in respect of its transactions.

External reserve

19 (1) The Authority shall at all times maintain a reserve of external assets which—

- (a) shall be in value not less than an amount equivalent to 50% of the total liabilities of the Authority in relation to the face value of currency notes in circulation; and
- (b) shall consist of all or any of the following—
 - (i) gold or gold bullion;
 - (ii) notes or coin or bank balances in Bermuda in any freely convertible currency;
 - (iii) balances and money at call in a bank in any country other than Bermuda whose currency is freely convertible;
 - (iv) Treasury bills maturing within 184 days issued by the government of any country other than Bermuda in any freely convertible currency;
 - (v) specified securities:

Provided that not more than 25% of the reserve of external assets shall be invested in securities defined in paragraph (c) of the definition of specified securities;

- (vi) balances with the Crown Agents.

(2) It is hereby declared that external assets do not include any security, debt or other liability in any currency, issued or guaranteed by the Government or by any resident.

[section 19 amended by 1990:52 effective 12 July 1990]

Local assets

20 *[Repealed]*

[section 20 repealed by 1999:48 s.8 effective 1 January 2000]

PART IVA

SUPERVISION, REGULATION AND INSPECTION OF FINANCIAL INSTITUTIONS

Authority to supervise, regulate and inspect financial institution

20A (1) Every person, body or entity specified in the Third Schedule (in this Act referred to as a “financial institution”) operating in or from within Bermuda shall be subject under this Act or the Regulations made thereunder to supervision, regulation and inspection by the Authority.

(2) The Minister may by order replace, add to or vary the Third Schedule.

(3) An order made under subsection (2) shall be subject to negative resolution procedure.

[section 20A inserted by 1990:52 effective 12 July 1990; subsection (3) substituted by 1999:48 s.9 effective 1 January 2000]

Money service business

20AA (1) For the purpose of this section, “money service business” means the business of providing any of the following services to the general public—

- (a) money transmission services;
- (b) cashing cheques which are made payable to customers and guaranteeing cheques;
- (c) issuing, selling or redeeming money orders or traveller’s cheques for cash;
- (d) issuing credit or debit cards, or otherwise providing means of electronic payment;
- (e) intermediating means of payment over the internet;
- (f) operating a bureau de change whereby cash in one currency is exchanged for cash in another currency.

(2) The Minister may by regulations subject to negative resolution procedure, make provision for the regulation by the Authority of money service businesses.

(3) Without prejudice to the generality of subsection (2), regulations may in particular provide with respect to any of the following matters—

- (a) the licensing of money service businesses;
- (b) the persons by whom and the manner in which applications in connection with licensing are to be made;
- (c) the information and evidence to be provided in connection with such applications and such supplementary information or evidence as may be required by the Authority;
- (d) the issue of licences and their surrender;

- (e) the refusal, and termination of licences in specified circumstances;
 - (f) matters arising out of the expiration, or termination of licences; and
 - (g) the charging of fees by the Authority in connection with the issue and holding of licences.
- (4) Regulations made under subsection (2) may—
- (a) make different provision for different classes or descriptions of money service businesses and for different circumstances;
 - (b) provide for the granting of exemptions;
 - (c) provide for dispensations by the Authority from specified requirements of the regulations subject to such conditions (if any) as the Authority thinks fit to impose;
 - (d) create offences subject to the limitation that no offence shall be punishable on summary conviction with a fine exceeding \$50,000 or imprisonment exceeding 2 years; and
 - (e) make such transitional, incidental or supplementary provision as appears to the Minister to be necessary or expedient.
- (5) The Minister may by Order subject to affirmative resolution procedure amend the meaning of money service business.

[section 20AA inserted by 2006:27 s.10 effective 27 December 2006]

Fees

20B The fees prescribed in the Fourth Schedule, shall be paid by certain financial institutions, in accordance with the legislation specified in the various Heads in the Fourth Schedule, to the Bermuda Monetary Authority.

[section 20B inserted by 2002:39 s.4 effective 30 December 2002]

PART V OPERATIONS

Relations with Government

- 21 (1) The Authority—
- (a) shall act as adviser to the Minister on policy matters relating to any financial institution and on monetary or financial matters generally;
 - (b) may act as investment adviser to the Government or to any public body; and
 - (c) may act generally as agent for the Government where it can do so appropriately and consistently with its functions under this Act;

- (d) shall, in connection with the incorporation of companies, which propose to carry on any restricted business activity as set out in the Ninth Schedule to the Companies Act 1981 [*title 17 item 5*] the establishment or formation of partnerships, investment funds as defined in section 2 of the Investment Funds Act 2006, sole traders or other entities or in respect of an application for a permit pursuant to section 134 of the Companies Act 1981 [*title 17 item 5*] or pursuant to section 4 of the Overseas Partnerships Act 1995 , process applications and make recommendations to the Minister or in respect of all matters relating, ancillary or consequential thereto occurring before or after such incorporation, establishment, formation or application make recommendations to the Minister.

(1A) The Minister may in writing, delegate to the Authority, powers for the purpose of prevention and detection of financial crime.

(2) The Minister may from time to time, after consultation with the Authority, give to the Authority in writing such general directions as appear to the Minister to be necessary in the public interest and the Authority shall act in accordance with such directions.

[section 21 amended by 1990:52 effective 12 July 1990; by 1995:32 effective 28 July 1995; by 1998:35 effective 5 October 1998; subsection (1A) inserted by 2002:39 s.5 effective 30 December 2002; subsection (2) amended by 2006:27 s.16 & Sch effective 27 December 2006; subsection (1)(a) amended by 2006:37 s.77(1)(b) effective 7 March 2007]

Furnishing information

22 (1) Subject to this Act, the Authority may require—

- (a) any person to furnish it at such time or times or at such intervals or in respect of such period or periods with such information as the Authority may reasonably require to discharge its functions under section 21(1)(a) or 21(1)(d); or
- (b) any financial institution to furnish it at such time or times or at such intervals or in respect of such period or periods with such information as the Authority may reasonably require to discharge its functions in respect of the supervision, regulation or inspection of the financial institution.

(2) Where the authority requires information to discharge its functions under section 21(1)(d), the information shall be such as the Minister determines under section 4A(3) or section 6(1) of the Companies Act 1981 [*title 17 item 5*] but no person shall be obliged to furnish the information.

(3) Subject to this Act, the Authority may—

- (a) require any financial institution to produce within such time and at such place such document or documents;
- (b) authorize an officer, a servant, an agent or an adviser of the Authority, on producing evidence of his authority, to require any financial institution to provide him forthwith with such information or to produce to him forthwith such documents as he may specify.

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being such document or information as the Authority may reasonable require for the discharge of its functions in respect of the supervision, regulation or inspection of the financial institution.

(4) The power under this section to require a financial institution to produce documents includes power—

- (a) if the documents are produced to take copies of them or extracts from them;
- (b) if the documents are not produced, to require the financial institution which was required to produce them to state, to the best of its knowledge and belief, where they are.

[section 22 amended by 1990:52 effective 12 July 1990; and by 1998:35 effective 5 October 1998]

Failure to comply with requirements

22A (1) Subject to this Act, where the Authority in the discharge of its functions in respect of the supervision, regulation or inspection of a financial institution requires information and any financial institution fails to comply with any requirements made by the Authority under section 22, then that financial institution is guilty of an offence and is liable on summary conviction to a fine of twenty-five thousand dollars or to imprisonment for six months or both or on conviction on indictment to a fine of fifty thousand dollars or to imprisonment for two years or both.

(2) Where the Authority in the discharge of its functions under section 21(1)(a) requires information and any person fails to comply with any requirements made by the Authority under section 22, then that person is guilty of an offence and is liable on summary conviction to a fine of \$10,000 or imprisonment for six months or both.

(3) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of an offence and is liable to be proceeded against and punished accordingly.

(4) Where the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with its functions of management as if he were a director of the body corporate.

(5) Where a partnership is guilty of an offence under this section, every partner, other than a partner who is proved to have been ignorant or to have attempted to prevent the commission of the offence, is also guilty of the offence and is liable to be proceeded against and punished accordingly.

(6) Where any other association, incorporated or not, is guilty of an offence under this section—

- (a) every officer of the association who is bound to fulfil any duty of which the breach is the offence; or

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- (b) if there is no such officer, every member of the governing body other than a member who is proved to have been ignorant of or to have attempted to prevent the commission of the offence,

is also guilty of the offence and is liable to be proceeded against and punished accordingly.

[section 22A inserted by 1990:52 effective 12 July 1990; subsection (2) amended by 1999:48 s.10 effective 1 January 2000]

General powers

23 Subject to this Act, the Authority may for the purpose of the performance of its functions under this Act—

- (a) purchase and sell gold coin and bullion;
- (b) maintain deposits in any institution in Bermuda or in a bank in any country other than Bermuda and utilise any such deposits as the Authority thinks expedient for the due performance of the its functions;
- (c) purchase, sell, discount and rediscount Treasury bills of the Government forming part of a public issue;
- (d) purchase and sell publicly issued securities of, or guaranteed by, the Government;
- (e) purchase and sell foreign currencies and purchase, sell, discount and rediscount bills of exchange and Treasury bills drawn in or on places abroad;
- (f) purchase and sell specified securities;
- (g) make arrangements or enter into an agreement to borrow, in such manner, at such rates of interest and upon such other terms and conditions as it may think fit, any foreign currency which the Authority, after consultation with the Minister, may think it expedient to acquire;
- (h) undertake the issue and management of loans publicly issued in Bermuda by the Government or by any public body;
- (i) receive deposits and pay interest on such deposits;
- (j) make such arrangements for the management and control of any deposits received from financial institutions, by such persons and on such terms including terms as to the payment by those persons of a fee or charge, as seem to the Authority to be expedient;
- (k) grant loans and advances to financial institutions for fixed periods not exceeding 6 months on the security of all or any of the following—
 - (i) gold coin or gold bullion;
 - (ii) Treasury bills of the Government;
 - (iii) securities issued or guaranteed by the Government;

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(iv) specified securities:

Provided that a loan granted on any such security as is mentioned in this paragraph shall not exceed 75% of the current market value of that security;

- (l) act as investment manager to the Government or to any public body;
- (m) trade in precious metals, coins or currency notes;
- (n) do any other thing as is incidental or ancillary to or consequential upon the performance of its functions,

and in exercising the powers granted under this section the Authority shall be deemed to be an authorized dealer within the meaning of the Exchange Control Act 1972 [*title 16 item 16*].

[section 23 amended by 1990:52 effective 12 July 1990; by 1999:48 s.11 effective 1 January 2000; paragraphs (b), (g) and (j) amended by 2006:27 s.16 & Sch effective 27 December 2006]

Prohibited activities

24 (1) Except as expressly authorized by this Act the Authority may not—

- (a) engage in trade or otherwise have a direct interest in any commercial, agricultural, industrial or other undertaking except such interest as the Authority may acquire in the course of the satisfaction of debts due to it, so, however, that it shall be the duty of the Authority to dispose of any such interest so acquired at the earliest suitable opportunity;
- (b) purchase shares of any company including the shares of any banking company;
- (c) make loans to any person other than as provided in section 23;
- (d) purchase, acquire or lease real property except so far as the Authority consider necessary or expedient for the provision or future provision of business premises for the Authority or of any other requirement incidental to the performance of its functions under this Act.

(2) Subsection (1)(a) shall not apply to the leasing by the Authority of any real property that the Authority has purchased, acquired or leased in circumstances falling within the exception to subsection (1)(d).

[section 24 subsection (1)(d) amended, and subsection (2) added, by 2006:27 s.11 and s.16 & Sch effective 27 December 2006]

PART VI

ACCOUNTS AND STATEMENTS

Financial year

25 The financial year of the Authority shall end on the thirty-first day of December.

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Expenditure budget

26 (1) The Authority shall, not later than two months (or such shorter period as the Minister may allow) before the commencement of each financial year, submit to the Minister for his approval estimates in such form and in such detail as the Minister may require in respect of the Authority's expenditure on operations in that financial year.

(2) The Authority shall submit as soon as may be to the Minister for his approval any proposed amendments to any such estimates.

(3) Any such estimates and any such amendments, when approved by the Minister for any financial year, shall constitute the Authority's expenditure budget for that financial year.

(4) The Authority shall not without the Minister's approval spend in total in any financial year more than the total amount of expenditure approved by the Minister for that financial year.

(5) The Minister may lay down in writing guidelines to be observed by the Authority in the management of the Authority's expenditure budget ("Ministerial guidelines"), and the Authority shall comply with any such guidelines.

(6) Where a specific sum is provided in the Authority's expenditure budget for any financial year in respect of any expenditure item, the Authority shall not spend on that item in that financial year any amount in excess of that sum unless the excess expenditure either—

- (a) is made within the Ministerial guidelines; or
- (b) has been approved by the Minister.

(7) This section shall not restrict the Authority's power to pay interest on deposits placed with the Authority, or require the Authority in any circumstances to obtain the Minister's approval for the payment of such interest.

[section 26 subsection (1) amended by 2004:1 s.5 effective 10 March 2004]

Audit

27 (1) The Authority shall with the approval of the Minister appoint an auditor.

(1A) The accounts of the Authority shall be audited annually by the auditor appointed under subsection (1).

(1B) Upon completion of the audit, the auditor shall present the audited accounts to the Authority.

(2) Without prejudice to subsection (1) the Minister may at any time require the Auditor General to examine and report on the accounts of the Authority as a whole or any aspect of the Authority's operations and the Authority shall provide the Auditor General with all necessary and proper facilities for such an examination.

[section 27 amended by 2001:34 s.14 effective 1 January 2002; subsections (1) and (1A) substituted, (1B) inserted, and (2) amended, by 2004:1 s.6 effective 10 March 2004; subsections (1) and (1B) amended by 2006:27 s.16 & Sch effective 27 December 2006]

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Publication of accounts and annual report

28 (1) The Authority shall, within four months after the end of each financial year, cause to be made and transmit to the Minister—

- (a) a report of the operations of the Authority during that year; and
 - (b) a copy of the annual statement of accounts of the Authority certified by the auditor appointed under section 27(1).
- (2) The Minister shall as soon as possible after their receipt—
- (a) cause a copy of the report and annual statement of accounts to be laid before both Houses of the Legislature; and
 - (b) cause a copy of the annual statement of accounts to be published in the Gazette.
- (3) The Authority shall as soon as may be after—
- (a) the last working day in each month, make up and transmit to the Minister; and
 - (b) the last working day in June of each year, make up and publish in the Gazette,

a statement showing its assets and liabilities at the close of business on such respective day.

[section 28 subsection (3)(b) amended by 1999:48 s.12 effective 1 January 2000; subsection (1)(b) substituted by 2002:39 effective 30 December 2002; subsection (1) amended by 2004:1 s.7 effective 10 March 2004]

PART VII MISCELLANEOUS

Other regulations

- 29 (1) The Minister may, after consultation with the Authority, make Regulations—
- (a) prescribing anything which may be or is to be prescribed under this Act;
 - (b) directing and controlling the calling in and demonetization of currency notes and coins issued under this Act; and
 - (c) regulating any aspect of the supervision and inspection of any financial institution operating in or from within Bermuda;
 - (ca) *[repealed]*;
 - (d) prescribing limitations, restrictions or conditions on any financial institution respecting the provision of financial services or financial instruments or respecting financial dealings;

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- (e) regulating the issue of financial instruments by any financial institution or by a resident;
- (f) prescribing balance sheet and other ratios to be maintained by any financial institution;
- (g) regulating the borrowing power of or the making of investments and loans by any financial institution;
- (h) regulating the establishment in or out of Bermuda of branches, subsidiary companies, holding companies or representative offices by financial institutions;
- (ha) regulating mergers, reconstructions, acquisitions, disposals and amalgamations of and by financial institutions;
- (i) providing for the ownership and management of any financial institutions and their subsidiary companies;
- (j) regulating share capital, loan stock, reserves, and dividends of any financial institution;
- (k) respecting liquidity requirements of any financial institution;
- (l) respecting the provision of information;
- (m) creating offences;
- (n) generally for the better carrying into effect of the purposes and provisions of this Act.

(2) Any person who commits an offence against the Regulations made under this section is liable on summary conviction to a fine of \$20,000 or imprisonment for six months or both, and if the offence is a continuing offence to a further fine of \$1000 for every day or part of a day during which the offence has continued.

(3) *[repealed]*

[section 29 amended by 1990:52 effective 12 July 1990; by 1997:20 effective 8 July 1997; by 1998:37 effective 17 July 1998; by 1999:48 s.13 effective 1 January 2000; subsection (1) amended, and (3) repealed, by 2006:27 s.12 and s.16 & Sch effective 27 December 2006; subsection (1)(ca) repealed by 2006:37 s.75(1)(a) effective 7 March 2007]

Directors may make bye-laws

30 The Authority may, with the approval of the Minister, make under the seal of the Authority bye-laws for the good order and management of the Authority.

[section 30 amended by 2006:27 s.16 & Sch effective 27 December 2006]

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Powers exercisable to assist foreign regulatory authorities

Request for assistance by foreign regulatory authority

30A (1) The powers conferred by section 30B are exercisable by the Authority for the purpose of assisting a foreign regulatory authority which has requested assistance in connection with inquiries being carried out by it or on its behalf.

(2) A “foreign regulatory authority” means an authority which, in a country or territory outside Bermuda, exercises regulatory functions corresponding to the regulatory functions of the Authority under this Act or any other Act or regulations.

(3) The Authority shall not exercise the powers conferred by section 30B unless it is satisfied that the assistance requested by the foreign regulatory authority is for the purposes of its regulatory functions.

(4) An authority’s “regulatory functions” means any function falling within subsection (2).

(5) In deciding whether to exercise those powers, the Authority shall take into account, in particular—

- (a) whether corresponding assistance would be given in that country or territory to the Authority;
- (b) whether the inquiries relate to the possible breach of a law, or other requirement, which has no close parallel in Bermuda or involves the assertion of a jurisdiction not recognised by Bermuda;
- (c) the nature and seriousness of the matter to which the inquiries relate, the importance to the inquiries of the information sought in Bermuda and whether the assistance could be obtained by other means; and
- (d) whether it is otherwise appropriate in the public interest to give the assistance sought.

(6) The Authority may decline to exercise the powers conferred by section 30B unless the foreign regulatory authority undertakes to make such contributions towards the costs of their exercise as the Authority considers appropriate.

(7) The Authority shall decline to exercise the powers conferred by section 30B (1) (c) unless it is satisfied that any statement that may be given in the exercise of that power cannot be used against the maker of the statement in evidence in criminal proceedings under the law of the jurisdiction of the foreign regulatory authority.

(8) The Authority shall decline to exercise the powers conferred by section 30B if the exercise of such power would breach subsection (9).

(9) Section 50(4) of the Trusts (Regulation of Trust Business) Act 2001 applies to the disclosure of information obtained pursuant to section 30B as it applies to the disclosure of information pursuant to section 50(2) of that Act.

[section 30A inserted by 2001:31 s.3 effective 1 October 2001; subsection (7) repealed and substituted by 2008:3 s.4 effective 25 March 2008]

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Power to require information

30B (1) Where in accordance with section 30A the Authority is satisfied that assistance should be provided pursuant to a request by a foreign regulatory authority and that the request is in relation to information which is in the possession or under the control of a person in Bermuda, the Authority may by notice in writing served on such person (“specified person”)—

- (a) require the specified person to furnish it with such information as the Authority may require with respect to any matter relevant to the inquiries to which the request relates;
- (b) require the specified person to produce to it such document or documents of such description as it may specify;
- (c) require the specified person or any of his officers, servants or agents to attend before the Authority at a specified time and place and answer any questions on oath or otherwise furnish any information with respect to any matter relevant to the inquiries; or
- (d) require the specified person to otherwise give the Authority such assistance in connection with those inquiries as the specified person may reasonably be able to give.

(2) Where documents are produced pursuant to this section the Authority may take copies from them.

(3) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

(4) *[repealed by 2008:3]*

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

(6) In this section “documents” includes information recorded in any form; and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of it in legible form.

[section 30B inserted by 2001:31 s.3 effective 1 October 2001; amended by 2008:3 s.5 effective 25 March 2008]

Exercise of powers by officer

30C (1) The Authority may authorise any of its officers or any other competent person to exercise on its behalf any of the powers conferred by section 30B.

- (2) No such authority shall be granted except for the purpose of investigating—
 - (a) the affairs, or any aspect of the affairs, of a person specified by the Authority; or
 - (b) a subject matter specified by the Authority;

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being a person who, or a subject matter which, is the subject of the inquiries being carried out by or on behalf of the foreign regulatory authority.

(3) No person shall be bound to comply with a requirement imposed by a person exercising powers by virtue of an authority granted under this section unless he has, if required, produced evidence of his authority.

(4) Where the Authority authorises a person other than one of its officers to exercise powers by virtue of this section, that person shall make a report to the Authority in such manner as it may require on the exercise of those powers and the results of exercising them.

[section 30C inserted by 2001:31 s.3 effective 1 October 2001]

Penalty for failure to comply with requirement

30D (1) A person who without reasonable excuse fails to comply with a requirement imposed on him under section 30B commits an offence and is liable on summary conviction to a fine of \$5000 or to imprisonment for six months or to both.

(2) A person who in purported compliance with any such requirement furnishes information which he knows to be false or misleading in a material particular, or recklessly furnishes information which is false or misleading in a material particular commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for two years or to both.

(3) A person who, in purported compliance with section 30B (1) (c)—

- (a) makes a statement which he knows to be false in a material particular; or
- (b) recklessly makes a statement which is false or misleading in a material particular,

commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for two years, or to both.

[section 30D inserted by 2001:31 s.3 effective 1 October 2001; subsection (3) inserted by 2008:3 s.6 effective 25 March 2008]

Statements

30E (1) A statement made by a specified person in compliance with a requirement imposed by section 30B (1)(c) may not be used in evidence against him in criminal proceedings.

(2) Subsection (1) does not apply on a prosecution for—

- (a) an offence under section 30D (3);
- (b) perjury; or
- (c) some other offence where, in giving evidence, a specified person makes a statement inconsistent with the statement mentioned in subsection (1).

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(3) A statement may not be used by virtue of subsection (2)(c) against a specified person unless—

- (a) evidence relating to it is adduced; or
- (b) a question relating to it is asked;

by or on behalf of the specified person in the proceedings arising out of the prosecution.

[Section 30E inserted by 2008:3 s.7 effective 25 March 2008]

Secrecy

31 (1) Except in so far as may be necessary for the due performance of his functions under the Act or other statutory provision, and subject to subsections (1AA), (1B), (1C) and (1D) any person who is, or is acting as, an officer, a servant, an agent or an adviser of the Authority shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the Government or the Authority or of any person that may come to his knowledge in the course of his duties.

(1A) Any such officer or servant who communicates any such matter to any person other than the Minister, the Board or an officer of the Authority authorized in that behalf by the Chairman or suffers or permits any unauthorized person to have access to any books, papers or other records relating to the Government or the Authority, or to any person, commits an offence.

Punishment on summary conviction: a fine of \$50,000 or imprisonment for two years or both.

Punishment on conviction on indictment: a fine of \$100,000 or imprisonment for five years or both.

(1AA) Subsection (1) does not preclude the disclosure of information—

- (a) to the Minister in any case in which the disclosure is for the purpose of enabling or assisting him to discharge his statutory functions or is in the public interest;
- (aa) to the Registrar of Companies for the purpose of enabling or assisting him to discharge his statutory functions;
- (ab) to a financial institution, which is a self-regulating organisation, for the purposes of its functions in its capacity as a self-regulating organisation;
- (ac) to the FIA, established under section 3 of the Financial Intelligence Agency Act 2007, for the purpose of its functions;
- (b) for the purpose of enabling or assisting the Authority to exercise any functions conferred on them by this Act or the Regulations made thereunder;
- (c) if the information is or has been available to the public from other sources;
- (d) in a summary or collection of information framed in such a way as not to enable the identity of any individual depositor, client or other customer of

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a financial institution or of any financial institution to which the information relates to be ascertained.

(1B) Subsection (1) does not preclude the disclosure of information for the purpose of enabling or assisting an authority in a country or territory outside Bermuda to exercise functions corresponding to those functions of supervision, regulation or inspection of the Authority.

(1C) No information or document regarding the account or regarding any matter or thing relating to the business or other affairs of any individual depositor, client or other customer of a financial institution that has been obtained by the Authority shall be disclosed by the Authority.

(1D) The restriction under subsection (1C) shall not apply to the disclosure by the Authority of any information or documents pursuant to section 30A or 30B, or subsection (1AA) or (1B) of this section or any provision under any other Act permitting disclosure by the Authority, of information or documents.

(2) No officer, servant, agent or adviser of the Authority shall be required to produce in any court any book or document or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Act or other statutory provision, except on the direction of the court or in so far as may be necessary for the purpose of carrying into effect this Act or other statutory provision.

(3) Notwithstanding anything to the contrary in this section the Minister, where he is of the opinion that it is desirable so to do in the interests of internal security or for the detection of crime, may authorize any police officer of or above the rank of Inspector by warrant under his hand to inspect and take copies of any of the books or records of the Authority.

(4) The books of the Authority shall be deemed to be banker's books for the purposes of the Evidence Act 1905 .

[section 31 amended by 1990:52 effective 12 July 1990; subsections (1), (1A) and (1AA) amended by 1999:48 s.14 effective 1 January 2000; subsection (1) amended, (1C) substituted, and (1D) inserted, by 2004:25 s.2 effective 12 August 2004; subsections (1), (1AA)(b) and (2) amended by 2006:27 s.16 & Sch effective 27 December 2006; subsection (1AA) paragraph (ac) inserted by 2007:22 s.22 effective 15 November 2008]

False verification of account or report

32 Any officer or auditor of the Authority who verifies any statement, account or report required to be furnished to the Minister pursuant to this Act, or who is concerned with delivering or transmitting the same to the Minister, knowing the same to be false in a material particular, commits an offence.

Punishment on summary conviction: a fine of \$50,000 or imprisonment for two years or both.

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Punishment on conviction on indictment: a fine of \$100,000 or imprisonment for five years or both.

[section 32 amended by 1990:52 effective 12 July 1990; by 1999:48 s.15 effective 1 January 2000; and by 2006:27 s.16 & Sch effective 27 December 2006]

Transmitting false information

33 (1) Where the Authority requires information—

- (a) in the discharge of its functions under section 21(1)(a); or
- (b) in the discharge of its functions under section 21(1)(d) or its functions relating to the supervision, regulation or inspection of a financial institution under this Act,

then a person commits an offence if he furnishes or is concerned with furnishing any information to the Authority knowing the same to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.

(2) A person who commits an offence—

- (a) under subsection (1)(a) is liable on summary conviction to a fine of \$10,000 or imprisonment for six months or both;
- (b) under subsection (1)(b) is liable on summary conviction to a fine of \$50,000 or imprisonment for two years or both or on conviction on indictment to a fine of \$100,000 or imprisonment for five years or both.

(3) Where an offence under subsection (1) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other officer of the body corporate, he, a *[sic]* well as the body corporate, shall be deemed to be guilty of an offence and is liable to be proceeded against and punished accordingly.

(4) Where the affairs of a body corporate are managed by the members, subsection (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if her were a director of the body corporate.

(5) Where a partnership is guilty of an offence under subsection (1), every partner, other than a partner who is proved to have been ignorant or to have attempted to prevent the commission of the offence, is also guilty of the offence and is liable to be proceeded against and punished accordingly.

(6) Where any other association, incorporated or not, is guilty of an offence under subsection (1)—

- (a) every officer of the association who is bound to fulfil any duty of which the breach is the offence; or
- (b) if there is no such officer, every member of the governing body other than a member who is proved to have been ignorant of or to have attempted to prevent the commission of the offence,

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is also guilty of the offence and is liable to be proceeded against and punished accordingly.

[section 33 repealed and replaced by 1990:52 effective 12 July 1990; subsection (2) amended by 1999:48 s.16 effective 1 January 2000]

Communication by auditor with Authority

33A No auditor of a financial institution is in breach of any duty to which he is subject as auditor of that institution by reason of his communicating in good faith to the Authority, whether or not in response to a request made by it, any information or opinion on any matter of which he becomes aware in his capacity as auditor of that institution and which relates to the business or affairs of that institution.

[section 33A inserted by 1993:32 effective 7 July 1993]

34 *[section 34 repealed by 2005:15 s.12 effective 1 April 2006]*

PART VIII

TRANSITIONAL PROVISIONS, REPEAL, ETC.

[omitted]

FIRST SCHEDULE

(section 4)

BOARD OF DIRECTORS

PART 1:

TENURE AND QUALIFICATIONS OF NON-EXECUTIVE MEMBERS OF THE BOARD

TERMS OF OFFICE

1 Appointment as director of the Authority shall be for a period of not less than three years and not more than five years, except that initially some appointments may be for shorter and different periods so as to secure that appointments expire at different times.

2 A person appointed as director of the Authority in place of a person who ceased to hold office before the end of the term for which he was appointed shall be appointed for the remainder of that person's term of office.

3 A person appointed as director of the Authority may resign his office by written notice to the Authority.

4 The Minister shall cause to be published in the Gazette the name of every person appointed as director of the Authority.

Qualification for appointment

5 A person is disqualified for appointment as director of the Authority if he is a member of either House of the Legislature or a person serving in a government department in employment in respect of which remuneration is payable out of money provided by Parliament.

6 The fact that a person has held office as director of the Authority does not disqualify him for re-appointment to that office.

Removal from office

7 A person appointed as director of the Authority shall vacate office if he becomes a person to whom paragraph 5 applies.

8 The Minister acting after consultation with the Authority may remove a person from office as director of the Authority if he is satisfied that that person—

- (a) has been absent from meetings of the Board for more than three months without the consent of the Board;

- (b) has become bankrupt, that his estate has been sequestered or that he has made an arrangement with or granted a trust deed for his creditors; or
- (c) is unable or unfit to discharge his functions as a member.

Remuneration

9 A director of the Authority shall be entitled to be paid by the Authority such remuneration and allowances as the Authority may determine with the approval of the Minister.

PART 2:

PROCEDURE FOR MEETINGS OF THE BOARD

POWERS

10 The Board may act notwithstanding the existence of one or more vacancies in its members or a defect in the appointment of a member.

11 The Board may appoint such committees, as it thinks fit.

Meetings

12 (1) The Board shall meet as often as necessary or expedient for the due performance of its functions.

(2) The Chairman (or in his absence the Deputy Chairman) may summon a meeting at any time on giving such notice as in his judgment the circumstances may require.

13 (1) At a meeting of the Board, the proceedings shall be regulated as follows.

(2) The quorum shall be six of whom a majority shall be non-executive members.

(3) The Chairman or the Deputy Chairman shall chair meetings of the Board.

(4) If the Chairman and the Deputy Chairman are absent from a meeting of the Board, the members present at the meeting shall nominate one of their number to chair the meeting.

(5) If a member of the Board has any direct or indirect interest in any dealing or business with the Authority—

(a) he shall disclose his interest to the Board at the time of the dealing or business being negotiated or transacted; and

(b) he shall have no vote in relation to the dealing or business, unless the Board has resolved that the interest does not give rise to a conflict of interest.

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(6) A member of the Board shall have no vote in relation to any question arising which touches or concerns him.

(7) Subject to subparagraphs (2) to (6), the Board shall determine its own procedure.

[First Schedule repealed and replaced by 2001:34 s.15 effective 1 January 2002]

SECOND SCHEDULE

[omitted]

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THIRD SCHEDULE [SECTION 20A]

ANY INSTITUTION

Any person registered under section 4 or 10 of the Insurance Act 1978

The Bermuda Stock Exchange

Bermuda Commodities Exchange

Bermuda Commodities Exchange Clearing House

Collective Investment Scheme

Credit Union

Investment funds as defined in section 2 of the Investment Funds Act 2006

An investment provider licensed under the Investment Business Act 2003

Fund administrators as defined in section 2 of the Investment Funds Act 2006

Money Service Business

Undertaking licensed under the Trusts (Regulation of Trust Business) Act 2001

[Third Schedule amended by 1991:40 effective 6 September 1991; by 1992:42 effective 18 June 1992; by BR 17 / 1998 effective 20 March 1998; by 1998:34 effective 1 January 2000; by 1999:48 s.18 effective 1 January 2000; by 2001:22 Sch 2 para 1 effective 25 January 2002; by 2003:20 s.88(2) effective 30 January 2004; by 2006:27 s.13 effective 27 December 2006; by 2006:37 s.77(1)(c) effective 7 March 2007; by 2008:3 s.8 effective 25 March 2008]

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FOURTH SCHEDULE

(section 20B)

Banks and Deposit Companies Act 1999

- (1) Application for a licence pursuant to section 13(1)- \$22,050
- (2) Annual fee pursuant to section 16—
 - (a) where an institution falls in band A \$18,200
 - (b) where an institution falls in band B \$121,300
 - (c) where an institution falls in band C \$242,550
- (3) For the purposes of paragraph (2), an institution falls—
 - (a) in band A, if it has consolidated gross assets not exceeding \$500 million;
 - (b) in band B, if it has consolidated gross assets exceeding \$500 million but not exceeding \$2 billion;
 - (c) in band C, if it has consolidated gross assets exceeding \$2 billion.
- (4) In this paragraph “consolidated gross assets” does not include assets included within the consolidated financial statements of a subsidiary company of the institution which is separately licensed under the Banks and Deposit Companies Act 1999.

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- (1) *[repealed]*
- (2) *[repealed]*
- (3) application for a licence to carry on a money service business pursuant to regulation 7(1)(a) of the Money Service Business Regulations 2007.....\$5,000
- (4) annual fee pursuant to regulation 7(1)(b) of the Money Service Business Regulations 2007.....\$5,000

Insurance Act 1978

- (1) Applying for registration as—
 - (a) an insurer under section 4(1) \$580
 - (b) an insurance manager, broker or agent under section 10 \$315
 - (c) an insurance salesman under section 10 \$75
- (2) Applying—

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(a) to vary or delete any conditions imposed on the Certificate of Registration under section 4(3)	\$390
(b) to register as a different class of insurer under section 4(6)	\$390
(c) <i>[repealed by 2008:46]</i>	
(d) to be granted an extension to the filing deadline under section 17(4)	\$580
(e) to be exempted from the record keeping requirements of section 18C(2)	\$390
(ea) to notify new or increased shareholder control under section 30D	\$390
(f) to file an affidavit prior to the payment of dividends exceeding 25% of a Class 4 insurer's statutory capital and surplus under section 31B	\$390
(g) to receive approval for an insurer to reduce total statutory capital by 15% or more under section 31C	\$580
(h) to be granted a direction under section 56 other than those mentioned in paragraph (ha)	\$390
(ha) to be granted a direction under section 56, in respect of—	
(i) exemption from requirement of section 18B to include opinion of loss reserve specialist opinion	\$390
(ii) modifying of accounting provisions under sections 15 to 18 and regulations	\$580
(iii) modifying margin of solvency for general business under section 33 and regulations	\$390
(iv) modifying statutory financial returns under sections 15 to 18 and regulations	\$390
(i) to be granted a direction under section 57A	\$1,450
(j) to receive Bermuda Monetary Authority approval for an asset not appearing on lines 1, 2, 3(a), 5(a), 9, 10, 11 and 12 as required by the Insurance Accounts Regulations 1980, to be treated as "relevant assets"	\$580
(k) to receive Bermuda Monetary Authority approval of letters of credit, guarantees and any other instruments to be treated as other fixed capital	\$390
(l) application for cancellation of registration under s.41(1)(a)	\$390

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(m)	application for approval of an internal capital model made under the provisions of a Rule made under section 6A	\$40,000
(n)	subject to paragraph 2A, application for review and approval of an internal capital model made under the provisions of a Rule made under section 6A	\$160,000
(o)	annual fee for the monitoring of an approved internal capital model made under the provisions of a Rule made under section 6A	\$15,000
(p)	application for post approval of an internal capital model made under the provisions of a Rule made under section 6A	\$15,000
(2A)	Section 14(6) (which allows the Authority to reduce the annual fee depending on the nature and scale of operations of an insurer and the complexity of its business) shall apply with the necessary modifications to the application fee for review and approval of an internal capital model under paragraph 2(n) above.	
(3)	Registering as—	
(a)	an insurer—	
(i)	non-resident insurance undertaking under the Non-Resident Insurance Undertakings Act 1967 (fees in subparagraphs (a)(ii) to (x) of this item do not apply to these undertakings)	\$3,650
(ii)	Class 1 insurer carrying on general business	\$971
(iii)	Class 2 insurer carrying on general business	\$2,200
(iv)	Class 3 insurer carrying on general business	\$12,000
(iva)	Class 3A insurer carrying on general business where gross premium is expected to—	
	not exceed \$5 million	\$19,000
	exceed \$5 million but not exceed \$20 million	\$22,500
	exceed \$20 million but not exceed \$35 million	\$26,000
	exceed \$35 million	\$30,000
(ivb)	Class 3B insurer carrying on general business where gross premium is expected to—	
	not exceed \$150 million	\$180,000

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	exceed \$150 million but does not exceed \$350 million	\$200,000
	exceed \$350 million but does not exceed \$2 billion	\$230,500
	exceeds \$2 billion	\$260,000
(v)	Class 4 insurer carrying on general business where gross premium written is expected to—	
	not exceed \$150 million	\$180,000
	exceed \$150 million but does not exceed \$350 million	\$200,000
	exceed \$350 million but does not exceed \$2 billion	\$230,500
	exceed \$2 billion	\$260,000
(vi)	Special Purpose insurers	\$11,600
(vii)	Long-Term Class A	\$10,500
(viii)	Long-Term Class B	\$10,500
(ix)	Long-Term Commercial insurers—	
	Class C insurer, if classified, otherwise total assets of less than \$250 million	\$20,000
	Class D insurer, if classified, otherwise total assets equal to or greater than \$250 million but less than \$500 million	\$40,000
	Class E insurer, if classified, otherwise total assets greater than \$500 million	\$60,000
	(b) an insurance manager, broker or agent under section 10	\$1,406
	(c) an insurance salesman under section 10	\$140
(4)	Issuing any certificate under section 14(1)(c)	\$580
(5)	Inspecting the register under section 14(1)(d)	\$25
(6)	The furnishing by the Authority of any document or copy of a document under section 14(1)(e)—	
	(a) for the first three pages or part thereof	\$25
	(b) for each additional three pages or part thereof	\$6
(7)	Annual fee under section 14(2) payable by—	
	(a) an insurer—	
	(i) non-resident insurance undertaking under the Non-Resident Insurance Undertakings Act 1967 (fees in subparagraphs (a)(ii) to (x) of this item do not apply to these undertakings)	\$3,650
	(ii) Class 1 insurer carrying on general business	\$971

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(iii) Class 2 insurer carrying on general business	\$2,200
(iv) Class 3 insurer carrying on general business	\$12,000
(iva) Class 3A insurer carrying on general business	\$30,000
(ivb) Class 3B or Class 4 insurer carrying on general business where gross premium written in the year preceding the year of assessment—	
did not exceed \$150 million	\$180,000
exceeded \$150 million but did not exceed \$350 million	\$200,000
exceeded \$350 million but did not exceed \$2 billion	\$230,500
exceeded \$2 billion	\$260,000
(v) Special Purpose insurers	\$11,600
(vi) Long-Term- Class A	\$10,500
(vii) Long-Term- Class B	\$10,500
(viii) Long-Term- Commercial insurers—	
Class C insurer, if classified, otherwise total assets less than \$250 million	\$20,000
Class D insurer, if classified, otherwise total equal to or greater than \$250 million but less than \$500 million	\$40,000
Class E insurer, if classified, otherwise with total assets greater than \$500 million	\$60,000
(b) an insurance manager, broker or agent under section 10	\$1,406
(c) an insurance salesman under section 10	\$140
(7a) Supplementary fee to be paid by insurer whose business includes domestic insurance business in addition to the fee payable for its class of business under paragraph (7)(a)	\$25,000
(8) Annual fee under section 27B payable by a designated insurer for a group	\$150,000

[Fee in paragraph (7a) contained a typographical error when enacted and has been corrected to read \$25,000 under the powers of the Computerization and Revision of Laws Act 1989 s. 11J. Also paragraph 7(aa) changed to 7(a) under the powers of the Computerization and Revision of Laws Act 1989 s.11J]

Investment Business Act 2003

(1) Application fee for a licence pursuant to section 16	\$2,200
(2) Annual licence fee pursuant to section 19(1)(b)—	

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(a) where the investment provider carries on—	\$2,100
(i) an investment activity of a kind specified in paragraph 2 of Part 2 of the First Schedule to the Act in connection with shares or units in a collective investment scheme;	
(ii) an investment activity of a kind specified in paragraph 4 of Part 2 of the First Schedule to the Act; or	
(iii) an investment activity falling within (i) and (ii) above	
(b) where the investment provider carries on an investment activity of a kind specified in paragraphs 1, 2 and 3 of Part 2 of the First Schedule to the Act but is not licensed to hold client assets	\$5,250
(c) where the investment provider carries on an investment activity of a kind specified in Part 2 of the First Schedule to the Act and is licensed to hold client assets	\$10,500
(3) Annual licence fee payable pursuant to section 19(1)(b) where an investment provider falls within paragraph (2)(a), (b) or (c) and is part of a group which is subject to consolidated supervision by the Authority as home regulator under the Investment Business Act 2003, and that group—	
(a) has consolidated net assets not exceeding \$500 million	\$60,650
(b) has consolidated net assets exceeding \$500 million	\$242,550

Investment Funds Act 2006

(1) Application fee authorisation (all funds)	\$830
(2) Reclassification fee (all funds)	\$830
(3) Annual fee - standard fund	\$1,490
(4) Annual fee - administered fund	\$940
(5) Annual fee - institutional fund	\$940
(6) Application fee - exempted funds	\$550
(7) Annual fee - exempted funds	\$660
(8) Application fee - fund administrator's licence	\$8,270
(9) Annual fee - fund administrator	\$9,100
(10) Transaction fee: all section 25 changes and notifications and section 6 notifications	\$250

Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008

(1) Application fee under section 14(1)	\$105
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(2) Annual fee pursuant to section 14(2) \$825

Trusts (Regulation of Trust Business) Act 2001

(1) Application for a licence under section 11(6)(d) where the application is in respect of—

(a) a limited trust licence

\$550

(b) an unlimited trust licence

\$5,500

(2) Annual fee under section 14(1)—

(a) for a limited trust licence

\$1,100

(b) for an unlimited trust licence—

(i) where a licensed company employs, or otherwise engages the services of, less than five persons

\$12,130

(ii) where a licensed company employs, or otherwise engages the services of, five or more persons but less than ten

\$21,225

(iii) where a licensed company employs, or otherwise engages the services of, ten or more persons

\$36,400

[Fourth Schedule inserted by 2002:39 s.3 & Sch effective 30 December 2002; amended by 2004:7 s.2 effective 26 March 2004; by 2004:33 s.2 effective 1 January 2005; by 2006:27 s.14 effective 27 December 2006; by 2006:41 s.4 effective 5 January 2007; by 2006:37 s.77(1)(d) effective 7 March 2007; by 2008:3 s.9 effective 25 March 2008; by 2008:34 s.28 effective 30 July 2008; by 2008:49 s.39(3) effective 1 January 2009; by 2008:46 s.3 - s.8 effective 1 January 2009; amended by 2009:37 s.2(a) effective 19 July 2009; by 2009:37 s.2(b) effective 1 January 2010; amended by 2010 : 2 s. 3 effective 25 February 2010; amended by 2010 : 2 s. 4 effective 25 February 2010; Fourth Schedule repealed and replaced by 2010 : 58 s. 11 effective 1 January 2011; Fourth Schedule amended by 2011 : 48 s. 2 effective 31 December 2011]

[Assent Date: 20 February 1969]

[Part IV was brought into operation on 6 February 1970 [GN 63/70] and the remainder on 20 February 1969 [GN 83/69]]

[Amended by:

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