

BERMUDA STATUTORY INSTRUMENT

BR 55/1994

**BERMUDA MONETARY AUTHORITY (FINANCIAL
INSTITUTIONS) (CONTROL) REGULATIONS 1994**

*[made under section 29(1)(h) of the Bermuda Monetary Authority Act 1969
[title 16 item 11] and brought into operation on 16 December 1994]*

Citation

1 These Regulations may be cited as the Bermuda Monetary Authority (Financial Institutions) (Control) Regulations 1994.

Interpretation

2 In these Regulations, unless the context otherwise requires —

"accounts" means any accounts, whether written or printed or kept on any machine or device;

"the Authority" means the Bermuda Monetary Authority;

"automatic teller machine" means any unmanned electronic device the primary function of which is to dispense cash to customers and the general public but which may also permit other transactions;

"branch" means a branch of a financial institution or the branch of a subsidiary of such institution which —

(a) does not have a legal status separate and apart from the financial institution or the subsidiary;

(b) is an integral part of the financial institution or the subsidiary; and

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(c) offers business services to customers and the general public,

and includes an automatic teller machine;

"director" includes an alternate director and any person occupying the position of, or purporting to act as, director, by whatever name called;

"document" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to the production of a document include references to the production of a copy of the information in legible form;

"financial institution" means a person, body or entity, other than —

(a) the Bermuda Stock Exchange;

(b) investment funds; and

(c) a person registered under section 4 or section 10 of the Insurance Act 1978.

specified in the Third Schedule to the Bermuda Monetary Authority Act 1969 *[title 16 item 11]*;

"manager" means the chief executive officer and includes any other person employed by a financial institution or subsidiary thereof who, under the authority of a director or the chief executive officer, exercises managerial functions and is responsible for the supply of information in respect of the institution or subsidiary to the Authority;

"representative office" means an office of a financial institution;

"subsidiary" means a subsidiary company within the definition of that expression in section 86 of the Companies Act 1981.

[Regulation 2 amended by BR 2/1995 effective 3 February 1995; by 2008:3 s.10(3) effective 25 March 2008]

Control of acquisition and establishment of branches, subsidiaries, etc.

3 A financial institution or a subsidiary thereof shall not, except with the prior written approval of the Authority, whether inside or outside Bermuda, establish any branch, subsidiary or representative office.

Financial Institution to notify Authority of closure of branch, etc.

4 Where —

- (a) a financial institution or a subsidiary thereof closes a branch or representative office; or
- (b) a subsidiary of a financial institution ceases its business operations,

the financial institution shall, within fourteen days from the date of such closure or of such cessation, in writing, notify the Authority of the fact.

Control of relocation of branches, etc.

5 (1) Subject to paragraph (2), a financial institution shall not, except with the prior written approval of the Authority, change the location of an existing branch, subsidiary or representative office.

(2) Paragraph (1) does not apply to the relocation of an automatic teller machine from one part of an existing building to another part of the same building.

Approval may be subject to conditions, etc.

6 (1) Subject to regulation 8, —

- (a) where the Authority grants approval under regulation 3, 5 or 12, the Authority may, at the time of granting such approval, or at any time thereafter, by notice in writing served upon a financial institution or a subsidiary thereof, attach to that approval such conditions, if any, as the Authority considers appropriate; and
- (b) the Authority may, at any time by notice in writing served upon a financial institution or a subsidiary thereof vary any such condition.

(2) The Authority may at any time by notice in writing served upon a financial institution or a subsidiary thereof revoke a condition referred to in paragraph (1).

Revocation of approval, etc.

7 (1) Subject to paragraph (2) of this regulation and regulation 8, the Authority may, at any time by notice in writing served upon a financial institution or a subsidiary thereof, revoke an approval granted under regulation 3, 5 or 12.

(2) Before issuing a notice under paragraph (1), the Authority shall give the financial institution or the subsidiary thereof notice in writing of its intention to revoke the approval and shall specify in such notice the grounds on which it proposes to revoke the approval and shall afford the financial institution or the subsidiary thereof an opportunity of

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submitting to the Authority written statements of objections to the giving of the notice under paragraph (1); and thereafter the Authority shall advise the financial institution or the subsidiary thereof of its decision in the matter.

- (3) Where the Authority —
- (a) refuses to grant approval under regulation 3 or 5;
 - (b) imposes any condition on an approval granted under regulation 3, 5 or 12; or
 - (c) varies any condition subject to which an approval is granted under regulation 6(1)(b),

the Authority shall state the reason for such refusal, imposition or variation, as the case may be.

Right of appeal to Minister

8 (1) Where a financial institution or a subsidiary thereof is aggrieved by —

- (a) a refusal to grant an approval under regulation 3 or 5;
- (b) the revocation of an approval under regulation 7(1); or
- (c) any condition subject to which an approval is granted, or which is thereafter attached to an approval or any variation of such condition, under regulation 6,

the financial institution or subsidiary thereof may, within twenty-one days from the date of such refusal or revocation, imposition or variation, of such condition, as the case may be, appeal, in writing, to the Minister.

(2) Except in respect of a refusal to grant an approval under regulation 3, a branch, subsidiary, or representative office shall remain in operation pending the outcome of an appeal.

(3) Where an appeal is made to the Minister under paragraph (1) the Minister may make such decision as he considers appropriate.

(4) The Minister shall give reasons for a decision under paragraph (3).

Furnishing Information

9 A financial institution, or a subsidiary thereof, which maintains a branch, subsidiary or representative office shall —

- (a) in such form and at such intervals as the Authority may specify, submit to the Authority such information as it may request; and

(b) within such period and in such manner as the Authority may require submit to the Authority such further information as the Authority —

- (i) considers necessary for a proper understanding of the functions and activities of the branch, subsidiary or representative office, as the case may be; or
- (ii) may require to discharge its functions in respect of the supervision, regulation or inspection of the financial institution or subsidiary thereof,

or for both such purposes.

Inspection of branch, etc.

10 (1) Subject to paragraph (3), where a financial institution or a subsidiary thereof refuses to submit to the Authority any information required by the Authority pursuant to regulation 9, the Authority, or a person duly authorized by the Authority for the purpose, may carry out an inspection of the financial institution or subsidiary thereof and of the branch, subsidiary or representative office, as the case may be.

(2) For the purposes of an inspection under paragraph (1), a financial institution or subsidiary thereof or the branch, subsidiary or representative office shall —

(a) afford the Authority or other duly authorized person carrying out the inspection —

- (i) access to the books and accounts of the branch, subsidiary or representative office, as the case may be;
- (ii) access to all documents, including documents of title to assets;
- (iii) access to all securities held by the branch, subsidiary or representative office;
- (iv) access to cash; and
- (v) access to such other information and facilities as may be required to carry out the inspection,

and the financial institution or subsidiary thereof, or the branch, subsidiary or representative office shall, at the premises at which the information is maintained, produce to the Authority or other duly authorized person carrying out the inspection such books, accounts, documents, securities cash and information as may be required.

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(3) Nothing contained in this regulation shall be construed as requiring a financial institution or a subsidiary thereof, or a branch, subsidiary or representative office to produce any books, accounts, documents, securities or cash as would —

- (a) contravene the laws of any country or jurisdiction; or
- (b) at such times or in such places, or both, as would interfere with the proper conduct of the normal daily business of the financial institution or subsidiary or of the branch, subsidiary or representative office.

Offences

11 (1) A director, or a manager of a financial institution or a subsidiary thereof who contravenes —

- (a) regulation 3 or 5; or
- (b) any condition subject to which approval is granted, or any variation of such condition, under regulation 6,

is guilty of an offence.

(2) Every director and every manager of a financial institution or subsidiary thereof, and every manager of a branch, subsidiary or representative office who —

- (a) contravenes regulation 9 or regulation 10(2); or
- (b) produces to the Authority or other duly authorized person carrying out an inspection any books, accounts, documents, securities or any information, whatsoever, which is false or misleading,

is guilty of an offence.

(3) For the purposes of regulation 9, any person who signs any document and knows, or ought reasonably to have known, the document to be false in a material particular is guilty of an offence.

Savings and Transitional

12 (1) Where, prior to the coming into operation of these Regulations, a financial institution or a subsidiary thereof had lawfully established a branch, subsidiary or representative office, that branch, subsidiary or representative office, as the case may be shall, subject to paragraph (2), continue under these Regulations and everything lawfully done by such branch, subsidiary or representative office shall be of full force and effect.

(2) A financial institution or a subsidiary thereof referred to in paragraph (1) shall, within thirty days from the coming into operation of these Regulations, in writing, notify the Authority of the existence and

location of the branch, subsidiary or representative office, as the case may be, and on receipt of such notification by the Authority the Authority shall, in writing, grant approval in respect of the continuance of that branch, subsidiary or representative office, as the case may be, and such approval shall be effective from the date of receipt of such notification by the Authority.

[Amended by:

BR 2/1995
2008 : 3]