

**BANKING ACT 1988**  
Act 41 of 1988 - 1 January 1989

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## PART I – PRELIMINARY

### 1. Short title

This Act may be cited as the Banking Act.

### 2. Interpretation

In this Act –

“affiliate” means, in relation to a bank, any company which, through the holding of voting shares, is directly or indirectly controlled by the bank;

“approval” means an approval given in writing;

“assigned capital” means the capital required to be maintained under section 14;

“auditor” means a qualified auditor as specified in the Companies Act 1984;

“bank” means a company incorporated under the laws of Mauritius, or a branch of a company incorporated abroad, which is licensed under this Act to conduct banking business –

- (i) under a Category 1 Banking Licence in Mauritius and, in the case of a foreign branch of a local bank, abroad; or
- (ii) under a Category 2 Banking Licence, from within Mauritius,

as the case may be;

“banking business” means –

- (i) the business of accepting deposits of money repayable on demand or after fixed periods or after notice, by cheque or otherwise; and
- (ii) the employment of such deposits in making or giving loans, advances, overdrafts or similar facilities for the account and at the risk of the person accepting such deposits;

“category 1 banking” means banking business other than category 2 banking;

“category 2 banking” means banking business or investment banking business conducted in currencies other than the Mauritius currency except to the extent

permitted by the central bank for trading on the foreign exchange market of Mauritius and investment in money market instruments;

“Category 1 Banking Licence” means a licence authorising the holder thereof to transact category 1 banking;

“Category 2 Banking Licence” means a licence authorising the holder thereof to transact category 2 banking;

“category 2 banking transactions” means transactions effected by a bank holding a Category 2 Banking Licence;

“central bank” means the Bank of Mauritius established under the Bank of Mauritius Act;

“chief executive officer”, in relation to a bank, means any person who performs the functions of a chief executive officer, by whatever name called;

“Commission” means the Financial Services Commission established under the Financial Services Development Act 2001;

“company” means a company incorporated or registered under the Companies Act;

“credit institution” means a body corporate which in the course of its business, extends credit in Mauritius and is declared as such by the central bank;

“demand liabilities” means the deposits in a bank which must be repaid on demand;

“director” includes any person, by whatever name called, who performs or is empowered to perform substantially the same functions, in relation to the direction of a bank, as those performed by a director of a company;

“Director-General” means the Director-General under the Unified Revenue Act;

“Export Processing Zone Certificate” means a certificate issued under the Industrial Expansion Act;

“Export Service Zone Certificate” means a certificate issued under the Export Service Zone Act;

“licence” means a licence granted under Part II;

“Minister” means the Minister to whom responsibility for the subject of finance is assigned;

“net free assets” means the aggregate of –

- (i) paid up capital, assigned capital or capital, as the case may be, after deduction of accumulated losses;
- (ii) Reserve Account;
- (iii) free reserves, including such excess provision against bad and doubtful debts as may be agreed by the central bank; and
- (iii) (iii) subordinated debt as defined by and of an amount agreed by the central bank,

less that part of net fixed assets which represents premises and other fixed assets, or such proportion or lesser amount thereof as may be laid down by the central bank;

“non-resident” means any person in any of the following categories –

- (a) a person who does not normally reside or carry on business in Mauritius;
- (b) a person who is a non-resident for the purposes of the Exchange Control Act;

“related company” has the same meaning as in the Companies Act 2001;

“Reserve Account” means the account specified in section 15;

“Revenue Commissioner” has the same meaning as in the Unified Revenue Act 1983;

“short term credit” means a credit for a term not exceeding 90 days for financing of imports;

“time liabilities” means all deposits, including savings deposits, which are not payable on demand;

“unsecured advances” or “unsecured credit facilities” means –

- (a) advances or credit facilities, as the case may be, made without security; or
- (b) in relation to any advance or credit facility made with security –
  - (i) any part thereof which at any time exceeds the market value of the assets constituting that security; or
  - (ii) where the central bank is satisfied that there is no established market value, the unsecured value as determined on the basis of a valuation proposed by the interested party and approved by the central bank.

## **PART II – LICENSING OF BANKS**

### **3. Authority to transact banking**

(1) The central bank may, on the application of a corporate body, grant to it a Category 1 Banking Licence or a Category 2 Banking Licence, as the case may be.

(2) No person shall transact any category 1 banking or category 2 banking in Mauritius without a licence from the central bank.

(3) An applicant may apply for and be granted both a Category 1 Banking Licence and a Category 2 Banking Licence on condition that the applicant establishes to the satisfaction of the central bank that business under one licence will be kept separate and distinct from business under the other licence and the applicant's accounting and control systems are, or will be, adequate to ensure this.

- (4) No licence shall be granted by the central bank unless it is satisfied as to –
- (i) the technical knowledge, experience, financial conditions and history of the applicant;
  - (ii) the adequacy of its capital structure;
  - (iii) the character of its business and its management;
  - (iv) the adequacy of its accounting and control systems and records;
  - (v) the convenience and needs of the community or market to be served;
  - (vi) the ability and willingness of the applicant to comply with such other conditions as the central bank may impose pursuant to this Act.

(5) The central bank may refuse to grant a licence where the applicant intends to operate under a name which –

- (i) so resembles that of an existing bank as to be likely or calculated to deceive the public;
- (ii) is calculated to suggest falsely a connection with a person or authority outside Mauritius;
- (iii) is calculated to suggest falsely a special status in relation to the Government of Mauritius or any foreign Government or any public body in or outside Mauritius, or that the applicant enjoys the official support or patronage thereof.

(6) A licence issued under this Part shall –

- (a) be subject to such conditions as the central bank may impose;
- (b) in the case of a bank holding a Category 1 Banking Licence, not authorise that bank to carry on business in any office or branch, other than its principal place of business, unless it has obtained the prior approval of the central bank;
- (c) in the case of a bank holding a Category 2 Banking Licence not authorise that bank to have more than one place of business for the purpose of category 2 banking.

(7) The holder of a Category 1 Banking Licence shall pay such annual licence fee as the central bank may notify in the *Gazette*.

(8) Every applicant for a Category 2 Banking Licence shall pay such processing fee as the central bank may notify in the *Gazette*.

(9) The holder of a Category 2 Banking Licence shall pay such annual licence fee as the central bank may notify in the *Gazette*.

(10) No licence granted by the central bank, shall *de facto* or *de jure* be transferable without the prior approval of the central bank.

(11) A bank holding a Category 2 Banking Licence shall not in any way be in a worse position than a correspondent bank in its relations with a bank holding a Category 1 Banking Licence.

#### **4. Application**

(1) Every application for a licence to transact category 1 banking or category 2 banking shall –

- (a) be made in such form as the central bank may determine;
- (b) be accompanied by a copy of the articles of incorporation of the applicant;
- (c) be accompanied by a copy of the balance sheet and profit and loss account, if any, as of a date within 90 days preceding the date of application.

(2) The central bank may call for such supplementary information as it may require and every such information, and any document provided under subsection (1), shall be treated as and kept confidential.

(3) The articles of incorporation mentioned in subsection (1) shall include the applicant's memorandum of association, articles of association and bylaws or their equivalent, if any.

- (4) The documents mentioned in subsections (1)(b) and (c) shall be –
- (a) authenticated copies; or
  - (b) where the originals are not in the English language, certified translations in that language.

(5) The central bank shall process such application within 90 days of the receipt thereof and thereafter give written notice of its decision to the applicant.

(6) An applicant may, within 30 days of the refusal of the central bank to grant a licence, appeal to the Prime Minister.

## **5. Display of licences**

(1) Every bank shall at all times display, in a conspicuous place in the public part of its principal place of business, the licence granted to it under this Act and copies shall be similarly displayed in each office or branch of the bank.

(2) Every bank which fails to comply with subsection (1) shall commit an offence and shall, on conviction, be liable to a fine of 500 rupees for each day on which the offence occurs or continues.

## **6 Power to vary conditions of licences**

(1) The central bank may, by notice in writing to a bank, inform the bank that it proposes to impose, amend, add to, vary or cancel any condition attaching to the licence of the bank.

(2) The bank may, within 7 days of receipt of the notice specified in subsection (1), make representations in writing to the central bank.

(3) The central bank shall, after giving due consideration to any representations made under subsection (2), take a decision on the action proposed in the notice in writing and notify the bank accordingly.

(4) The bank may, within 10 days of the notification of the decision of the central bank, appeal to the Minister.

## **7 Revocation and surrender of licences**

(1) (a) The central bank may revoke the licence of a bank where the bank in

question –

- (i) fails, within a period of 12 months from the grant of the licence, to engage in the business authorised by the licence;
- (ii) is found to have ceased to transact the business authorised by the licence;
- (iii) goes into liquidation or is wound up or otherwise dissolved;
- (iv) appears to the central bank to be carrying on business in a manner which is contrary or detrimental to the interests of its depositors or the public;
- (v) appears to the central bank to have insufficient assets to cover its liabilities to its depositors or the public;
- (vi) has been convicted by a domestic court, a court of the Commonwealth or any such other court as may be prescribed, of a crime related to the use or laundering in any manner of illegal drug proceeds, or is the affiliate or subsidiary or parent company of a bank which has so been convicted, provided such conviction is a final conviction;
- (vii) is contravening any provision of this Act.

- (b) Before revoking a licence, the central bank shall serve on the bank in question notice in writing of its decision so to do, specifying a date, being not less than 90 days after the date of the notice upon which the revocation shall take effect.
- (c) The bank in question may, within 10 days of service of the notice of revocation, make representations to the central bank.
- (d) The central bank shall, after taking into consideration any representations made by the bank in question, take a final decision on the proposed revocation and notify the bank in writing accordingly.
- (e) The bank in question may, within 10 days of the communication of the final decision of the central bank to it, appeal to the Prime Minister.

(2) A bank may, with the permission of the central bank, surrender its licence at any time.

(3) The central bank may, before or after the revocation or surrender of a licence, make such inquiry and give such directions as it thinks fit, so as to ensure to the extent possible that the interests of depositors and of the public are preserved.

## **8 Procedure in cases of urgency**

(1) Notwithstanding the provisions as to previous notice in sections 6 and 7, the central bank may, in cases of urgency and in the public interest –

- (a) revoke the licence of a bank; or
- (b) amend, add to or vary the conditions attaching to the licence or impose a condition on any such licence.

(2) Any revocation, amendment, addition to or variation of a licence as specified in subsection (1) shall, on communication thereof to the bank in question, have immediate effect and bind the bank accordingly.

(3) The bank in question, may, within 30 days of the communication of the decision of the central bank, make representations to the central bank.

(4) The central bank shall, within 10 days of any representations made and after taking into consideration any representations so made, review the action taken by it and inform the bank in writing accordingly.

(5) The bank may, within 10 days of the notification of the decision of the central bank as specified in subsection (4) or in subsection (1), as the case may be, appeal to the Prime Minister.

(6) Subject to the Prime Minister's decision on an appeal under subsection (5), the central bank shall give public notice in the *Gazette* and in at least 3 daily newspapers of the revocation of a licence.

## **9 Limitations on management and remuneration**

(1) No bank shall be managed by any person other than the persons on its board of directors or by any person appointed by the board of directors.

(2) No bank shall employ any person whose remuneration, in part or in whole, takes the form of a commission linked to profitability in any manner or of a share in the profits of the bank.

## **10 Other restrictions**

(1) No bank incorporated in Mauritius shall, except with the approval of the central bank –

- (a) be merged or consolidated with any other bank or other institution;
- (b) cause or permit any interest in any class of voting capital, which would entitle the holder thereof to 15 per cent or more of the voting strength of that class, to be acquired directly or indirectly by any person;
- (c) make any alteration to the instrument under which it is incorporated.

(2) Any bank aggrieved by a decision of the central bank under subsection (1) may, not later than 10 days after the communication of the decision of the central bank, appeal to the Minister.

## **11 Decision of Prime Minister or Minister on appeal**

The decision of the Prime Minister or of the Minister, as the case may be, on any appeal made in pursuance of this Part shall be final and conclusive.

## **12 Offences connected with banking activities**

(1) No category 1 banking or category 2 banking shall be transacted except by a bank.

(2) No bank shall open or keep open a new place of business or close or keep closed an existing place of business, or change its location, without the approval of the central bank.

(3) No person, other than a bank, shall without the written authorisation of the central bank -

- (a) use, in any language, the word “bank” or any of its derivatives as part of the name, description or title under which he carries on his activities;
- (b) use, as part of the name, description or title under which he carries on his activities, any word or term likely to indicate the nature of his activities to be those of a bank;

- (c) make any representation or use any word or term in any billhead, letter, notice or advertisement indicating in any manner that he is carrying on the activities of a bank.

(4) Every person who fails to comply with any provision of this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5,000 rupees for each day on which the offence occurs or continues.

### **13 Examination in cases of unlicensed banking**

(1) Where the central bank has reason to believe that any person is transacting category 1 banking or category 2 banking without a licence, it may examine the books, accounts and records of that person in order to ascertain whether such person is transacting such business.

(2) Before proceeding with an examination under subsection (1), the central bank shall notify the person of the proposed examination and give him an opportunity, within a delay not exceeding 5 days, of explaining the nature of his business and producing the relevant books, records and accounts voluntarily.

(3) Where the central bank is not satisfied by the explanation, it may inform that person that the proposed examination will be carried out on a specified day.

(4) Every person who, without any valid reason, obstructs the central bank in the exercise of its powers of examination shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5,000 rupees for each day on which the offence occurs or continues and to imprisonment for a term not exceeding twelve months.

## **PART IIA – AUTHORISATION TO NON-BANK FINANCIAL INSTITUTIONS**

### **13A Authority to transact deposit-taking business**

(1) No person shall, without the written authorisation of the central bank, carry on deposit-taking business in Mauritius.

(2) The central bank may give its authorisation to a non-bank financial institution to carry on deposit-taking business on such terms and conditions as the central bank may impose.

- (3) For the purposes of subsection (2) –
  - (a) the central bank may call for such information as it may require and any such information shall, subject to paragraph (b), be treated as and kept confidential;
  - (b) the central bank may publish, in whole or in part, at such time as it may determine, the information received under paragraph (a) provided that the information does not disclose the particular financial situation of the non-bank financial institution unless the consent of that institution has been obtained;

- (c) “deposit-taking business” means the business of accepting deposits of money and the employment of such deposits to finance the specific business activities of the non-bank financial institution accepting such deposits;
- (d) “non-bank financial institution” means a financial institution other than a bank which is authorised under this Part to carry on the business of financial intermediation.

(4) Where the central bank has reason to believe that a person is carrying on deposit-taking business without its authorisation, it may call for such information from that person as it may require.

### **PART III – CAPITAL STRUCTURE, RESERVE ACCOUNT AND OTHER FINANCIAL PROVISIONS**

#### **14 Minimum capital and net free assets**

- (1) No bank shall be granted or hold a Category 1 Banking Licence unless –
  - (a) in the case of a bank incorporated in Mauritius, it maintains in Mauritius a paid up capital of not less than 50 million rupees which shall be raised to not less than 75 million rupees as from 1 January 1998 and to not less than 100 million rupees as from 1 January 1999 after deduction of the accumulated losses of the bank;
  - (b) in the case of a bank incorporated abroad, it maintains in Mauritius assigned capital (consisting of funds transferred from abroad and such other funds as may be determined by the central bank) of not less than 50 million rupees which shall be raised to not less than 75 million rupees as from 1 January 1998 and to not less than 100 million rupees as from 1 January 1999 after deduction of the accumulated losses of the bank.

(2) Every bank holding a Category 1 Banking Licence shall maintain in Mauritius net free assets of not less than 5 per cent of such of that bank’s deposits and other liabilities (including contingent liabilities), or loans and such other assets, as may be specified by the central bank, the basis of computation being specified by the central bank from time to time.

- (3) The central bank may, with the approval of the Minister, vary from time to time–
  - (i) the minimum levels of paid up or assigned capital laid down in subsection (1);
  - (ii) the minimum ratio of net free assets mentioned in subsection (2).

- (4) No bank shall be granted, or hold, a Category 2 Banking Licence unless –

- (a) it maintains the capital and the net free assets specified in subsections (5) and (6) respectively; and
- (b) it is a branch or a related company of a foreign bank of established reputation, or a bank incorporated in Mauritius.

(5) Every bank which holds a Category 2 Banking Licence shall maintain, in respect of its Mauritian category 2 banking business, a capital or paid up capital, as the case may be of not less than the current equivalent of 25 million rupees which shall be raised to not less than 75 million rupees as from 1 January 1998 and to not less than 100 million rupees as from 1 January 1999 after deduction of accumulated losses, in any freely convertible currency, any subsequent fluctuation arising in the conversion of that currency into the Mauritius currency being disregarded.

(6) Every bank which holds a Category 2 Banking Licence shall maintain net free assets amounting in total to a specified percentage of such of its deposits and other liabilities, (including contingent liabilities), or loans and such other assets, as the central bank may determine.

(7) The percentage mentioned in subsection (6) shall be determined by the central bank from time to time, after discussion with the bank, and shall not necessarily be the same for all banks.

(8) In determining the percentage mentioned in subsection (6), the central bank shall in each case have regard to –

- (a) other financial resources available to the bank in question;
- (b) the nature, scale and risks of the bank's operations;
- (c) the amount and nature of net free assets required, in the central bank's judgment, to protect the interests of depositors and potential depositors and the public.

(9) The central bank may, with the approval of the Minister, vary from time to time the minimum level of capital or paid up capital laid down in subsection (5).

(10) If a bank's net free assets are or become deficient in terms of the preceding subsections, the central bank may grant that bank a reasonable period of time for making good the deficiency.

## **15 Maintenance of Reserve Account**

(1) Subject to subsection (2), every bank holding a Category 1 Banking Licence shall maintain a Reserve Account and shall transfer each year to such Reserve Account out of the net profits of that year, after due provision has been made for income tax, a sum equal to not less than 15 per cent of the net profits until the balance in the Reserve Account is equal to –

- (a) in the case of a bank incorporated in Mauritius, the amount of its paid up capital;
- (b) in the case of a bank incorporated abroad, the amount of its assigned capital as prescribed in section 14 (1) (b).

(2) Where a bank makes a loss, the net loss shall be set off against any profit made in subsequent years until a position of net cumulative profit is reached and the transfer to the Reserve Account set out in subsection (1) shall be calculated and made on that net position.

(3) No profit shall be transferred, or dividend declared, until the transfer referred to in subsection (1) has been made, except that the central bank may, where it considers the balance held in the Reserve Account of the bank to be adequate, declare by order in writing directed to the bank that subsection (1) shall not apply to that bank for such period and subject to such conditions as may be specified in such order.

#### **16 Local assets of banks holding a Category 1 Banking Licence**

Every bank holding a Category 1 Banking Licence shall maintain, in Mauritius, assets the value of which shall be not less than an amount representing such ratio, in respect of its average demand and time liabilities, in Mauritius, as may be determined by the central bank and notified to the bank.

#### **17 Liquid assets of banks and credit institutions**

(1) Every bank holding a Category 1 Banking Licence shall, in addition to the minimum cash balances which it is or may be required to maintain, maintain, in Mauritius, liquid assets in accordance with subsection (2).

(2) The amount of liquid assets to be maintained shall, in relation to each such bank, be expressed as a percentage not exceeding 30 per cent of such of that bank's deposits and other liabilities (including contingent liabilities), as the central bank may specify, averaged on a basis to be fixed by the central bank from time to time.

(3) The percentage mentioned in subsection (2) shall be determined by the central bank, from time to time, after consultation with the Minister, and shall be the same for all such banks.

(4) Where the percentage determined under subsection (3) is varied, the bank shall be allowed a reasonable time (being not less than thirty days from the date of the variation) to comply with subsection (3).

(5) Every bank holding a Category 2 Banking Licence shall maintain liquid assets in accordance with subsections (6) and (7).

(6) The amount of liquid assets to be maintained shall, in relation to each such bank, be expressed as a percentage of such of that bank's deposits and other liabilities

(including contingent liabilities) as the central bank may specify, averaged on a basis to be fixed by the central bank from time to time.

(7) The percentage referred to in subsection (6) shall be determined by the central bank, from time to time, after discussion with each bank, and shall not necessarily be the same for all such banks.

(8) In determining the percentage referred to in subsection (7), the central bank shall in each case have regard to –

- (a) other financial resources available to the bank in question;
- (b) (b) the relationship between the bank's liquid assets and its actual or contingent liabilities;
- (c) (c) the times at which the liabilities will or may fall due and the assets mature;
- (d) the nature, scale and risks of the bank's operations.

(9) For the purposes of this section, liquid assets shall include –

- (a) (a) in the case of banks holding Category 1 Banking Licences, Treasury Bills and other securities issued by the Government of Mauritius and such other assets of such classes and maturities and for such aggregate figures, as may be specified by the central bank from time to time and notified in the *Gazette*;
- (b) (b) in the case of banks holding Category 2 Banking Licences, balances with foreign banks and freely tradeable securities denominated in freely convertible currencies as may be specified by the central bank from time to time and notified in the *Gazette*.

(10) (a) Every credit institution shall maintain in Mauritius –

- (i) such cash balances as may be required by the central bank;
  - (ii) (ii) such level of proportion of liquid assets as may be determined by the central bank from time to time after consultation with the Minister, such level or proportion being uniform for all credit institutions in a particular category.
- (b) Where the percentage determined under paragraph (a) (ii) is varied, the credit institution shall be allowed a reasonable time, being not less than 30 days from the date of the variation, to comply with paragraph (a).

## **18 Failure to maintain minimum holdings**

(1) Every bank shall furnish, within a reasonable time and in any event not later than three weeks from the date of a request to that effect made by the central bank, such information as may be required by the central bank to indicate whether the bank is complying with the requirements of section 17.

(2) No bank shall –

- (a) (a) allow its holding of liquid assets to be less than the amount which is determined by the central bank under section 17;
- (b) (b) grant or permit, for the period during which liquid assets are less than the amount determined by the central bank under section 17, any increase in its outstanding loans overdrafts or investments.

(3) Every bank that contravenes subsection (1) or (2) shall commit an offence and shall, on conviction, be liable to a fine which shall not be less than 1,000 rupees or more than 5,000 rupees for each day on which the offence occurs or continues and, in addition, the bank shall, in relation to an offence in respect of subsection (2), be liable to pay to the central bank a charge determined under subsection (4).

(4) The charge payable under subsection (3) shall be at such rate of interest as may be determined by the central bank from time to time, calculated on –

- (a) (a) the amount by which the minimum holding of liquid assets is deficient; and
- (b) (b) the period over which the minimum holding of liquid assets remains deficient.

(5) Any charge imposed under subsection (3) may be recovered by the central bank by deduction from any balance of, or money owing to, the bank concerned, or as if it were a civil debt.

(6) The provisions of this section shall also apply to credit institutions.

#### **PART IV – LIMITATIONS ON OPERATIONS**

##### **19 Restriction on payment of dividends**

(1) No bank shall declare, credit or pay, or transfer abroad, any dividend or make any other transfer from profits until –

- (a) all its capitalised expenditure, including preliminary expenses and those relating to its incorporation, share selling commission, brokerage, loss incurred and any other item of expenditure not represented by tangible assets, have been completely written off;
- (b) any impairment in its capital has been made good;
- (c) adequate provision, to the satisfaction of the central bank, has been made in respect of bad or doubtful debts.

(2) For the purposes of this section, an issue of bonus shares out of profits shall be deemed to be a payment of dividends.

##### **20 Limitation of advances or facilities**

No bank shall –

- (a) grant any advance or credit facility against the security of its own shares;

- (b) grant to, or permit to be outstanding from, its officers or employees unsecured advances or unsecured credit facilities which, in the aggregate and in relation to any one officer or employee, exceed the annual emoluments of that officer or employee.

## **21 Limitation on concentration of risk**

(1) No bank holding a Category 1 Banking Licence shall, without first informing in writing the central bank, grant one or more loans or extend one or more credit facilities, or undertake off-balance-sheet commitments, to any one customer, or group of closely related customers, for amounts aggregating more than such percentage of that bank's net free assets or such amount as the central bank may determine.

(2) No bank holding a Category 1 Banking Licence shall, without the written permission of the central bank, grant one or more loans or extend one or more credit facilities, or undertake off balance sheet commitments, to any one customer, or group of closely related customers, for amounts aggregating more than such percentage of that bank's net free assets or such amount as the central bank may determine.

(3) The central bank may issue instructions to banks clarifying the definition of "customer" and "group of customers" in subsections (1) and (2) in circumstances where two or more persons are so closely connected as to be likely to constitute one risk.

(4) Any instructions issued by the central bank shall be in writing and binding on the banks.

## **22 Limitations on investments and on non-banking operations**

- (1) Subject to subsections (4) and (5), no bank shall, except in the course of the satisfaction of debts due to it by the default of the debtor –
  - (a) engage, whether on its own account or on the basis of a commission, in the wholesale or retail trade, including the import or export trade, or in any business other than the business for which such bank is licensed under this Act, except as may be approved by the central bank;
  - (b) acquire or hold any interest in the capital of any financial, commercial, agricultural, industrial or other undertaking other than in respect of –
    - (i) a purchase, for the account of a customer and without recourse, of shares or stock;
    - (ii) a shareholding, with the approval of the central bank, in any undertaking the object of which is to insure deposits or promote the development of a money or securities market in Mauritius;
    - (iii) subject to the approval of the central bank, a shareholding in an undertaking the object of which is to promote the economic development of Mauritius;

- (iv) subject to the approval of the central bank, a shareholding in any other undertaking up to an amount which, in the aggregate, does not exceed thirty per cent of the bank's current capital base, the shareholding being valued at its fair market value or, where it is not practicable to determine the latter, at a valuation approved by the central bank;
- (c) purchase or acquire immovable property or any right therein except as may be reasonably necessary for the purpose of conducting its operations, including provision for foreseeable expansion, or of housing or providing amenities for its staff.

(2) Where a bank, in the course of the satisfaction of debts due to it, acquires any interest in the capital of any undertaking or in any other property, movable or immovable, by the default of the debtor, it shall dispose of the interest as soon as is reasonably practicable.

(3) The central bank may exempt a bank holding a Category 2 Banking Licence from compliance with the provisions of subsections (1) (b) and (c) in so far as activities and operations referred to in such provisions are carried on outside Mauritius and not involving the acquisition of any interest in movable or immovable property in Mauritius.

(4) A bank may invest an amount not exceeding 10 per cent of its current capital base in shares of companies quoted on the Official List of the Stock Exchange established under the Stock Exchange Act 1988, subject to any such investment -

- (a) (a) not being made by the bank directly or indirectly in its own shares; and
- (b) (b) not exceeding, in the aggregate, 5 per cent of the total shareholdings of any such company.

(5) A bank may, for the purpose of participating in the equity capital of enterprises and subject to such investment not having the effect of impairing such capital adequacy requirements as may be imposed by the central bank from time to time, set up or participate in an equity fund approved by the Commission.

## **PART V – FINANCIAL STATEMENTS, AUDIT AND SUPERVISION**

### **23 Balance sheet and profit and loss account**

(1) Every bank shall, not later than three months after the end of its financial year, prepare in respect of that year a balance sheet and profit and loss account as of the last working day of that year in such form as the central bank may approve.

(2) The balance sheet and profit and loss account referred to in subsection (1) shall be jointly signed by –

- (a) in the case of a bank incorporated in Mauritius, its principal officer and two of its directors;
- (b) in the case of a bank incorporated abroad, its manager and the next most senior officer of the principal office or branch of the bank in Mauritius.

(3) The balance sheet and profit and loss account referred to in subsection (1) shall be audited in the manner provided in section 25.

- (4) Every bank shall –
- (a) exhibit at all times, in a conspicuous place, at its principal place of business in Mauritius and at each of its offices and branches in Mauritius, a copy of its latest audited balance sheet and profit and loss account;
  - (b) not later than four months after the end of its financial year, forward to the central bank and publish in the *Gazette* and in at least one daily newspaper published and circulated in Mauritius, a copy of its latest audited balance sheet and profit and loss account.

(5) Every bank which fails to comply with subsection (4) shall commit an offence and shall, on conviction, be liable to a fine which shall not be less than 500 rupees or more than 1,500 rupees for each day on which the offence occurs or continues.

(6) Every bank incorporated abroad and having a branch in Mauritius shall present to the central bank, not later than one month after publication, a copy of its audited annual consolidated balance sheet together with a copy of its audited annual consolidated profit and loss account.

## **24 Monthly statements**

(1) Every bank shall, not later than the fifteenth day of each month, forward to the central bank a statement in such form as may be approved by the central bank, showing the assets and liabilities of all its offices and branches in Mauritius together with an analysis of advances, bills discounted and other assets as at the close of business on the last working day of the preceding month.

(2) Every bank shall forward to the central bank such additional information in respect of its operations or those of its affiliates in Mauritius as the central bank may require for the purposes of this Act.

(3) Every bank which fails to comply with this section shall commit an offence and shall, on conviction, be liable to a fine which shall not be less than 1,000 rupees or more than 2,000 rupees for every day on which the offence occurs or continues.

## **25 Appointment, powers and duties of auditors**

(1) Every bank shall appoint an auditor annually to audit its accounts and such appointment shall be subject to the approval of the central bank.

- (2) The auditor's duties shall be to make a report –
  - (a) in the case of a bank incorporated in Mauritius, to shareholders, and the report shall be consolidated to include the bank's subsidiaries and overseas branches, if any;
  - (b) in the case of a bank incorporated abroad, to the head office of the bank.
- (3) The auditor's report shall be made on the annual balance sheet and profit and loss account.
- (4) The auditor shall, in the report, state whether –
  - (a) the balance sheet and profit and loss account are, in his opinion, complete and fair and properly drawn up;
  - (b) the balance sheet and profit and loss account present a true and correct statement of the affairs of the bank;
  - (c) the explanations or information given to him by the officers or agents of the bank, where the auditor has called for such information or explanations, are satisfactory to him.
- (5) The report shall –
  - (a) in the case of a bank incorporated in Mauritius, be read together with the report of its board of directors at its annual meeting of shareholders; and
  - (b) in the case of a bank incorporated abroad, be transmitted to its head office.
- (6) A certified copy of the report shall, as soon as is reasonably practicable and in any event not later than one month after it is made, be sent to the central bank.
- (7) An auditor may be appointed by the central bank in every case where a bank fails to appoint an auditor approved by the central bank.
- (8) Every auditor, whether appointed under subsection (1) or (7), shall have a right of access at all times to the books, accounts and vouchers of the bank in relation to which he has been appointed and those of its affiliates in Mauritius and of its branches and affiliates abroad, if any, and may require from the directors and officers of that bank or its affiliates in Mauritius or its branches and affiliates abroad, if any, such information and explanations as may appear to him to be necessary for the performance of his duties under this section.
- (9) Every auditor, whether appointed under subsection (1) or (7), shall be paid by the bank in respect of which he has been appointed and, where he has been appointed under subsection (7), his remuneration shall be determined by the central bank.
- (10) The central bank may impose all or any of the following duties on an auditor in addition to those provided under subsection (2) —

- (a) a duty to submit such additional information in relation to his audit as the central bank considers necessary;
  - (b) a duty to carry out any other examination or establish any procedure in any particular case; and
  - (c) (c) a duty to submit a report on any of the matters referred to in paragraphs (a) and (b),
- and the bank shall remunerate the auditor in respect of the discharge by him of all or any of these additional duties.

(11) If an auditor, in the course of the performance of his duties as an auditor of a bank, is satisfied that –

- (a) there has been a serious breach of or non-compliance with, the provisions of this Act, the Bank of Mauritius Act, the Companies Act, the Exchange Control Act, and regulations, guidelines and circulars issued by the central bank;
- (b) a criminal offence involving fraud or other dishonesty has been committed;
- (c) losses have been incurred which reduce the paid up or assigned capital, as the case may be, of the bank by 50 per cent or more;
- (d) serious irregularities have occurred, including those that jeopardise the security of depositors and creditors; or
- (e) he is unable to confirm that the claims of depositors and creditors are still covered by the assets,

he shall immediately report the matter to the central bank.

(12) The central bank shall arrange trilateral meetings with each bank and its auditors from time to time (being at least once a year), to discuss matters relevant to the central bank's supervisory responsibilities which have arisen in the course of the statutory audit of that bank, including relevant aspects of the bank's business, its accounting and control systems, and its annual balance sheet and profit and loss accounts.

(13) The central bank may, if it considers it desirable or necessary in the interests of depositors, arrange bilateral meetings with auditors of banks from time to time.

(14) No duty of confidentiality to which an auditor of a bank may be subject shall be regarded as contravened by reason of his communicating in good faith to the central bank, whether or not in response to a request made by it, any information or opinion which is relevant to the central bank's functions under this Act.

## **26 Regular inspections of banks**

The central bank shall cause regular inspections of the operations and affairs of every bank (including, where the central bank so specifies, overseas branches) to be made by its officers.

## **27 Examination of banks**

(1) Where, in relation to any bank, an examination appears to be necessary or expedient whether in the course of a regular inspection or otherwise, in order to determine whether any given bank is in a sound financial condition and whether the requirements of this Act, the Bank of Mauritius Act and the Exchange Control Act, as the case may be, are being complied with, the central bank may appoint one or more of its officers to conduct an examination in respect of the affairs of the bank and of its affiliates, if any.

(2) Notwithstanding subsection (1), banks holding a Category 2 Banking Licence shall be exempt from compliance with the Exchange Control Act with respect to their category 2 banking transactions and activities.

(3) Every inspector or examiner appointed under this section shall treat as and keep confidential any information obtained by him in the course of any inspection or examination, save as may be otherwise necessary for any prosecution under this Act.

## **28 Powers of inspectors and examiners**

(1) Any person making an inspection under section 26 or any person appointed under section 27 to conduct an examination shall, in relation to the bank in respect of which the inspection is to be made or the examination is to be conducted, be entitled to examine all books, minutes, accounts, cash, securities, vouchers and any other document in the possession or custody of the bank or of its affiliates and to require, within such time as he may specify, such information concerning its business, or that of its affiliates in Mauritius, or that of its branches and subsidiaries abroad, if any, as appear to him to be necessary.

- (2) (a) Where any bank or its affiliate fails to produce any book or other document or information required under subsection (1), it shall commit an offence and shall, on conviction, be liable to a fine of 20,000 rupees for each day during which the offence occurs or continues.
- (b) Where any bank or its affiliate gives information or produces any book or other document required under subsection (1), which is false in any material particular, it shall commit an offence and shall, on conviction, be liable to a fine which shall not be less than 50,000 rupees or more than 250,000 rupees.

## **29 Powers of the central bank following inspection or examination**

(1) Where, in relation to any bank, the central bank considers that an inspection made under section 26 or an examination conducted under section 27 discloses any of the matters specified in subsection (2), the central bank may take any of the actions specified in subsection (3).

- (2) The matters referred to in subsection (1) are the following –
- (a) the bank is conducting its business in a manner detrimental to the interest of its depositors;

- (b) the bank has insufficient assets to cover its liabilities;
  - (c) the bank's paid up or assigned capital as the case may be, is impaired; or
  - (d) the bank is otherwise in an unsound condition.
- (3) The actions mentioned in subsection (1) are –
- (i) to impose or vary conditions attaching to the bank's licence in accordance with section 6(1), invoking in cases of urgency the procedure set out in section 8;
  - (ii) to require the bank forthwith to take such steps as may appear to the central bank to be necessary to remedy the situation;
  - (iii) to appoint a person with the approval of the Minister to advise the bank in the proper conduct of its business and fix the remuneration to be paid by the bank to the person so appointed; or
  - (iv) with the approval of the Prime Minister, to revoke the bank's licence under the provisions of section 7(1)(a), invoking in cases of urgency the procedure set out in section 8.

## **PART VI – RESPONSIBILITIES OF DIRECTORS AND OTHER OFFICERS OF BANKS**

### **30 Fit and proper persons**

- (1) (a) No person shall –
- (i) become the chief executive officer, by whatever name called, of a bank; and
  - (ii) be appointed for a period exceeding 5 years,
- unless he is a fit and proper person, having regard to –
- (A) his probity and competence;
  - (B) the diligence with which he is likely to fulfil his responsibilities; and
  - (C) his previous conduct and activities in business, particularly whether he has committed any fraud or other dishonesty.
- (2) (a) Where the central bank has reason to believe that any person is, by virtue of his shareholding in the bank or otherwise, in a position to influence the chief executive officer, or the board of directors of the bank and is exercising his influence in a manner which is likely to be detrimental to the interests of depositors, the central bank may request the bank to remedy the situation.
- (b) Where a bank fails to give satisfaction to the central bank following a request made under paragraph (a) the central bank may, with the approval of the Prime Minister, revoke the licence of the bank.

### **31 Disqualifications**

(1) Without prejudice to anything contained in the Companies Act, any person who is a director, a chief executive officer, a manager or other officer concerned with the management of a bank, shall cease to hold office if he is –

- (a) declared bankrupt or makes a composition with his creditors; or
- (b) convicted of an offence involving fraud or other dishonesty.

(2) No person who has been a director of, or indirectly concerned in the management of, a bank which has been liquidated shall, without the written authorisation of the central bank, act or continue to act as a director of, or be directly or indirectly concerned, in the management of a bank.

(3) Any person who acts in breach of this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding five years.

### **32 Disclosure of interest by director**

(1) Every director of a bank who is in any manner, whether directly or indirectly, interested in an advance, loan or credit facility from the bank shall, as soon as is reasonably practicable, declare the nature of his interest to the board of directors of the bank and the board shall cause the declaration to be circulated forthwith to all the directors individually.

(2) For the purposes of subsection (1), a notice given to the board of directors of a bank by a director to the effect that –

- (a) he is a creditor of, or has an interest in, a concern specified in the notice; and
- (b) he is to be regarded as interested in any advance, loan or credit facility which may, after the date of the notice, be made to that concern,

shall be deemed to be a sufficient declaration of interest in relation to any advance, loan or credit facility made to the concern, if –

- (i) the notice specifies the nature and extent of his interest in the concern specified;
- (ii) the interest is not different in nature from, or greater in extent than, the interest specified in the notice at the time any advance, loan or credit facility is made to the concern so specified; and
- (iii) the notice is given at a meeting of the board of directors or the director takes reasonable steps to ensure that it is given at the earliest opportunity.

(3) Where a director of a bank who holds any office or acquires property whereby, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as director of the bank, he shall make, at a meeting of the board of directors of the bank, a declaration as to the fact, nature and extent of conflict.

(4) The declaration referred to in subsection (3) shall be made at the first meeting of the board of directors held –

- (a) after the declarant becomes a director of the bank; or
- (b) if he is already a director, after he commences to hold the office or comes into possession of the property, as the case may be.

(5) Every director who makes a declaration under subsection (3) shall cause the declaration to be –

- (a) given at the meeting of the board of directors at the earliest opportunity; and
- (b) recorded in the minutes of the meeting at which it is given.

(6) Every director who fails to comply with this section, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 25,000 rupees and to imprisonment for a term not exceeding 5 years.

### **33 Offences by directors or agents of banks**

(1) Any person who, being a director, a chief executive officer, manager, officer or agent of a bank –

- (a) makes, with intent to deceive, any false or misleading statement or entry or omits any statement or entry in any book, account, report or statement of the bank;
- (b) obstructs an inspection or examination of the affairs of the bank under this Act;
- (c) fails to take all reasonable steps to ensure compliance by the bank with this Act; or
- (d) is privy to any offence committed under this section and fails to report it to a senior officer (or, in the case of a director, to the board of directors),

shall commit an offence.

(2) Any person who commits an offence under this section shall be liable to imprisonment for a term not exceeding five years and to a fine not exceeding 50,000 rupees.

## **PART VII – MISCELLANEOUS**

### **34 Abandoned funds**

(1) Where a customer's deposit, or money lodged with a bank for any purpose, has been left untouched and not reclaimed for ten years or more and the customer has not responded within six months to a letter from the bank about the dormant deposit or money sent to the customer's last known address by registered post, the deposit or money, as the case may be, shall be deemed to have been abandoned and shall, without further formality, be transferred forthwith by the bank concerned to the central bank to be dealt with as decided by the central bank.

(2) The central bank shall maintain such records of deposits or monies abandoned as to enable it to refund to the owner or his heirs or assigns any such deposits or monies to which a rightful claim is established to the satisfaction of the central bank.

(3) No refund made pursuant to subsection (2) shall carry any interest.

### **35 Fiat of the Director of Public Prosecutions**

No prosecution for any offence under this Act shall be instituted except with the written consent of the Director of Public Prosecutions.

### **36 Evidence in relation to banker's books**

(1) Notwithstanding any other enactment, a copy of any entry in a banker's books shall be prima facie evidence of such entry and of the matters, transactions and accounts recorded if –

- (a) the book was, at the time the entry was made, one of the ordinary books of the bank;
- (b) the entry was made in the usual course of banking business;
- (c) the book is in the custody of the bank; and
- (d) the copy of the entry is certified by a responsible person to have been compared with, and is a correct copy of, the original entry.

(2) No officer, employee or agent of a bank shall, in any proceedings to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under subsection (1) or to appear as a witness to prove the matters, transactions and accounts recorded except by order of a court or judge and on good cause shown.

(3) A court or judge may, on the application of any party to legal proceedings, order that such party be permitted to obtain copies of any entry in a banker's book where such entry is material to the proceedings.

(4) Any application made under subsection (3) shall be served on the bank in respect of whose banker's books the application is made.

(5) For the purposes of this section, "banker's books" include ledgers, day books, cash books, account books and all other books and records, including electronic and computer records, used in the ordinary course of banking business.

### **37 Validity of thumb print**

In all the transactions connected with the opening of, deposit into or withdrawal from a savings bank account or a fixed deposit account, the thumb print of a depositor who is unable to sign shall, if affixed in the presence of two officers of the bank, have the same legal effect as if the depositor had signed his name.

### **38 Control of advertisements**

(1) No deposit advertisement shall be made on behalf of a bank unless a copy of such advertisement has been submitted to the central bank at least 10 days before the intended date of publication.

(2) For the purpose of this section, “deposit advertisement” means any material, written, published, broadcast or otherwise, containing an invitation to make a deposit or information such as might lead directly or indirectly to the making of a deposit.

(3) If an advertisement is in the view of the central bank misleading the central bank may direct the bank, credit institution or other person responsible for the dissemination of such advertisement to withdraw or modify it as directed by the central bank, and the bank shall comply with any such direction.

(4) This section shall not apply to a bank holding a Category 2 Banking Licence.

### **39 Confidentiality of information**

(1) Subject to the other provisions of this Act, no director, chief executive officer, manager, officer, employee or agent of a bank or any other person who by virtue of his professional relationship with a bank has access to the records of the bank (hereinafter referred to as a “banker”) shall, during or after his relationship with the bank, disclose directly or indirectly any information he may acquire in the course of his duties as a banker about any customer’s deposits, borrowings or transactions or other personal, financial or business affairs, without the written and freely given permission of the customer or his personal representative.

(2) The duty of confidentiality imposed under subsection (1) shall not apply where—

- (a) the customer is declared bankrupt in Mauritius or, if a company, is being wound up;
- (b) civil proceedings arise involving the bank and the customer or his account;
- (c) the bank has been served with a garnishee order attaching monies in the account of the customer;
- (d) a banker is summoned to appear before a court or a Judge in Mauritius and the court or the Judge orders the disclosure of the information;
- (e) the information is required by a colleague in the employment of the same bank in Mauritius or an auditor or legal representative of the bank who requires and is entitled to know the information in the course of his professional duties;
- (f) the information is required by another bank for the purpose of assessing the credit worthiness of a customer, provided that the

information is being sought for commercial reasons and is of a general nature;

(g) the bank has been directed to produce any information pursuant to a directive issued by the Independent Commission Against Corruption under the Prevention of Corruption Act 2002.

(3) (a) Subject to paragraphs (c) and (d), where the head office of a bank incorporated overseas requires information from its branch in Mauritius about any transaction of that branch with another bank in Mauritius or outside Mauritius, the information may be disclosed.

(b) Subject to paragraphs (c) and (d), where the parent bank of a subsidiary operating in Mauritius requires information from the subsidiary about any transaction of the subsidiary with another bank in Mauritius or outside Mauritius, the information may be disclosed.

(c) Where the information that is required under paragraph (a) or (b) relates to a transaction with a customer other than a bank, no information other than credit facilities granted to or foreign exchange transactions with the customer shall be disclosed.

(d) No information relating to deposits taken from a foreign exchange transaction with a central bank or any other entity or agency, by whatever name called, which performs the functions of a central bank, shall be disclosed.

(4) Where an official of a foreign bank or an official of a central bank or any other entity or agency, by whatever named called, which performs the functions of a central bank, having the responsibility to supervise that bank, proposes to conduct an audit or inspection of a branch or a subsidiary of that bank in Mauritius, he shall obtain the prior written authorisation of the central bank and be subject to the duty of confidentiality imposed under subsection (1) and any conditions that the central bank may impose.

(5) Where a police officer, the Director General or a revenue commissioner requires any information from a bank relating to the transactions and accounts of any person, he may apply to a Judge in Chambers for an order of disclosure of such transactions and accounts or such part thereof as may be necessary.

(6) The Judge shall not make an order of disclosure unless he is satisfied that

—

- (a) the applicant is acting in the discharge of his duties;
- (b) the information is material to any civil or criminal proceedings, whether pending or contemplated in Mauritius;
- (c) the disclosure is otherwise necessary, in all the circumstances.

(7) Notice of an application made under subsection (5) shall be served on both the bank and the person in question.

(8) Subject to this Act, neither the central bank nor any person making an inspection or conducting an examination for it under Part V shall reveal, unless required by a court so to do, to any person any information in relation to the affairs of a customer obtained in the course of an inspection made or of an examination conducted under Part V.

(9) Notwithstanding subsection (8), the central bank may disclose to the auditor of a bank any information received under or for the purpose of this Act if it considers that disclosing the information would enable or assist it in the discharge of its supervisory responsibilities.

(10) The central bank may publish, in whole or in part, at such times as it may determine, information or data furnished under this Act provided that the information or data do not disclose the particular financial situation of any bank or customer, unless the consent of the bank or the customer, as the case may be, has been specifically obtained.

(11) Nothing in this section shall preclude the disclosure of information by the central bank, under conditions of confidentiality, to a central bank in a foreign country for the purpose of assisting it in exercising functions corresponding to those of the central bank under this Act.

(12) (12) For the purposes of this section –

“professional relationship” includes a relationship between a bank and a computer bureau or a printer, being a relationship that has been approved by the central bank.

(13) Every person who acts in breach of subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding five years.

### **39A Confidentiality in respect of banks holding a Category 2 Banking Licence**

(1) The central bank and every officer or employee of the central bank shall deal with all documents, records of banks, accounts, statements and other information in its possession or under its control concerning banks holding a Category 2 Banking Licence, its officers and customers, as secret and confidential.

(2) Except where ordered by the Supreme Court for a reason specified under subsection (3), no officer or employee of the central bank shall be required to produce or divulge to any court, tribunal, committee of enquiry or other authority in Mauritius or elsewhere any document, information or other matter coming to his notice, or being in his possession or control for any reason.

(3) The Court shall not make an order for disclosure or production of any information which under this section is to be treated as confidential except on the

application of the Director of Public Prosecutions, and on proof beyond reasonable doubt that the confidential information is bona fide required for the purpose of any enquiry or trial into or relating to the trafficking of narcotics and dangerous drugs, arms trafficking, offences related to terrorism under the Prevention of Terrorism Act 2002 or money laundering under the Financial Intelligence and Anti-Money Laundering Act 2002.

- (4) This section shall be without prejudice to –
  - (a) the obligations of Mauritius under any international treaty, convention or agreement;
  - (b) to the obligations of the central bank under any concordat or arrangement.

#### **40 Identity of customers**

(1) Every bank shall, before opening any account, issuing a passbook, entering into a fiduciary relationship, renting a safe deposit box or establishing any other business relationship, verify the true identity and address of its customer in accordance with the Financial Intelligence and Anti-Money Laundering Act 2002 and any regulations made thereunder.

(2) In the case of bank accounts and security deposits which have been opened, and safe deposit boxes which have been rented out, prior to the coming into force of this Act, and where the true identity of the customer has not been satisfactorily established, the bank concerned shall, by writing to the customer in question or otherwise, take steps forthwith to establish his true identity.

(3) If the steps taken under subsection (2) fail to satisfy the bank concerned that they have established beyond reasonable doubt the true identity of the customer within twelve months of the coming into force of this Act, the bank shall forthwith close the account or security deposit, or terminate the lease of the safe deposit box, as the case may be, and report the matter to the central bank.

(4) Every bank which acts in breach of this section shall commit an offence and shall, on conviction, be liable to a fine which shall not be less than 10,000 rupees or more than 5,000,000 rupees.

#### **41 Bank holidays**

(1) Subject to subsection (2), the central bank may, with the approval of the Minister, declare by notice published in the *Gazette* any day to be a bank holiday.

(2) Where, on account of cyclonic weather or a threat thereof, the Government announces a public holiday, whether such holiday be in respect of a full day or only part of a day, and the closure of public buildings, whether such closure be immediate or otherwise, such announcement shall be deemed to be also an announcement made by the central bank and bind all banks to give effect to it.

(3) Except with the permission of the central bank, no bank may transact business with the public on any bank holiday, or public holiday.

(4) Any obligation which is required to be fulfilled at a bank and which falls due on any bank holiday or public holiday shall be deemed to fall due on the day next following the bank holiday or public holiday, as the case may be.

#### **42 Hours of business**

Subject to this Part, every bank shall during the hours fixed by the central bank, remain open for the transaction of business with the public.

#### **43 Penalties**

Every person who or any bank that contravenes a provision of this Act, for which no separate penalty is provided, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5,000 rupees.

#### **44 Payments by banks holding a Category 2 Banking Licence**

A bank holding a Category 2 Banking Licence shall be entitled to open and maintain with a bank holding a Category 1 Banking Licence and with the approval of the central bank, an account in Mauritius currency out of which all payments by way of salaries, remuneration, fee, fine, penalty and other proper local payments shall be made.

#### **45 Winding up of banks**

Notwithstanding the Companies Act, the following provisions shall apply in relationship to the winding up of a bank –

- (a) the Official Receiver shall be the liquidator;
- (b) the court may, if it considers that no object will be thereby served sufficient to justify the delay and expense, dispense with any meeting of creditors or contributors or with the appointment of a committee of inspection;
- (c) the amounts shown in the books of a bank as standing to the credit of depositors shall, unless the liquidator shows that there is reason to doubt the entry, be presumed to be proof of those amounts without further proof from the depositors.

#### **46 Priority of deposit liabilities**

Subject to section 47, where a bank becomes unable to meet its obligations or becomes insolvent or suspends payment, the assets of that bank in Mauritius shall be available to meet all deposit liabilities of the bank in Mauritius, and those deposit liabilities shall have priority over all unsecured liabilities of the bank other than those expenses and debts specified in the Companies Act to have priority of claim over all other liabilities of the company in the event of a winding up.

#### **47 Priority of different classes of deposit and other liabilities**

(1) Notwithstanding the provisions of any other enactment, in the event of a winding up of a bank that operates a bank holding a Category 1 Banking Licence as well as a bank holding a Category 2 Banking Licence, the deposit liabilities of the bank shall be settled in the following manner –

- (a) Subject to subsection (3), all the assets of the bank holding a Category 1 Banking Licence shall be available to meet all deposit liabilities of the bank in the following order of priority –
  - (i) deposit liabilities incurred by the bank holding a Category 1 Banking Licence with non-bank customers;
  - (ii) deposit liabilities incurred by the bank holding a Category 1 Banking Licence with other banks holding a Category 1 Banking Licence;
  - (iii) deposit liabilities incurred by the bank holding a Category 1 Banking Licence with other banks including its own bank holding a Category 2 Banking Licence;
  - (iv) other liabilities of the bank holding a Category 1 Banking Licence;
  - (v) deposit liabilities incurred by the bank holding a Category 2 Banking Licence with non-bank customers;
  - (vi) deposit liabilities incurred by the bank holding a Category 2 Banking Licence with other banks;
  - (vii) other liabilities of the bank holding a Category 2 Banking Licence.
  
- (b) Subject to subsection (3), all the assets of the bank holding a Category 2 Banking Licence shall be available to meet all deposit liabilities of the bank in the following order of priority –
  - (i) deposit liabilities incurred by the bank holding a Category 2 Banking Licence with non-bank customers;
  - (ii) deposit liabilities incurred by the bank holding a Category 2 Banking Licence with other banks, including the bank holding a Category 1 Banking Licence;
  - (iii) — [left blank];
  - (iv) deposit liabilities incurred by the bank holding a Category 1 Banking Licence with non-bank customers;
  - (v) deposit liabilities incurred by the bank holding a Category 1 Banking Licence with other banks;
  - (vi) other liabilities of the bank holding a Category 1 Banking Licence.

(2) The deposit or other liabilities in each class specified in subsection (1) shall rank in the order specified therein but as between deposit or other liabilities of the same class shall rank equally between themselves and shall be paid in full unless the assets of the bank are insufficient to meet them in which case they shall be settled in equal proportions between themselves.

(3) Where there is a winding up and the bank holds both a Category 1 Banking Licence and a Category 2 Banking Licence, the assets of the bank pertaining to the Category 1 Banking Licence shall not be used to meet any deficiency which occurs in the assets of the bank pertaining to the Category 2 Banking Licence.

(4) For the purpose of section 46 and this section –

“deposit liabilities” means sums of money paid on terms –

- (a) under which they will be repaid, with or without interest or at a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the persons making the payments and the bank receiving them;
- (b) which are not referable to the provisions of property or services or to the giving of security;

“bank” means a bank as defined in section 2 of this Act and any person licensed as a bank or permitted to carry on banking business in the country in which it is incorporated.

(5) For the purposes of subsection (4) (b), money is paid on terms which are referable to the provisions of property or services or to the giving of security if, and only if –

- (a) it is paid by way of advance or part-payment for the sale, hire or other provision of property or services of any kind and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided;
- (b) it is paid by way of security for payment for the provision of property or services of any kind provided or to be provided by the bank by whom or on whose behalf the money is accepted; or
- (c) it is paid by way of security for the delivery or return of any property, whether in a particular state of repair or otherwise.

#### **48 Regulations**

(1) The Minister may make such regulations as he deems necessary for carrying into effect the provisions of this Act.

(2) Regulations made under section (1) may provide –

- (a) that any person who acts in contravention thereof shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 12 months;
- (b) for the terms and conditions under which short term credits may operate;
- (c) for the exemption of banks holding a Category 2 Banking Licence from the requirements of any provision of this Act.

**51 Application of Act**

(1) This Act shall not apply to the Savings Bank established under the Savings Bank Act and such other institutions as the Minister may specify, after consultation with the central bank.

(2) In the event of any conflict or inconsistency between any provision of this Act and the provisions of any other laws, other than the Bank of Mauritius Act, the provisions of this Act shall prevail.