

BANKING ACT, 2009

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Banking Act, 2009



THE GAMBIA

NO. 9 OF 2009

Assented to by The President,

this 29th day of July, 2009



YAHYA A. J. J. JAMMEH
President

AN ACT to repeal The Financial Institutions Act No. 8 of 2003 and to enact The Banking Act, 2009 to make provision for the regulation of Banking Institutions, including Islamic Banking and for connected matters.

[29th July, 2009]

ENACTED by the President and the National Assembly

PART I – PRELIMINARY

- Short title 1. This Act may be cited as the Banking Act, 2009.
- Interpretation 2. (1) In this Act, unless the context otherwise requires -
- "Bank" means the Central Bank of The Gambia;
- "bank" means a banking institution whose operations include the acceptance of deposits transferable by cheque or other means of third party transfer;
- "banking business" means the business of receiving deposits on current, savings or other account, paying or collecting cheques drawn by or paid in by customers, provision of finance, consultancy and advisory services relating to corporate and investment matters, making or managing investment on behalf of any person, or such other services as the Minister may by regulations designate as banking business;
- "deposit means" -
- (a) a sum of money paid on terms which-
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- (i) requires it to be repaid, with or without interest or premium of any kind, and either on demand or at a time in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
 - (ii) is not referable to the provision of property or services or the giving of security whether or not evidenced by any entry in a record of the person receiving the sum or by any receipt, certificate, note or other document, and references in this Act to money deposited and to the making of a deposit shall be construed accordingly;
- (b) does not include a sum paid by-
- (i) a licensed banking institution or any other person in the course of carrying on a money-lending business-
 - (ii) one corporation to another at a time when the corporations are associated with each other or affiliated,
 - (iii) a person who, at the time when it is paid, is in a close family relation with the person receiving it,
 - (iv) a person who, at the time it is paid, is a director, manager or a shareholder of the person receiving it, or
 - (v) a person exempted from the application of this Act.

"director", in relation to-

- (a) a local banking institution, means any person by whatever name called, carrying out or empowered to carry out
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substantially the same functions in relation to the direction of the banking institution as those carried out by a director of a company constituted under the Companies Act;

- (b) a foreign banking institution, means both a director as defined in sub-paragraph (a) and the person in The Gambia responsible for carrying out the functions of the foreign banking institution;

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"banking institution" means any individual, body, association or group of persons, which carries on the business of banks, whose principal objects include banking business, factoring, project financing, equipment leasing, debt administration, fund management, private ledger services, investment management, local purchase orders financing, export finance, project consultancy, banking consultancy, pension fund management or such other businesses as the Minister may by regulations designate;

"foreign banking institution" means a banking institution incorporated as a body corporate and continuing in good standing under the laws of a foreign State and licensed to operate under this Act;

"Islamic banking business" means the practice of all banking activities in conformity with Sharia and mainly avoiding all types of interest deals (usury or *riba*) as a lender or a borrower;

"insolvency" means the inability to pay debts as they mature, or as obligations become due and payable and, in relation to a banking institution or bank, includes the point at which the ratio of capital to assets of the banking institution or bank is at, or close to, zero, or if the capital assets of the banking institution or bank, including common stock, are of poor quality that its continued existence is uncertain;

"licensed banking institution" means a banking

institution licensed under the provisions of this Act;

"local banking institution" means a banking institution incorporated under the laws of The Gambia;

"Minister" means the Minister responsible for Finance;

"*Mudarabah*" means any amounts given by or to the banking institution for the purpose of doing business on the basis of sharing of the profits and losses;

"person" includes any company or association or body of persons, whether or not incorporated;

"place of business" means any branch or office of a banking institution in The Gambia, including a mobile office open to the public;

"prescribe" means to prescribe by guideline, interpretation bulletin or other writing, but does not include any matter required by this Act to be prescribed by regulations;

"unsecured advances" or "unsecured credit facilities" means -

- (a) advances or credit facilities granted without security; or
- (b) in the case of advances or credit facilities granted against security, any part of the advances or credit facilities which at any given time exceeds the market value of the assets comprising the security given, or exceeding the valuation approved by the Bank whenever it deems that no market value exists for the assets;

"usury", when used with reference to Islamic banking, includes any payment of interest at any rate, whether the rate is

excessive or not.

(2) For the purposes of this Act -

- (a) a person is associated with another person if-
 - (i) one person is a corporation of which the other person is an officer or director-
 - (ii) one person is a corporation that is controlled directly or indirectly by the other person,
 - (iii) one person is in a partnership in which the other person is a partner,
 - (iv) both persons are members of a voting trust or other arrangement relating to the shares of a licensed banking institution, or
 - (v) one person is the spouse, parent, child, brother or sister of the other person, or of the other person's spouse, parent, child, brother or sister;
- (b) two or more persons are affiliated if they are companies controlled, directly or indirectly, by the same person.

(3) In subsection (2), "control" includes-

- (a) control through direct or indirect ownership or control of voting shares, whether in person or acting through another person, such as proxy voting; and
 - (b) the ability to otherwise influence the management or policies of a banking institution.
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PART II – LICENCES

Banking
institutions not
to operate
without licence

3. (1) No local banking institution shall carry out a banking business in or outside The Gambia without a licence issued by the Bank authorising the licensee to do so.

(2) The Bank shall not issue a licence to carry on banking business in The Gambia to a person other than -

(a) a company incorporated under the Companies Act; or

(b) a foreign banking institution.

(3) A person who carries on banking business in The Gambia without a valid licence issued by the Bank authorizing the licensee to do so commits an offence and is liable on conviction to a fine not exceeding five hundred thousand dalasis or imprisonment of a term not exceeding ten years or to both such fine and imprisonment.

(4) A copy of a licence issued under this Act shall be displayed in a conspicuous place in the public part of every place of business of the licensee in The Gambia.

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Procedure
for issuance
of licence

4. (1) The Bank may, on application made in accordance with this Act, in its discretion –

(a) permit the applicant to incorporate a bank; and

(b) on incorporation, issue a licence authorizing the banking institution to carry on the business of banking.

(2) An application for a licence under subsection (1) shall be submitted to the Bank in writing, in such form as the Bank may prescribe, and shall include the following -

(a) the proposed memorandum and

articles of association of the new banking institution;

- (b) the address of the proposed head office of the banking institution, the names and permanent residential addresses of the persons who will be its directors;
- (c) the name and address of the person who will be the first chief executive of the banking institution;
- (d) the name and permanent residential address of any person who subscribed for or intends to subscribe for any class or series of shares to be issued by the banking institution in a number exceeding ten *per cent* of all the shares of that class or series whether the shares carry the right to vote in all circumstances or not;
- (e) the addresses of the places of business where it proposes to locate and in the case of a mobile office, the area proposed to be served;
- (f) full particulars of the business it proposes to carry on;
- (g) the amount of its proposed capital; and
- (h) such assurances and evidence of the foregoing and such additional information as the Bank may prescribe.

(3) The Bank shall conduct such investigation as it considers necessary to satisfy itself as to –

- (a) the banking condition and history of the applicant;
 - (b) the character and experience of the
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- applicant, the directors and the proposed management of the banking institution;
- (c) the adequacy of the capital of the banking institution;
 - (d) the convenience and needs of the community the banking institution intends to serve;
 - (e) the prospects for profitable operation of the banking institution;
 - (f) the prospective effect of the banking institution on existing banking institutions in the area to be served; and
 - (g) such other matters as the Bank considers appropriate.

(4) A banking institution shall not be granted a licence under this section unless it fulfils the minimum capital requirements prescribed by the Bank in accordance with section 18(2).

(5) The Bank may issue a Provisional Approval (Approval in Principle) to the applicant on the terms and conditions that the Bank considers appropriate.

(6) Within the time specified in subsections (7), the Bank shall -

- (a) issue a licence to the applicant; or
 - (b) inform the applicant in writing that it refuses to issue a licence and the reasons for its refusal, provided that if the Minister certifies that issuing the licence would not be in the public interest of The Gambia, no other reason for refusal need be furnished to the applicant.
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(7) The time limit for the purposes of subsection (6) shall, where the application discloses—

- (a) no information necessitating the Bank making inquiries about a person at an address outside The Gambia, be one hundred and eighty days;
- (b) information necessitating the Bank making inquiries outside The Gambia, be one hundred and eighty days,

after receipt by the Bank of the completed application.

(8) If the Bank, by notice in writing sent to the applicant, requests further information from the applicant, within the applicable time limit specified in subsection (7), the time limit shall be extended for another period of one hundred and eighty days, and the Bank may make such requests as often as it considers necessary in order to—

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- (a) conduct its investigation to its satisfaction; and
- (b) give the application the consideration it requires.

(9) When issuing a licence, the Bank may impose any one or more conditions and limit the exercise of powers of the banking institution to such powers as the Bank may consider necessary or desirable.

(10) Where the business proposed to be carried on by the applicant is the business of a bank, the business may be commenced only if the licence issued by the Bank specifically authorizes the applicant to operate as a bank.

(11) If the Bank decides to issue a licence to an applicant, it shall deliver to the Registrar of Companies the approved memorandum and

articles of association of the applicant, for the registration.

(12) Notwithstanding anything in the Companies Act to the contrary, the Registrar of Companies shall not incorporate any company -

- (a) under a name that includes the word "bank" or any of its derivatives in any language; or
- (b) for the purpose of or having as one of its objects the carrying on of a banking business,

unless the application is received from and the memorandum and articles of association of the company are approved by the Bank.

(13) On incorporation of the applicant, it shall provide the Bank with certified copies of its memorandum and articles of association as registered pursuant to the Companies Act, and if the Bank remains satisfied with the applicant at the time, it shall issue a licence in accordance with this Act.

(14) A banking institution shall notify the Bank in writing of-

- (a) an amendment made to its articles or memorandum of association or other instrument under which it is incorporated; and
- (b) a change in the address of its head office or in the names of the persons who own more than ten *per cent* of the shares of any class or series in the capital of the banking institution, within thirty days of the amendment or change.

(15) A foreign banking institution shall provide the Bank with-

- (a) a written certificate specifying the name and permanent residential address in The Gambia of the director, officer, agent or other person-
 - (i) on whom any legal process may be served, and
 - (ii) to whom any notice that is directed to the foreign banking institution may be given,

and any process so served or notice so given shall be deemed to be properly served or given for all purposes; and

- (b) a new certificate in advance of any change in the name or address of the director, officer, agent or other person, but service on or notice to any person at an address designated in a certificate is valid until the Bank receives a new certificate.

Restriction on the use of the word "bank"

5. No person, other than a licensed banking institution operating as a bank, shall, without the consent of the Bank-

- (a) use the word "bank" or any of its derivatives in any language, or any other word or symbol indicating the transaction of banking business, in the name, description or title under which the person does business in The Gambia; or
- (b) make or continue to make any representation to such effect in any bill head, letter, paper, notice, advertisement or in any other manner whatsoever for the purpose of doing business in The Gambia.

Misleading and unlicensed names

6. (1) No banking institution shall be issued a licence under a name which so closely

resembles the name of an existing institution or in the opinion of the Bank mislead or is likely to mislead the public.

(2) No banking institution shall, except with the written approval of the Bank, use, or refer to itself by, a name other than the name under which it is licensed.

Limitation on type, opening and relocation of place of business of banking institution

7. (1) A licence issued under this Act shall authorize the licensee to do business only of the type or class described in, and only at the place of business designated in the licence.

(2) No banking institution shall open a new place of business in The Gambia or change the location of, or close an existing place of business in The Gambia, without the approval of the Bank.

(3) The Bank may, before granting its approval under subsection (2), satisfy itself by inspection that the new or relocated place of business will continue to meet the criteria to the extent applicable under section 4(3).

Issue of shares and limitation on voting control over banking institutions, and mergers

8. (1) Every share issued by a banking institution shall be recorded in the register of shares of the banking institution.

(2) No person shall, without the written approval of the Bank, acquire either directly or indirectly, any beneficial interest in the voting shares of a banking institution which would enable the person to control more than ten *per cent* of the total number of votes that could be cast on any resolution of the banking institution.

(3) Where a person directly or indirectly acquires more shares than have been approved under subsection (2), the added shares shall not be voted unless the Bank has approved the transfer of the added shares and the transfer has been recorded in the share register of the banking institution.

(4) No banking institution shall, without the approval of the Bank, enter in its share register the transfer of shares, which would either directly or indirectly result in giving more than ten *per cent* of voting shares of that banking institution to one person.

(5) No local banking institution which is licensed under this Act shall, without the approval of the Bank -

- (a) enter into a merger or consolidation;
- (b) transfer the whole or any substantial part of its assets or liabilities in The Gambia, other than in the ordinary course of its business;
- (c) effect a reduction of its paid-up capital;
- (d) do business in The Gambia under a name, other than that specified in its licence; or
- (e) amend its memorandum or articles of association.

(6) In acting on an application for merger (or consolidation), the Bank shall consider whether-

- (a) the resulting institution would meet the criteria for the licensing of a new institution including capital adequacy; and
- (b) the transaction is likely to have a substantially adverse effect on competition in banking that are not outweighed by benefits to the public arising from the transaction.

(7) No banking institution shall, without the prior approval of the Bank, effect significant acquisi-

tions, other than those covered by section 8 (5), that-

- (a) increase the acquiring banking institution's assets by an amount in excess of a percentage to be specified in regulations; or
- (b) result in the acquisition by a banking institution of a substantial part of the assets of the selling company (or of a division thereof).

(8) In acting on an application for approval under subsection (7), the Bank shall be guided by the criteria for the licensing of a new banking institution.

(9) No foreign banking institution which is licensed under this Act shall, without the approval of the Bank -

- (a) transfer the whole or any substantial part of its assets or liabilities in The Gambia, other than in the ordinary course of its business;
- (b) effect a reduction of its assigned capital in The Gambia; or
- (c) do business in The Gambia under a name, other than that specified in its licence.

(10) In considering a proposed action under subsection (5) or (9) of this section, the Bank shall be guided by the criteria set out in section 4 (3).

(11) A person who contravenes or fails to comply with this section commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis or to imprisonment for a term not exceeding five years.

(12) For the purposes of this section -

- (a) a person is deemed to indirectly acquire shares in a banking institution if he or she is associated with any other person who beneficially owns shares in that banking institution;
- (b) where two or more persons, each of whom beneficially owns shares in a banking institution, are associated with each other, they shall be deemed to be a single person who beneficially owns the aggregate number of shares of the banking institution;
- (c) restriction on controlling more than ten *per cent* of the total number of shares of a banking institution applies to control by voting in person or proxy and does not include other forms of exercising influence, other than by way of beneficial ownership of voting shares, such as, through nominee directors or other business connections; and
- (d) the Minister may by regulations prescribe what is a substantial part under subsection (7)(b).

Revocation
and
cancellation of
licence

9. (1) The Bank may revoke or cancel a licence issued by it pursuant to this Act if the banking institution-

- (a) fails to commence operations within a period of six months following the issuance of the licence;
 - (b) fails to comply with any condition of its licence or contravenes a provision of section 22 or 23;
 - (c) is in breach of any provision of this Act or any regulation made under it;
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- (d) ceases to carry on a banking business;
 - (e) fails to rectify its affairs as specified under section 28(2); or
 - (f) obtained its licence based on false, fraudulent or misleading information or other material irregularities.

(2) The Bank may also revoke or cancel a licence if-

- (a) the banking condition of the banking institution is unsound;
- (b) the business of the banking institution is being conducted in an imprudent manner; or
- (c) the continuation of the activities of the banking institution is detrimental to the interests of its depositors.

(3) The Bank shall, before revoking or cancelling a licence for the reasons specified in subsection (1) (a) or (d), give the banking institution written notice of its intention to do so, including a reasonably detailed statement of its reasons.

(4) If, within three days following receipt by a banking institution of a notice given pursuant to subsection (3), the banking institution notifies the Bank in writing that it requires a hearing, the Bank shall, within ten days of receiving the notification, convene a hearing, at which the Bank shall provide the banking institution with a reasonable opportunity to show cause to the Bank why the licence should not be revoked or cancelled, as the case may be.

(5) If no request for a hearing is received in accordance with subsection (4), the Bank shall revoke or cancel the licence, as the case may be.

(6) The Bank shall, within three days after the conclusion of a hearing convened pursuant to subsection (4), notify the banking institution in writing of its decision which may be to confirm, vary or withdraw its notice of intention to revoke or cancel the licence.

(7) If the banking institution is not satisfied with the decision of the Bank notified to it under subsection (6), it may appeal to the High Court within seven days from the date of receipt of the decision from the Bank.

(8) The right of appeal under subsection (7) applies only to a decision of the Bank to cancel or revoke a licence under subsection (1) (a) or (d).

(9) Where the decision to cancel or revoke is not subject to appeal, the Bank shall apply to the High Court for the compulsory liquidation of the banking institution.

Hearing of
appeal
against
revocation and
cancellation
of licence

10. (1) Every appeal from the decision of the Bank to cancel or revoke a licence under section 9 (1) (a) or (d) shall be heard by a Judge in open court within fourteen days of the filing of the notice of appeal and his or her decision shall be given on it within thirty days.

(2) The Judge may confirm or reverse the decision of the Bank.

(3) If the Judge confirms a revocation or cancellation of the licence of a banking institution, it shall order the compulsory liquidation of the banking institution.

(4) When a licence is revoked or cancelled under section 9, the banking institution shall surrender to the Bank each copy of the licence displayed in every place of business of the banking institution and the Bank shall, as soon as practicable -

(a) publish notice of the revocation or cancellation in the *Gazette* and in a newspaper of general circulation in The

Gambia; and

- (b) take such steps as, in its opinion, are necessary to inform the public of the revocation or cancellation.

Investigation
of persons
carrying on
illegal banking
business

11. (1) Where the Bank has reason to believe that a person is carrying on banking business without a valid licence, it shall-

- (a) seize the books, accounts and records relating to the business; and
- (b) examine the books, accounts and records so seized in order to ascertain whether the person is so carrying on the business.

(2) No person to whom subsection (1) applies shall undertake any deposit - taking activity.

(3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dalasis or imprisonment for a term not exceeding five years.

(4) A person who holds funds obtained by carrying on banking business without a licence issued under this Act shall repay the funds in accordance with such directions as the Bank may give.

(5) Nothing in subsection (4) shall relieve a person from liability to criminal proceedings arising out of any contravention of the provisions of this Act.

PART III - ISLAMIC BANKING INSTITUTIONS

Islamic ban-
king licence

12. (1) No local banking institution shall carry on an Islamic banking business in or outside The Gambia and no foreign banking institution shall carry on an Islamic banking business in The Gambia without a licence issued by the Bank authorising the institution to do so.

(2) Notwithstanding the provisions of section 4, the Bank shall not issue a licence to a banking institution proposing to carry on an Islamic banking business unless the proposed memorandum and articles of association of the banking institution contain conditions stating that the banking institution shall -

- (a) as a joint venture with the depositors, bear any losses resulting from any cause for which it is legally liable, including any case where authority is exceeded or insufficient care or caution is exercised by members of its Board of Directors, or its managers or employees, provided that if the loss arose through no fault of the banking institution, the liability shall be jointly shared by the depositors and the banking institution;
- (b) at the end of each banking year, announce by public notice, the general percentage of profit to be allocated to the general funds participating in joint investment; and
- (c) not carry on any business which involves usury or which is not approved by Sharia.

Distribution of
profit

13. A banking institution carrying on Islamic banking business is entitled to-

- (a) the remaining percentage of profits after the deduction of the amount allocated to investors; and
- (b) participate in the profits of joint investments in proportion to the amount of its own funds or the funds which it is authorized to risk in joint investment.

Transactions
with conven-
tional banks

14. (1) No banking institution carrying on Islamic banking business shall in its dealings with banks

involved in conventional banking engage in banking operations which involve usury.

(2) A banking institution which contravenes subsection (1) commits an offence and is liable to a fine of not less than one hundred thousand dalasis.

(3) Notwithstanding the provisions of sub-sections (1) and (2), a bank shall invest in Islamic instruments as may be issued from time to time by the Bank or any other reputable institution, subject to compliance with Sharia principles.

Commissions
and fees

15. (1) A banking institution carrying on Islamic banking business may in carrying out some of its functions charge such commissions or fees as may be necessary.

(2) The funds received as commissions and fees shall constitute the banks income and shall not be divided among the depositors.

Profits
realised from
investment

16. (1) All profits and losses relating to banking and joint investment activities shall be separated in the accounts-

- (a) the other income and expenditure relating to other activities and services offered by the banking institution; and
- (b) the income and expenditure of investments for specific purposes, in respect of which a separate account must be kept for each particular project.

(2) In accounting for the profit or income connected with its financing and investment activities, the banking institution shall not adopt a method of accounting which takes into account estimated or expected profits, but shall confine itself to the profits realised in accordance with the nature of the operations which the banking institution finances, and in accordance with the

following rules -

- (a) in the case of individual *Mudarabah*, the profit is realised on the basis of a final settlement of accounts carried out between the banking institution and the party utilising the funds, provided that -
 - (i) the settlement is based on actual receipt of the cash and realisation of the income and is duly approved and accepted, and
 - (ii) the profits of each year is entered in the accounts of the year in which the settlement is carried out whether in respect of the complete project or a part of it;
 - (b) in the case of decreasing participation, the profit or income is realised on the basis of the net income derived from the project concerned until the end of the banking year, even if the income is not in fact received in cash, as in such event, the income realised is treated as money due but not received;
 - (c) in the case of purchasing for others on a pre-agreed profit basis, the profit is realised on the conclusion of the subsequent contract and on the basis of the difference between the actual cost and the price agreed on with the party who ordered the purchase; and
 - (d) the various financing operations shall be charged with all the direct expenses and costs arising from them, and shall not be charged with any part of the general overhead expenses of the banking institution.
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Restriction on
use of Islamic
banking
instruments

17. No company registered to carry on Islamic banking business shall use any Islamic banking instrument without the written consent of the Bank.

PART IV – BANKING REQUIREMENTS AND LIMITATIONS

Capital and
assigned
capital
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18. (1) A banking institution shall maintain unimpaired capital, either paid-up if it is a banking institution incorporated under the Companies Act or assigned if it is not so incorporated, at least equal to the minimum amount prescribed by the Bank by notification in accordance with subsection (2).

(2) The minimum required capital of a banking institution -

- (a) shall be of such kind, computed in such manner and of such amount as the Bank may prescribe, having due regard to internationally accepted guidelines;
- (b) may include such part of the banking institution's Reserve Account, undivided profits, retained income and other reserves as the Bank may specify in the prescription; and
- (c) may be fixed with reference to such of the assets or portion of the assets of the banking institution, as the Bank may prescribe.

Reserve
account

19. (1) A banking institution shall maintain a Reserve Account and shall, before declaring any dividend or transferring any profit to its head office or elsewhere, transfer to its Reserve Account, out of net profits of each year after due provision has been made for taxation, the following amount-

- (a) Where the amount of the bank's Reserve Account is less than 100% of its paid-

up capital, the minimum amount prescribed by the Bank.

- (b) Where the amount of the bank's Reserve Account is equal to 100% of its paid-up capital or more, the minimum amount prescribed by the Bank.

(2) The Reserve Account shall not be reduced or impaired, but the Bank-

- (a) may permit a reduction when a transfer is made for the purpose of increasing the capital; and
- (b) shall permit an impairment of the Reserve Account when it is the only practicable means of preventing an impairment of the capital.

Liquid assets
of banking
institution

20. (1) Any banking institution shall at all times maintain liquid assets amounting to not less than such percentage of its liabilities to the public in The Gambia as the Bank may prescribe specifically for it or prescribe for banking institutions of its class or type as designated by the Bank, provided that-

- (a) the amount prescribed shall not be greater than forty *per cent*;
- (b) the distribution of the amount prescribed between the various classes may be made at the discretion of each banking institution; and
- (c) no banking institution shall be required to maintain any higher percentage than any other banking institution of the same class or type.

(2) A change in an amount prescribed under subsection (1) shall take effect, if it provides for -

- (a) a decrease, immediately; or

-
- (b) an increase, only after reasonable notice of the increase has been given to the banking institutions affected by the change.

(3) Notwithstanding anything contained in subsection (1), no banking institution shall be required to augment its liquid assets during any month of the year by an amount in excess of five *per cent* of the aggregate of its liabilities as at close of the last business day of the preceding month.

(4) A banking institution which withholds any information required by the Bank to satisfy itself that the banking institution is observing the requirements of this section commits an offence and is liable to a fine of not less than fifty thousand dalasis.

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(5) A banking institution which-

- (a) allows its holding of liquid assets to be less than the amount which is from time to time, prescribed by the Bank for it or for its class; or
- (b) during the period of any such deficiency of liquid assets the banking institution grants or permits, without the approval of the Bank, increases in its outstanding advances, credit facilities or investments,

is liable to a penalty charge of five hundred dalasis for every day during which the default continues.

(6) A banking institution which allows its holding of liquid assets to be less than the amount which is, from time to time, prescribed by the Bank under this section shall, notwithstanding any penalties provided for in subsection (5), be liable to pay to the Bank a penalty charged at the rate specified under subsection (7).

(7) The penalty to be paid to the Bank under subsection (6) shall be charged at an annual rate not exceeding, by five percentage points, the highest rate fixed at the time of the offence by the Bank pursuant to section 35 of the Central Bank of The Gambia Act, 1992 for any of its operations, on the amount of the deficiency for each day on which the deficiency continues.

(8) For the purpose of this section, "liquid assets" means assets of the following classes which are transferable free of any charge or lien whatsoever

- (a) notes and coins constituting the currency of The Gambia and such foreign exchange in the form of currency notes as the Bank may, from time to time, prescribe for the purpose of this subsection;
 - (b) reserves held by way of demand deposits in current account in the Bank;
 - (c) net credit or debit balances at any banking institution in The Gambia;
 - (d) treasury bills and other securities issued or guaranteed by the Government and maturing within one hundred and eighty days;
 - (e) in the case of banks, bills of exchange, promissory notes and other negotiable instruments eligible for rediscount by the Bank, within the limits fixed by the Bank for the purpose of this section; and
 - (f) net credit or debit balances at any bank, including the offices and branches of a bank in such monetary areas as the Bank may approve for the purpose of this section.
-

Local assets ratio	21. A banking institution shall maintain, in The Gambia, assets consisting of debt securities and other obligations payable in the currency of The Gambia and such other assets in such minimum proportion of its deposits and other liabilities payable in The Gambia, as the Bank may prescribe.
Limitation on payment of dividend	22. No banking institution shall declare, credit or pay any dividend or make any other transfer from profits if the payment or transfer would impair its capital, its assigned capital or its Reserve Account.
Prohibitions and limitations	23. (1) No bank shall directly or indirectly, except with the approval of the Bank on such terms and conditions as the Bank may prescribe - (a) grant to a person and his or her associated persons an advance or a credit facility or make a guarantee where the total value of the advance, credit facility or guarantee in respect of the person is at any time more than twenty-five <i>per cent</i> of the aggregate amount of the bank's unimpaired capital and the unimpaired balance in its Reserve Account, provided that the limitation on a transaction under this paragraph shall not apply if the transaction - (i) is on or with respect to a draft or bill of exchange drawn in good faith against actually existing assets or on banker's acceptances and guarantees or bill of exchange of the kind and maturity prescribed by the Bank or on commercial or business paper actually owned by the person discounting or selling the bill with or to the bank and endorsed without limitation or guaranteed by the person, (ii) is a secured asset, fully covered by insurance having an ascertainable

- market value, or otherwise having value as security as found in good faith by an officer of the bank, of at least fifteen *per cent* more than the amount of the obligations secured thereby,
- (iii) is secured in such other manner as the Bank may deem sufficient in this behalf,
 - (iv) represents a loan granted by a mortgage to a mortgagor, or
 - (v) represents a loan granted to, or a guarantee by the Government, its boards or agencies, or Local Government bodies;
- (b) grant an advance against the security of its own shares or more than 10% of the value of shares of any other financial institution;
- (c) grant or permit to be outstanding unsecured advances of an aggregate amount to be determined by the Bank and secured advances in excess of twenty-five *per cent* of the banking institution's capital and reserves to-
- (i) any of its directors, officers and other associated persons, whether or not the advances are obtained by them jointly or severally, or
 - (ii) any person in which it or any one or more of its directors has any interest as a director, partner, manager, agent, member or otherwise;
- (d) engage in trade, except in so far as may be temporarily necessary in the conduct of its business or to obtain the satisfaction of debts due to it which shall, however, be disposed of as soon
-

as possible thereafter;

- (e) acquire any ownership interest in any financial, commercial, agricultural, industrial or other business undertaking except:
 - (i) such interest as it may acquire for the satisfaction of debts due to it which shall, however, be disposed of as soon as possible thereafter,
 - (ii) for the purchase and sale of shares for trust or upon the order and for the account of a customer where the bank acts only as agent and not as principal in the transaction,
 - (iii) where the aggregate amount of such investment shall not exceed 10% of the Capital and reserves of the bank, unless approved by the Bank;
- (f) purchase, lease or otherwise acquire real property except as may be necessary for the purpose of conducting its business as a bank, including provision for future expansion, and housing its officers or employees, provided that a bank may secure a debt on any real or other property and in default of repayment may acquire the property for resale as soon as possible thereafter; or
- (g) lease or otherwise contract to make available to any person in consideration of periodic payments of rent or other instalment payment terms any tangible personal property owned by the bank except in accordance with such conditions and limitations as the Bank may prescribe,

provided that this paragraph shall not-

- (i) prevent a bank from lending on the security of any tangible personal property and taking title thereto for that purpose,
- (ii) prevent a bank from letting or subletting part of immovable property which is ordinarily used for housing its business where the property is in excess of the immediate requirements of the bank

(2) The total indebtedness of associated persons shall be combined and deemed to be in respect of a single person.

(3) A bank shall not be deemed to have violated paragraph (a) or (c) of subsection (1) by reason only that the combined indebtedness exceeds the limitation at the time the bank became aware of the total indebtedness under subsection (2), but the bank shall dispose of the indebtedness of the group referred to in that subsection, in the amount in excess of the limitation, within such reasonable time as shall be determined by the Bank.

(4) The provisions of subsection (1) (e), (f) and (g) shall not be construed to prohibit the activities of Islamic banks in providing financing to customers through the use of alternative forms of financing that are the functional equivalents of the types of financing traditionally provided by conventional banks.

PART V - BANKING INFORMATION, AUDIT AND EXAMINATION

Financial
information

24. (1) A banking institution shall send to the Bank, in duplicate -

- (a) not later than a period to be determined by the Bank after the last business day of each month, one or more statements in such form as the Bank may prescribe, showing the assets and liabilities of the banking institution in The Gambia and abroad as at the close of business on the last business day of the preceding month; and
- (b) not later than a period to be determined by the Bank after the last day of each quarter ending on 31st March, 30th June, 30th September and 31st December, one or more statements in such form as the Bank may prescribe showing its profit or loss and its assets and liabilities in The Gambia and abroad on the last business day of the quarter.

(2) The Bank may, from time to time, demand any information that it may require, for the purpose of this Act, from -

- (a) any banking institution, about its operations and those of its affiliates in The Gambia; or
- (b) a local banking institution, about its operations and those of its affiliates abroad, and the banking institution shall comply within a reasonable time.

Audit

25. (1) Not later than three months after the expiration of each financial year, every banking institution shall, in respect of all business transacted by it, prepare a balance sheet and a profit and loss account as at the last business day of that year in such manner as the Bank may prescribe.

(2) The balance sheet and profit and loss account shall be certified as correct, in the case of-

- (a) a local banking institution, by the signatures of its directors and auditor; and
 - (b) a foreign banking institution, by the signatures of its two most senior officers in The Gambia and its auditor in The Gambia.
- (3) A banking institution shall appoint annually, at the beginning of each financial year, an auditor who shall be a professionally qualified person satisfactory to the Bank whose duties shall be to make a report to the Bank, on the annual balance sheet and accounts of the banking institution.
- (4) If a banking institution fails to appoint an auditor satisfactory to the Bank or the auditor fails to submit its report within the time prescribed under subsection (5), the Bank may appoint an auditor for the banking institution.
- (5) The remuneration of the auditor, whether appointed by the banking institution or by the Bank, shall be paid by the banking institution and, in the case of an auditor appointed by the Bank, shall be determined by the Bank.
- (6) No person who has an interest in a banking institution, otherwise than as a depositor, and no director, officer, employee or agent of a banking institution, shall be eligible for appointment as an auditor for the banking institution.
- (7) A person who, after being appointed as an auditor acquires an interest or becomes a director, officer, employee or agent of the banking institution shall forthwith cease to be the auditor.
- (8) A banking institution shall-
- (a) exhibit, throughout the year, in the public part of each of its places of business in The Gambia a copy of its latest balance sheet; and

-
- (b) publish, in at least one newspaper of general circulation in The Gambia, a copy of its latest balance sheet in such form and within such reasonable period as the Bank may prescribe.

Bank and
Auditors
Relationship

26. (1) External Auditors shall submit to the Bank and the bank on an annual basis not later than three months after the end of the financial year, the audited accounts and accompanying management letter and where such auditors are on special assignment, a special report shall be mandatory upon completion of the assignment. The Bank may impose all of the following duties on an auditor a duty to-

- (a) submit such additional information in relation to his or her audit as the Bank considers necessary;
- (b) carry out any other examination or establish any procedure in any particular case;
- (c) submit a report on any of the matters referred to in subsections (a) and (b);
- (d) submit a report on the financial and accounting systems and risk management controls of the banking institutions; and
- (e) a duty to certify that the systems of loan classification, provisioning and write-offs prescribed by the Bank are being implemented in accordance with such regulations that the Bank may prescribe and the banking institution shall remunerate the auditor in respect of the discharge by him of all or any of these additional duties.

(2) If an auditor, in the course of the performance of his or her duties is satisfied that-

-
- (b) publish, in at least one newspaper of general circulation in The Gambia, a copy of its latest balance sheet in such form and within such reasonable period as the Bank may prescribe.

Bank and
Auditors
Relationship

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- (c) submit a report on any of the matters referred to in subsections (a) and (b);
- (d) submit a report on the financial and accounting systems and risk management controls of the banking institutions; and
- (e) a duty to certify that the systems of loan classification, provisioning and write-offs prescribed by the Bank are being implemented in accordance with such regulations that the Bank may prescribe and the banking institution shall remunerate the auditor in respect of the discharge by him of all or any of these additional duties.

(2) If an auditor, in the course of the performance of his or her duties is satisfied that-

- (a) there has been a serious breach of or non-compliance with the provisions of this Act, the Central Bank of the Gambia Act, the Companies Act, or regulations, guidelines or instructions issued by the Bank;
- (b) a criminal offence involving fraud and dishonesty has been committed;
- (c) losses have been incurred which reduce the paid-up or assigned capital, as the case may be, of the banking institution by 25 % or more;
- (d) serious irregularities have occurred, including those that jeopardise the security of depositors and creditors;
- (e) he or she is unable to confirm that the claims of depositors and creditors are still covered by the assets;
- (f) he or she shall immediately report the matter to the Bank.

(3) The Bank may, if it considers necessary, from time to time, arrange trilateral meetings with each banking institution and its external auditors, to discuss matters relevant to the Bank's supervisory responsibilities which have arisen in the course of the statutory audit of that banking institution, including relevant aspects of the banking institution's business, its accounting and internal control systems, its annual balance sheet and profit and loss accounts.

(4) The Bank may, if it considers it desirable or necessary in the interests of depositors, from time to time arrange bilateral meetings with auditors of banking institutions.

(5) No duty of confidentiality to which an auditor of a banking institution may be subject shall be regarded as contravened and no civil, criminal or disciplinary proceeding shall lie against him or her by reason of his or her communicating in

good faith to the Bank, whether or not in response to a request made by it, any information or opinion which is relevant to the Bank's functions under this Act.

Examination
of banking
institutions

27. (1) The Bank shall cause an examination to be made of each banking institution whenever in its judgment an examination is necessary or expedient in order to determine whether or not -

- (a) the institution is in a sound banking condition; and
- (b) the requirements of this Act have been complied with in the conduct of its business.

(2) For the purpose of determining the condition of a banking institution and its compliance with this Act, the Bank may, at any time, cause an examination to be made of any of its associates or affiliates in The Gambia to the same extent that an examination may be made of the banking institution.

(3) The Governor shall have the power to appoint one or more qualified person(s) other than the officers of the Bank to conduct examination or investigation, under conditions of confidentiality, of the books and affairs of the bank.

Scope of
examination of
banking
institutions

28. (1) A banking institution shall-

- (a) produce and cause its affiliates and associates to produce for the inspection of any examiner appointed by the Bank at such times as the examiner specifies, all books, minutes, internal operations manuals, accounts, cash, securities, documents, vouchers and other documents relating to its business in The Gambia; and
- (b) supply all information concerning its business in The Gambia as may reasonably be required by the examiner

within such time as the examiner specifies.

(2) If a banking institution or an affiliate or associate without reasonable excuse, the proof of which shall be on it, fails to comply with the requirements of subsection (1), it commits an offence and is liable to a fine not exceeding one thousand dalasis in respect of every day during which the default continues.

(3) If an information supplied or item produced to an examiner appointed by the Bank is false in any material particular, the person responsible commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis or imprisonment for a term not exceeding five years.

Action by the
Bank if
banking
institution is
unsound

29. (1) If, in the opinion of the Bank, an examination authorized under section 27 shows that the banking institution concerned is conducting its business in an unlawful or unsound manner or that its capital or Reserve Account is impaired, or that it is otherwise in an unsound condition, the Bank shall promptly take such corrective measures as may be required to ensure that the problems are resolved at the earliest possible time and may-

- (a) require the banking institution to take forthwith such measures as the Bank may consider necessary to rectify the matter; and
- (b) appoint a person who in its opinion has had proper training and experience to advise the banking institution on the implementation of such measures as may be prescribed by the Bank to rectify the matter, and shall fix his or her remuneration which shall be paid by the banking institution; or

- (c) suspend the licence issued to the banking institution under this Act for a period not exceeding six months.

(2) Where a banking institution whose licence is suspended under subsection (1)(c) fails to rectify its affairs within the period of six months specified under that subsection, the Bank may proceed against the banking institution under section 9 or 45 of this Act.

Extension of time for furnishing documents or information

30. The Bank may, at the request of a banking institution, in its discretion extend, from time to time, any period within which the banking institution is, in accordance with the provisions of this Act, obliged to furnish any document or information or to perform an act.

PART VI – DIRECTORS AND OFFICERS

Appointment of Chief Executive Officer and Senior management

31. A banking institution shall-

- (a) appoint a Chief Executive Officer who shall after the appointment reside in The Gambia and be responsible for the day-to-day administration of the bank;
- (b) secure approval of the Bank prior to the appointment of Senior Management. such request for approval shall include changes in the membership of the board of directors, removal of senior managers or other major changes at the top management of the bank, failure of which shall be punishable by a fine of not less than the minimum amount prescribed by the Bank; and
- (c) secure approval for each of the existing senior management and directors on a regular basis as prescribed by the Bank.

Appointment of Directors

32. A banking institution shall secure approval of the Bank prior to the appointment of directors. The operations of every bank shall be directed by a Board consisting of at least five (5) members,

headed by a chairperson who is a non-executive director of the bank.

Disqualifica-
tions
Cap. 95: 1

33. (1) Notwithstanding anything in the Companies Act, no person shall be a first director of a new banking institution or be elected or appointed a director or officer of a banking institution if the person-

- (a) is a discharged or an undischarged bankrupt;
- (b) has been convicted of a felony or an offence involving dishonesty and has not been fully pardoned for the offence;
- (c) has been found mentally incompetent to manage his or her affairs and not discharged from the condition;
- (d) is under suspension from office by order of the Bank pursuant to this Act; or
- (e) is a director or officer of another banking institution.

(2) A director or an officer in the management of a banking institution shall forthwith cease to hold office if he or she -

- (a) becomes bankrupt, suspends payments or compounds or proposes a compromise with his or her creditors generally;
- (b) is convicted of a felony or an offence involving dishonesty;
- (c) is declared mentally incompetent by any official proceeding under the laws of The Gambia or elsewhere;
- (d) is suspended from office by order of

the Bank pursuant to this Act; or

(e) is appointed to another banking institution.

(3) No person who has been a director of, or directly or indirectly concerned in, the management of a banking institution the licence of which has been revoked shall, without the approval of the Bank, act or continue to act as a director or be directly concerned in the management of a banking institution.

(4) No person shall be appointed or elected, or accept appointment or election, as a director, chief executive officer or employee of a bank if that person has been a director or manager or associated with the management of an institution which is being or has been wound up by a court of competent jurisdiction due to offences committed under a law or a bankruptcy.

(5) A person acting in contravention of this section commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis or imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Duty of care

34. (1) Every director and officer of a banking institution shall, in exercising the powers and discharging the duties of his or her office-

(a) act honestly and in good faith with a view to securing the best interests of the banking institution; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) A director or officer who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis or imprisonment for a term not

exceeding five years and, in addition, he or she shall be removed from the Board or management of the banking institution.

(3) The Bank shall set and enforce standards-

(a) for the corporate governance of banking institutions, including a management structure with clear accountability, and independent board of directors able to provide a check on management, independent audit and compliance functions; and

(b) for internal controls.

Disclosure of
conflict of
interest

35. (1) A director or an officer of a banking institution who-

(a) is a party to a material contract or a proposed material contract with the banking institution; or

(b) has a material interest in or a material relation to a person who is a party to a material contract or a proposed material contract with the banking institution,

shall disclose to the banking institution, in writing, the nature and extent of the material interest or relation.

(2) The disclosure required by subsection (1) shall be made by the director or officer when the contract or proposed contract comes or ought reasonably to come to the attention of the director or officer.

(3) A director or an officer of a banking institution shall, whenever a conflict of interest in a material contract arises, give a general notice in writing to the board of directors disclosing every material, commercial, banking, agricultural, industrial or other business or family interest that he or she has at the time, and stating that he or she is to be regarded as interested in a material contract between the banking institution and a person

named in the disclosure.

(4) A director who has a material interest or a material relation within the scope of subsection (1) or (3), shall withdraw from a meeting at which the contract is discussed, and shall refrain from voting on a matter related to the contract which becomes the subject of action by the board of directors of the licensed banking institution, provided that an interest, if so disclosed, shall not disqualify the interested person for purposes of constituting a quorum.

(5) For the purpose of subsections (1) and (3), an interest shall be material if it is material with reference to the wealth, business or family interests of the person with the interest, and a person has a material interest-

- (a) in a company of which he or she is directly or indirectly the controlling shareholder or a director; and
- (b) in any partnership of which he or she is a partner.

(6) Where a director or officer fails to disclose a material conflict of interest in a contract in accordance with this section -

- (a) the High Court may, on the application of the banking institution, a shareholder or the Bank, set aside the contract on such terms as it thinks fit; and
- (b) the Bank may, by written order, suspend the director or officer from office for any period not exceeding one year.

(7) A director or officer who acts in contravention of subsection (1), (2) or (4) commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis or imprisonment for

a term not exceeding five years or to both such fine and imprisonment.

(8) In this section, "material contract includes a loan agreement.

False statements and obstruction of examination

36. A director, officer, employee or agent of a banking institution who-

(a) with intent to deceive-

- (i) makes a false or misleading statement or entry,
- (ii) omits a statement or entry that should be made in a book, account, report or statement of the banking institution; or

(b) obstructs or endeavours to obstruct -

- (i) the proper performance by an auditor of his duties in accordance with the provisions of this Act, or
- (ii) a lawful examination of the banking institution by an examiner appointed by the Bank,

commits an offence and is liable, on conviction to a fine of not less than twenty thousand dalasis or imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Failure by management to secure compliance with the provisions of this Act

37. (1) The Bank may, by written order, suspend or remove from office for a period not exceeding one year any director or officer concerned in the management of a banking institution who fails to take all reasonable steps to secure compliance by the institution with the requirements of this Act.

(2) A director or officer who fails to take all reasonable steps as specified in subsection (1) commits an offence and is liable on conviction to

a fine of not less than twenty thousand dalasis or imprisonment for a term not exceeding five years or to both such fine and imprisonment.

PART VII – INSOLVENCY, WINDING UP, LIQUIDATION AND SEIZURE OF BANKING INSTITUTIONS

Acceptance of deposits by insolvent banking institutions

38. A director, officer or employee of a banking institution who knows or, in the proper performance of his or her duties, ought to know of the insolvency of the institution and who receives or authorizes the acceptance of, a deposit commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis or imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Approval of Bank required for voluntary winding-up or liquidation
Cap. 95:1

39. (1) A banking institution incorporated under the Companies Act shall not, except with the approval of the Bank, pass any resolution for voluntary winding-up under the Companies Act.

(2) A banking institution not incorporated under the Companies Act shall not, except with the approval of the Bank, commence voluntary liquidation under this Act or any other law of The Gambia or elsewhere.

(3) The Bank shall grant approval under subsections (1) or (2) on such terms and conditions as it may determine and only if it appears to the Bank that the institution is solvent and has sufficient liquid assets to repay its depositors and other creditors in full and without delay.

Actions by a banking institution on voluntary liquidation

40. When a banking institution has received approval of the Bank under section 39, it shall-

(a) immediately surrender its licence to the Bank, cease to do business and thereafter exercise its powers only to the extent necessary to effect its orderly liquidation;

(b) repay in full its depositors and other

creditors; and

- (c) wind-up all operations undertaken prior to the receipt of the approval.

Notice of
voluntary
winding-up
and liquida-
tion

41. (1) A banking institution shall, within fourteen days from the receipt of an approval under section 39, send by registered mail to-

- (a) every depositor;
- (b) every other creditor of the banking institution; and
- (c) a person otherwise entitled to any fund or property held by the banking institution as a trustee, judiciary, less or of a safe deposit box or bailee, a notice of voluntary winding-up or liquidation of the banking institution setting out such information as the Bank may prescribe.

(2) The banking institution shall display the notice in a conspicuous place in the public part of each place of business of the banking institution and publish it in the *Gazette* and in a newspaper of general circulation in The Gambia.

Rights of
depositors
and creditors

42. (1) The approval by the Bank under section 36 for the voluntary winding-up or liquidation of a banking institution shall not prejudice the rights of a depositor or other creditor to payment in full of a claim or the right of an owner of funds or other property held by the banking institution to its return.

(2) Every lawful claim shall be paid promptly and any fund or other property held by the banking institution shall be returned to their rightful owners within such maximum period as the Bank may prescribe.

Distribution of
assets on
voluntary
liquidation

43. (1) When the Bank is satisfied that a banking institution has discharged all the obligations referred to under section 39, the remainder of its property shall be distributed to their rightful

owners.

(2) No distribution shall be made under subsection (1) unless-

- (a) all lawful claims of depositors and other creditors have been paid in full, or, in the case of a disputed claim, before the banking institution has turned over to the Bank funds sufficient, in the opinion of the Bank, to meet any liability that may be judicially determined; and
- (b) any fund payable to a depositor or other creditor who has not made a claim has been turned over to the Bank.

Powers of Bank if assets insufficient or completion of winding-up or liquidation unduly delayed

44. If the Bank finds that -

- (a) the assets of a banking institution whose voluntary winding-up or liquidation it has approved will not be sufficient for the full discharge of all its obligations; or
- (b) completion of the winding-up or liquidation is unduly delayed,

it may, if it deems fit, take possession of the banking institution, or petition the High Court for the continuance of the voluntary winding-up, subject to the supervision of the Court.

Seizure by the Bank of banking institution

45. The Bank may take possession of a banking institution-

- (a) whose capital is impaired;
- (b) whose business is being conducted in an unlawful manner;
- (c) which refuses to permit an examination to be made as provided in section 27 or has otherwise obstructed

an examination;

(d) if, in the opinion of the Bank -

- (i) the banking condition of the institution is unsound,
- (ii) the business of the banking institution is being conducted in an imprudent manner, or
- (iii) the continuation of the activities of the banking institution is detrimental to the interests of its depositors; or

(e) which fails to rectify its affairs as specified under section 29 (2).

Notice of seizure

46. (1) The Bank shall, on taking possession of a banking institution, post at each place of business of the banking institution a notice announcing its action pursuant to this Act and specifying the time when the possession shall take effect.

(2) A copy of the notice shall be transmitted to the High Court.

Appeal for termination of seizure

47. (1) A banking institution may, within a period of twenty-one days after the date the Bank has taken possession of the banking institution, institute proceedings in the High Court to have the seizure terminated on the ground that the Bank acted in bad faith.

(2) The institution of proceedings under subsection (1) shall not affect or suspend the Bank's possession of the banking institution.

Powers and duties of Bank on seizure

48. (1) The Bank shall, after taking possession of a banking institution, promptly take an inventory of the assets, property and liabilities of the institution and transmit a copy to the Registrar of the High Court who shall make a copy available for examination by interested parties at the office of the Registrar at the High Court.

(2) When the Bank has taken possession of a banking institution, it shall have full and exclusive powers of management and control of the institution, including, without limiting the generality of the foregoing, the power to- -

- (a) continue or discontinue its operations;
- (b) reorganize the banking institution in accordance with the provisions of this Act;
- (c) stop or limit the payment of its obligations;
- (d) employ any necessary officers or employees;
- (e) execute any instrument in the name of the banking institution;
- (f) initiate, defend and conduct in its name any action or proceedings to which the banking institution may be a party; and
- (g) terminate possession, by restoring the banking institution to its Board of Directors or owners, as the case may be.

Effects of
seizure

49. When the Bank has taken possession of a banking institution-

- (a) a statutory, contractual or any other term which provides for the expiration or extinction of a claim or right within a specified period, shall be extended by six months from the date of the expiration or extinction; and
- (b) a transfer of an asset or property of the banking institution made after or in contemplation of its insolvency or seizure by the Bank with intent to effect a preference shall be void.

Restriction of rights of creditors as to execution and garnishee in seizure

50. No writ of execution or a garnishee order shall be issued against the assets or property of a banking institution in possession of the Bank, except, in the discretion of the High Court, a writ of execution or a garnishee order issued pursuant to a judgment rendered prior to the date of the seizure by the Bank for an amount not exceeding five thousand dalasis.

Limitation on duration of seizure

51. (1) When the Bank has taken possession of a financial institution, it shall, within a renewable period of ninety days, after the effective date of seizure specified pursuant to section 45 -

- (a) apply to the High Court by petition for compulsory liquidation under section 52;
- (b) commence reorganization under section 48; or
- (c) terminate the seizure.

(2) Notwithstanding the provisions of subsection (1), the Bank may, if it deems fit-

- (a) reorganize the banking institution by increasing its capital, arranging for new shareholders and reconstituting its board of directors; or
- (b) amalgamate the banking institution with any other banking institution operating under the provisions of this Act.

(3) An owner or a shareholder of the banking institution or an interested party who is dissatisfied with any reorganization or amalgamation carried out by the Bank may appeal to the High Court on the ground that the Bank acted in bad faith or did not act in the best interest of the parties.

(4) The High Court may approve the reorgani-

zation or amalgamation carried out by the Bank or order the compulsory liquidation of the banking institution.

Compulsory liquidation

52. (1) The compulsory liquidation of banking institution may be ordered by the High Court only on petition by the Bank.

(2) Immediately following the Bank's petition to the High Court, the Bank shall notify the directors, shareholders, depositors and creditors and other interested parties of the petition by written notice to those persons for whom the Bank has a name and address, and by publication or other form of public notice.

(3) Each person notified under subsection (2) shall have a period of thirty days to file an objection with the High Court.

(4) The High Court shall render its decision within a period of thirty days after the end of the period during which objections to the liquidation were admissible, whether the Court is in session or not.

(5) On receipt of the Bank's petition, the Court may-

- (a) order compulsory liquidation of the banking institution;
- (b) refuse compulsory liquidation and order the seizure of the banking institution to be terminated; or
- (c) order the reorganization of the banking institution.

Reorganiza-
tion

53. (1) If the Bank, pursuant to section 48(2)(b), decides to commence the reorganization of a banking institution, or if the High Court orders a reorganization in accordance with section 51(4), the Bank shall, after granting a reasonable opportunity for a hearing of all interested parties, send a copy of the reorganization plan approved

by the Court to the depositors and other creditors by notice.

(2) The copy of the reorganization plan shall be accompanied by a notice stating that if-

- (a) the reorganization plan is not refused in writing within a period of thirty days by persons holding at least one third of the aggregate amount of deposits and claims and representing at least one-third of the depositors; or
- (b) within the same period of thirty days, the Court does not order a stay of proceedings, the Bank shall proceed to carry out the reorganization plan.

Petition
against
reorganization
plan

54. Where depositors and other creditors refuse a reorganization plan prepared by the Bank or ordered by the Court pursuant to section 51, or where in the course of reorganization it appears to the Bank that circumstances render the plan inequitable or its execution undesirable, the Bank may apply by petition to the High Court to -

- (a) modify the plan; or
- (b) order the compulsory liquidation of the institution in accordance with the provisions of section 52.

Powers and
duties of
Bank in
effecting
compulsory
liquidation

55. (1) In effecting compulsory liquidation pursuant to section 52, the Bank or its authorised agent may exercise any of the powers of the banking institution, whether express or implied, provided that it obtains approval from the High Court for any of the following actions -

- (a) the sale of any asset of the institution having a value in excess of five hundred thousand dalasis;
- (b) the creation of a security interest in any asset of the institution in favour of a creditor who extends new credit to the

institution;

- (c) the compromise or release of any claim, if the amount of the claim exceeds five hundred thousand dalasis; or
- (d) the payment of any claim other than a claim in respect of an obligation incurred by the Bank in the exercise of its powers in liquidation before the schedule referred to in paragraph (c) of section 56 has been approved by the Court.

(2) Within a period of six months after the date of the decision of the High Court ordering a compulsory liquidation, the Bank or its authorised agent may terminate -

- (a) any employment contract;
- (b) any contract for services to which the banking institution was a party; or
- (c) any obligation of the banking institution as a lessee of real property, provided that a lessor, who has received ninety days' notice that the Bank is exercising its discretionary powers to terminate the lease, shall have no claim for -
 - (i) rent, other than rent accrued on the date of termination of the lease, or
 - (ii) damages by reason of the termination.

(3) As soon as possible after the decision of the High Court ordering a compulsory liquidation, the Bank or its authorised agent shall-

- (a) take all necessary steps to terminate
-

all fiduciary functions performed by the banking institution;

(b) return all assets and property held by the banking institution as a fiduciary to their owners; and

(c) settle its fiduciary account.

(4) As soon as possible after the decision of the High Court ordering a compulsory liquidation, the Bank or its authorised agent shall send, by registered mail, to all depositors, other creditors, safe deposit box lessees and bailors of property held by the banking institution, at the addresses shown on the banking institution's books, a statement of the nature and amount for which their claims are shown on the banking institution's books.

(5) The statement shall state that any objection to the statement must be filed with the Bank before a specified date not earlier than sixty days after the filing date and shall invite safe deposit box lessees and bailors to withdraw their assets and property.

(6) A safe deposit which has not been withdrawn before the date specified in the statement referred to in subsection (4) shall be opened in the manner prescribed by the Bank.

(7) Any unclaimed fund and property held by the banking institution as a bailor, together with inventory pertaining to the fund, shall be kept by the Bank for one year, unless claimed by the owner before the expiration of the period.

Limitation on
filing of claims
in
compulsory
liquidation

56. Within six months after the last day specified in the notice of a compulsory liquidation referred to in section 52(4) for the filing of objections or within such longer period as may be prescribed by the High Court, the Bank or its authorised agent shall-

(a) reject a claim if it doubts its validity;

- (b) determine the amount, if any, owing to each known depositor or other creditor and the priority class of his or her claim under the provisions of this Act;
- (c) prepare for filing with the Court a schedule of the steps it proposes to take; and
- (d) notify each person whose claim has not been allowed in full and publish once a week for three consecutive weeks, in a newspaper of general circulation in The Gambia, a notice of
 - (i) the date and place where the schedule referred to in paragraph (c) will be available for inspection, and
 - (ii) the date, not sooner than thirty days counting from the date of the third publication of the notice, on which the Bank will file the schedule with the Court.

Objections to
schedule of
proposed
steps
in compulsory
liquidation

57. (1) Within twenty days after the filing of the schedule referred to section 56(c), any depositor, creditor or owner of a banking institution and any other interested party may file with the High Court an objection to any step proposed.

(2) An objection so filed shall be considered by the High Court, on such notice to the Bank or its authorised agent and interested party as the Court may prescribe.

(3) If an objection is upheld, the Court shall direct that an appropriate modification of the schedule be made.

(4) After filing the schedule, the Bank or its authorised agent may, from time to time, make partial distribution to claimants whose claims are undisputed or have been allowed by the Court,

on condition that a proper reserve is established for the payment of disputed claims.

(5) The Bank or its authorised agent shall make final distribution as soon as possible after all objections have been decided upon.

Preferential
payments

58. (1) In a compulsory liquidation of a banking institution, the Bank or its authorised agent shall adhere to the following order of priority in the payment of claims -

- (a) necessary and reasonable expenses incurred by the Bank in applying the provisions of this Act;
- (b) taxes and rates due, whether payable to the Government or to a local authority;
- (c) advances and fees due to the Bank or its authorised agent;
- (d) wages and salaries of officers and employees of the institution for the three months period preceding the effective date of seizure, within the limit of an amount to be determined by the Bank;
- (e) deposits, up to an amount to be determined by the Bank; and
- (f) other deposits.

Cap 95:01

(2) After payment of all claims filed, with interest thereon at a rate to be fixed by the Bank, any remaining claim which was not filed within the time prescribed for the filing of objections under section 56(5) shall be paid.

(3) If the amount available for payment for any class of claims listed under subsection (1) is insufficient to provide payment in full, the claims shall abate *pro rata*.

(4) Notwithstanding the provisions of the Companies Act or any law of The Gambia dealing with bankruptcy or insolvency, the debts of a banking institution of the classes referred to in paragraphs (e) and (f) of subsection (1) shall have priority over any class of claims of general creditors and shall have priority among themselves in the order prescribed under subsection (1).

Final
distribution in
compulsory
liquidation

59. An asset of a banking institution remaining after all claims have been paid on compulsory liquidation shall be distributed among the owners in accordance with their rights and interests.

Unclaimed
funds

60. (1) Unclaimed funds remaining after the final distribution referred to in sections 43, 56 and 58, which are not subject to other provisions under this Part, shall be kept by the Bank for a period of six months, unless claimed by the owner before the expiration of that period.

(2) On the expiration of the period of six months, any funds remaining unclaimed shall be paid to the Companies Liquidation Account at the Treasury.

(3) The Bank shall be issued a certificate for the funds paid into the Treasury, which shall be deemed to be an effectual discharge of the Bank's responsibility to make the payment.

(4) A person claiming to be entitled to any funds paid into the Treasury pursuant to subsection (2) may apply to the Directorate of Treasury for payment thereof, and the Director of Treasury may, if satisfied with the claim, make an order for the payment of the sum due to that person.

(5) A person dissatisfied with the decision of the Director of Treasury in respect of a claim made pursuant to subsection (4) may appeal to the High Court.

Account to High Court and revocation of licence in compulsory liquidation

61. (1) When all the assets of a banking institution have been distributed pursuant to a compulsory liquidation, the Bank shall render an account to the High Court.

(2) On approval by the High Court of the account rendered under subsection (1), the licence of the banking institution shall be revoked and the Bank shall be relieved of any liability in connection with the liquidation.

PART VIII – MISCELLANEOUS

Substitution for depositor's signature

62. (1) Where in a transaction connected with the opening of, deposit into, or withdrawal from, a deposit account, the depositor is unable to sign the relevant document, his or her thumb impression affixed on the document in the presence of an officer of the banking institution shall have the same legal effect as if it were the depositor's signature.

Cap. 30:02

(2) An officer in whose presence a thumb impression is affixed under subsection (1) shall write his or her full name and address on the document and the provisions of the Illiterates' Protection Act shall apply with respect to the document.

Confidentiality of banking

63. (1) Subject to any other law to the contrary, nothing in this Act shall authorize an inquiry to be made into the affairs of any individual customer of a banking institution.

(2) The Bank shall not, unless lawfully required to do so by a court or any other law, reveal to any person an information as to the affairs of any individual customer of a banking institution obtained in the exercise of its regulatory jurisdiction.

(3) The Bank may, in the exercise of its regulatory jurisdiction, at its direction and on obtaining assurances of confidential treatment-

- (a) give to and receive from a bank supervisor of another country, confidential information, subject to the same requirements regarding confidentiality as governing information obtained directly by the Bank;
- (b) enter into agreements with bank supervisors of other countries providing for the exchange of confidential information.

Cap. 95:01

Cap. 6:01

(4) The Bank may publish in whole or in part, at such time as it may determine, any information or data furnished under this Act, but the Bank shall not publish any information or data which might disclose the particular affairs of a banking institution or of a customer of a banking institution unless the consent of every interested party has been obtained in writing prior to the publication.

(5) Notwithstanding the provisions of sub-sections (2) and (4) of this Section, the Bank or any agency duly appointed to serve as the Credit Reference Bureau shall collect and disseminate information to banks and other interested parties pursuant to its duties.

(6) Notwithstanding the provision of any law to the contrary, where evidence of the commission of an offence is to be found in the books or records of a banking institution, the evidence shall not be sought or obtained from the banking institution otherwise than in the manner provided in this Act, under section 384 of the Companies Act or under Rules 38 to 44 of Order 7 of the Rules of the High Court contained in the First Schedule to the Courts Act, as may be appropriate.

Bank holidays

64. (1) The Bank may declare bank holidays on which no banking institution may be opened for business with the public without regard to whether or not the bank holidays are or are not also public holidays.

(2) A banking institution shall remain open for business with the public during hours agreed to by the Bank on all business days, other than bank holidays.

(3) A private obligation which can be fulfilled only at a banking institution and which falls due on any day or at any particular hour on which the institution is not open for business in accordance with subsection (1) or (2) shall be deemed to fall due on the first business day after the expiration of the bank holiday.

Special
reserve
account and
liability
insurance

65. A banking institution shall -

- (a) maintain a special reserve account which is, in the opinion of the Bank, adequate and which is reserved exclusively for the purpose of making good any loss resulting from the negligence or dishonesty of any of its directors, officers or employees;
- (b) insure itself against such loss, to an amount which the Bank deems adequate, with a person approved by the Bank carrying on insurance business or the business of guaranteeing against such loss; or
- (c) undertake such other commitment as the Bank deems acceptable for the purpose of this section.

Unclaimed
funds

66. (1) A banking institution which holds funds presumed abandoned under this section shall report to the Bank on the amount and nature of the funds in such form and at such time as the Bank may prescribe.

(2) For the purpose of this section, the following funds held or owing by a banking institution shall be presumed abandoned -

- (a) any demand, savings or matured time deposit, together with any

interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within the past ten years -

- (i) increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest,
 - (ii) corresponded in writing with the banking institution concerning the deposit, or
 - (iii) otherwise indicated an interest in the demand, savings or deposit as evidenced by a memorandum on file with the banking institution;
- (b) any fund paid towards the purchase of shares or other interest in a banking institution or any deposit made with the banking institution and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within the past ten years-
- (i) increased or decreased the amount of the fund, or presented an appropriate record for the crediting of interest or dividends,
 - (ii) corresponded in writing with the banking institution concerning the fund, or
 - (iii) otherwise indicated an interest in the fund as evidenced by a memorandum on file with the banking institution; and
-

- (c) any fund or other personal property, tangible or intangible, removed from the safe deposit box or any other safekeeping facility on which the lease or rental period has expired due to non-payment of rental charges or other reason, or any surplus amount arising from the sale thereof pursuant to law, that has been unclaimed by the owner for more than ten years from the date on which the lease or rental period expired.

(3) A report received by the Bank under subsection (1) shall be referred to the Minister for such action as he or she shall by regulations prescribe.

Unsafe and
unsound act
or conduct

67. (1) Where, in the opinion of the Bank, a banking institution or a person authorised by a banking institution is committing or engaging or is about to commit or engage in an act or a conduct that is an unsafe or unsound practice in conducting the business of the banking institution, the Bank may direct the banking institution or person to do any or all of the following -

- (a) cease or refrain from doing the act or engaging in the course of conduct;
- (b) perform such acts as, in the opinion of the Bank, are necessary to rectify the situation.

(2) The Bank may, in particular, but without limiting the generality of subsection (1)-

- (a) require the banking institution to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
- (b) impose any limitation on the banking institution's acceptance of deposits, the

granting of credit or the making of investments;

- (c) prohibit the banking institution from soliciting deposits either generally or from persons who are not already depositors;
- (d) prohibit the banking institution from entering into any other transaction or class of transactions; or
- (e) require the suspension from office of any director, officer or other person involved in the act or conduct concerned.

(3) A direction given under this section -

- (a) shall be given by notice in writing and may be varied by a further direction; and
- (b) may be revoked by the Bank by a notice in writing to the banking institution or person concerned.

(4) A person who fails to comply with a direction made by the Bank pursuant to this Section, and of which he or she has received notice in writing commits an offence and is liable on conviction to a term of imprisonment of not more than three years or to a fine not exceeding twenty thousand dalasis or to both such fine and imprisonment.

Immunity to liability in damage

68. The Bank or a member of its Board of Directors or any of its officers or other staff shall not be liable in damages for any act or omission in the discharge or purported discharge of the functions of the Bank under this Act unless it is shown that the act or omission was in bad faith.

Offences by a body corporate

69. Where a person who commits an offence is a body corporate, every director, or any manager, secretary or other officer of the body corporate is guilty of the offence, if it is proved that the offence was committed with the consent or connivance,

or was attributable to the negligence, of the director, manager, secretary or person, and is liable on conviction, except otherwise provided in this Act, to a fine of not less than twenty thousand dalasis or imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

Recovery of pecuniary penalties imposed

70. (1) A pecuniary penalty not specifically designated as fines, incurred under or imposed by this Act, may be sued for, determined, enforced and recovered by civil proceedings in a Magistrate Court, which court is hereby vested with necessary jurisdiction for that purpose.

(2) A Magistrate Court shall have jurisdiction under this section notwithstanding that the penalty outstanding exceeds the civil jurisdiction of the Court.

Regulations, guidelines and orders by the Bank

71. (1) The Minister may make such regulations as may be required for giving effect to the provisions of this Act, including the provision of penalties for breach of any of the regulations.

(2) Without prejudice to the provisions of subsection (1), the Minister may, by regulations-

(a) prescribe that any person or class of persons is exempt from the whole or any part of this Act for such period of time and on such terms as the Minister and the Bank shall agree; and

(b) vary any penalty imposed for an offence under this Act.

(3) The Bank may-

(a) issue such guidelines, interpretation bulletins or other regulatory statements as the Bank may consider necessary or desirable for the administration of this Act and the regulations; and

(b) prescribe penalties for violation of the guidelines, interpretation bulletins or

other regulatory statements by persons who have received written notice of them from the Bank.

Repeal of Act
No. 8 of 2003
and savings

72. (1) The Financial Institutions Act, 2003 is hereby repealed.

(2) Notwithstanding subsection (1)-

- (a) all regulations, orders, rules, notices or directives made or given under the repealed Act, and in force at the commencement of and not inconsistent with this Act shall be deemed to have been made or given under this Act and shall continue in force until other provisions are made by virtue of this Act; and
- (b) any proceedings commenced before the commencement of this Act shall be proceeded with as if this Act had not been passed.

PASSED in the National Assembly this Ninth day of July in the year of Our Lord Two Thousand and Nine.

M. A. Sise

Ag. Clerk of the National Assembly.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed in the National Assembly, and found by me to be a true and correct copy of the said Bill.

M. A. Sise

Ag. Clerk of the National Assembly.
