

FINANCIAL INSTITUTIONS ACT, 1975

No. 8



of 1975

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An Act to provide for the licensing, control and regulation of Financial Institutions, and for matters incidental thereto

Date of Assent : 22.4.75

Date of Commencement : On Notice

ENACTED by the Parliament of Botswana.

PART I. *Preliminary*

1. This Act may be cited as the Financial Institutions Act, 1975, and shall come into force on such date as the Minister may, by notice published in the Gazette, appoint:

Short title and commencement

Provided that the Minister may, by the same or different notices, appoint different dates for different provisions of the Act to come into operation.

2. In this Act, unless the context otherwise requires --
“affiliate”, in respect of any financial institution, means any company, association, syndicate, partnership or other body of persons, corporate or unincorporate, in which 20% or more of any class of voting shares or other voting participation is directly or indirectly owned or controlled by such financial institution, or is held by it with power to vote;

Inter-pretation

“Bank” means the Bank of Botswana established under the Bank of Botswana Act, 1975;

“banking business” means the business of receiving funds from the public or from members thereof, whether within or without Botswana, through the acceptance of money deposits payable upon demand or after a fixed period or after notice, or any similar operation through the sale or placement of bonds, certificates, notes or other securities, and the use of such funds either in whole or in part, whether within or without Botswana, for loans, advances, investments or any other operation authorized either by law or by customary banking practice, for the account and at the risk of the person doing such business;

“director” includes any person, by whatever title he may be referred to, carrying out or empowered to carry out substantially the same functions in relation to the direction of a financial institution as those carried out by a director of a company under the Companies Proclamation, 1959, and includes any person occupying the position of alternate director, by whatever name he may be called;

71 of 1975

“financial institution” means any person carrying on banking business;

“foreign financial institution” means any financial institution, incorporated or otherwise, other than a local financial institution, doing business in Botswana whether such business be banking or other business:

Provided that, for the purpose of this Act, unless the context otherwise requires, all branches and offices of a foreign financial institution in Botswana shall be deemed to be one financial institution;

“licensed” means licensed under this Act;

“local financial institution” means a financial institution incorporated under the Companies Proclamation, 1959;

“place of business” means any branch, office or agency (including a mobile agency) of a financial institution in Botswana open to the public;

“principal officer” means the manager or other person in Botswana, by whatever title he may be referred to, chiefly responsible for the management of the affairs of a financial institution;

“unsecured”, in relation to loans, advances or credit facilities, means loans, advances or credit facilities granted without security; or, in the case of loans, advances or credit facilities granted against security, any part of such loans, advances or credit facilities which at any given time exceeds the market value of the assets comprising the security given, or which exceeds the valuation approved by the Bank whenever it deems that no market value exists for such assets.

Act not to
apply

3. The provisions of this Act shall not apply to –

Cap. 74:05

(a) the Bank, except insofar as this Act confers upon the Bank powers to perform functions set forth herein;

36 of 1961

(b) the National Development Bank established under the National Development Bank Act;

41 of 1962

(c) building societies registered under the Building Societies Proclamation, 1961;

(d) co-operative societies registered under the Co-operative Societies Law, 1962;

Cap. 56:03

(e) the Post Office Savings Bank established under the Post Office Savings Bank and Savings Certificates Act;

21 of 1969

(f) insurers registered under the Insurance Act, 1969;

(g) any international financial organization of which the Government is a member;

Provided that the Minister, acting in accordance with the advice of the Bank, may, by order published in the Gazette, make applicable to any of the aforesaid any of the provisions of this Act under such conditions and for such period as may be prescribed.

4. (1) The Minister may, acting in accordance with the advice of the Bank, by order published in the Gazette, temporarily suspend the application of any provision of this Act in respect of any person for such period, not exceeding 90 days, and under such terms and conditions as may be prescribed whenever such suspension is, in his opinion, in the public interest:

Suspension
and
exemption

Provided that –

- (i) any period prescribed hereunder may be extended from time to time by resolution of the National Assembly for such further period as may be specified in such resolution; and
- (ii) no suspension under this subsection shall exceed 12 months in total duration.

(2) The Minister may, acting in accordance with the advice of the Bank, exempt in writing any person from the provisions of section 16 for such period and under such conditions as he may determine, whenever such exemption is, in his opinion, in the public interest.

(3) The Minister may, acting in accordance with the advice of the Bank, in writing, exempt any foreign financial institution not carrying on banking business in Botswana from all or any of the provisions of this Act, for such period and under such conditions as he may determine whenever such exemption is, in his opinion, in the public interest.

PART II. *Licences*

5. (1) Except under the authority and in accordance with the terms and conditions of a valid licence –

Prohibition
against
transaction of
business by
unlicensed
person or
financial
institution

- (a) no person shall transact any banking business in Botswana;
- (b) no local financial institution shall transact any business outside Botswana; and
- (c) no foreign financial institution shall transact any business in Botswana.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine of R500 in respect of each day on which the contravention continues.

6. (1) Where the Bank has reason to believe that a person is transacting business in contravention of section 5 or acting as an agent within the meaning of section 16 without being validly licensed therefor, it may call for and inspect, or cause to be inspected, all books, minutes, accounts, cash, securities, records, vouchers and other documents in such person's possession or custody in order to ascertain whether such person is so transacting banking business or so acting.

Investigation
of persons
suspected of
carrying on
banking
business

(2) Any person who, having been so called upon by the Bank under subsection (1), fails or refuses to make available for inspection all such books, minutes, accounts, cash, securities, records, vouchers and other documents, shall be guilty of an offence and liable to a fine of R1 000 and to imprisonment for one year.

Repayment of monies or securities by unlicensed financial institution, etc.

7. (1) Where any person transacts business in contravention of section 5 or acts as an agent in contravention of section 16, and such person holds moneys or other property obtained by transacting such business or so acting whilst not licensed so to do, the Bank may make application to the High Court for directions in respect of the disposition of such moneys or property.

(2) The provisions of subsection (1) shall be in addition to and not in derogation of any criminal liability of such person in accordance with this Act or any other written law.

(3) In giving directions under subsection (1), the High Court shall give such directions as will, so far as is possible, ensure the speedy and efficient return of such moneys or property to the depositor or owner thereof and may, without prejudice to the generality of the foregoing, direct that such monies or property be transferred to the custody of the Bank for distribution to the depositors or owners concerned.

Use of certain words

8. (1) Save with the consent of the Bank, which may impose such conditions as it thinks fit, no person, other than a licensed financial institution, its agent or a person licensed under section 16, shall use in the name, description or title under which such person transacts business in Botswana the word "bank", or any of its derivatives, or any literal translation of any such word or any other word or combination of words indicating the transaction of banking business or make or continue to make any representation indicating the transaction of banking business in any bill-head, letter paper, notice, advertisement or in any other manner whatsoever for the purpose of transacting business in Botswana.

(2) The provisions of subsection (1) shall not apply where the use of such word –

- (a) is for the sole use of forming and incorporating a company with a view to applying for a licence under this Act;
- (b) is included in the title of a staff association or similar organization of a financial institution.

(3) Subject to subsection (2), any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine of R1 000.

Names of financial institutions

9. (1) A licence shall not be issued to any financial institution under a name which is, in the opinion of the Bank, likely to mislead the public.

(2) No financial institution shall, without the written approval of the Bank, use or refer to itself by, or transact business under, a name other than that under which it is licensed.

(3) The Bank may, upon application being made in writing, and subject to such conditions as it may impose, permit the name under which a licence has been issued to be amended.

(4) Where the Bank is of the opinion that the name under which a financial institution is licensed is likely to mislead the public, it may serve notice on that institution requiring it to amend such name within such period as may be specified in the notice, and at the expiration of such period that financial institution shall cease to use, or refer to itself by, or transact business under such name, and shall take such steps as may be necessary, whether under this Act or any other written law, to amend such name.

(5) Any financial institution that uses, or refers to itself by, or transacts business under, a name other than that under which it is licensed, or which has been approved by the Bank under subsection (2), or, after the expiration of the specified period, a name which it has been required to amend under subsection (4), shall be guilty of an offence and liable to a fine of R500 for each day on which the offence continues.

10. (1) No local financial institution shall be granted a licence unless it is incorporated as a company under the Companies Proclamation, 1959, and limited by share capital.

Financial institutions to be incorporated

(2) All shares endowed with voting rights in the share capital of a local financial institution shall be in registerable form.

(3) No foreign financial institution shall be granted a licence unless it is registered as an external company under the Companies Proclamation, 1959.

(4) In addition to the register required to be kept under section 88 of the Companies Proclamation, 1959, every local financial institution shall maintain a register, in such form as the Bank may approve, of the current beneficial owners of all shares endowed with voting rights in the share capital of such institution and no transfer of such shares shall be valid until it has been recorded in such register.

(5) The register required to be maintained under subsection (4) shall be kept open for inspection by members of the public at the institution's principal place of business and without charge during the institution's normal hours of business.

11. (1) An application for a licence by a financial institution shall be made in writing to the Bank and shall contain or shall be accompanied by –

Application for and granting of licences

(a) a certified copy of the memorandum and articles of association of the applicant, or, in the case of a foreign financial

institution, such documents of similar effect regulating its affairs, or such other documents as the Bank may require to establish the manner of control and management of the institution, and, in the case of a public company in formation, a copy of its prospectus or similar document required under the law relating to the formation of that company, and the name, nationality and address of every subscriber thereto;

- (b) a statement of the address of the head office of the applicant and its registered address, and the name, nationality and address of its chairman, of every director and of its principal officer;
- (c) a copy of the balance sheet of the applicant as at a date within 90 days prior to the date of its application;
- (d) full particulars of the business the applicant proposes to carry on, and of the manner in which it proposes to carry on such business;
- (e) the location of the applicant's principal place and other places of business in Botswana and, in the case of a local financial institution outside Botswana, where it proposes to carry on its activities, and a schedule of places to be served by any mobile agency;
- (f) full particulars of any shareholding in the institution giving the holder thereof 20% or more of the voting rights or power to appoint any of the directors of the institution.

(2) In the case of an applicant who is a foreign financial institution, such applicant shall, in addition to the documents required to be lodged in accordance with subsection (1), lodge with the Bank –

- (a) a written certificate of designation, which may be changed from time to time thereafter by the lodging of a new certificate of designation, specifying the name and address of the officer, agent, or other person in Botswana upon whom all process in any action or proceeding against it on a cause of action arising out of a transaction with its places of business in Botswana may be served with the same force and effect as if such institution were organized in Botswana and had been lawfully served with process therein, and to whom any such process served on the Bank under paragraph (b) shall be forwarded; and
- (b) a duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing the Bank its true and lawful agent upon whom any process referred to in paragraph (a) may be served with the same force and effect as if such institution were organized in Botswana and had been lawfully served with such process therein.

(3) The Bank may require an applicant for a licence to submit such additional information or documents as it may consider necessary or desirable.

(4) An application and every document submitted in accordance with subsection (1) or (3) shall be signed by the principal officer of the applicant, or, if the applicant is a company in formation, by the subscribers to the memorandum and articles of association.

(3) An applicant for a licence shall, at the time of lodging the application, pay to the Bank the investigation fee specified in the Schedule.

(6) (a) In considering an application for a licence, the Bank shall conduct such investigation as it may deem necessary to ascertain the validity of the documents submitted under subsection (1) or (2), the financial status and history of the applicant, and the character and experience of any person concerned with the management or control of the applicant, the adequacy of its capital structure, the convenience and needs of the community it intends to serve, the earning prospects afforded by the area primarily to be served, the prospective effect that the opening of a financial institution may have on existing financial institutions in such area, and the public interest.

(b) No financial institution shall be granted a licence unless it fulfils the minimum capital requirements specified in section 17 (1).

(7) In granting a licence under this section, the Bank may impose conditions to be complied with by the licensee and, without prejudice to the generality of the foregoing, such conditions may include conditions as to the place or places at which the licensee shall carry on business, or the services or facilities that the licensee shall provide or refrain from providing.

(8) In refusing to grant a licence under this section the Bank shall furnish to the applicant a written statement of the reasons for its decision:

Provided that, if the Minister certifies to the Bank that the granting of such licence is not in the public interest, such certification shall be final and shall not be questioned in any court, and no other reason need be furnished to the applicant.

12. (1) The validity of a licence issued to a financial institution shall be of indefinite duration.

(2) It shall be a condition of every such licence that –

(a) the licensee transacts business at and only at the places specified therein; and

(b) the licensee informs the Bank of any change in the particulars supplied in its application for a licence within 28 days of such change.

Duration of
licence,
conditions
and annual
fee

(3) The Bank may amend the terms and conditions of any such licence on every anniversary of the issue thereof.

(4) The annual fee specified in the Schedule in respect of a licence shall be paid by the licensee to the Bank within 28 days prior to the anniversary of the issue of such licence and, if unpaid within the period aforesaid, shall be a debt due to the Bank and recoverable in a court of competent jurisdiction.

Places of
business

13. (1) No financial institution shall, without the prior consent in writing of the Bank, transact business in Botswana at any place or places of business other than those specified in its licence, or close an existing place of business in Botswana.

(2) No local financial institution shall, without the prior consent in writing of the Bank, transact business outside Botswana at any place or places of business other than those specified in its licence, or close an existing place of business outside Botswana.

General
conditions

14. (1) Without the prior written approval of the Bank, no person may acquire either directly or indirectly any interest in a local financial institution which would confer upon him a voting right exceeding 20% of the total or any right to appoint directors, and, in considering any application for such approval, the Bank may call for such information as it considers necessary.

(2) Without the prior written approval of the Bank, no local financial institution shall –

- (a) enter into a merger or consolidation;
- (b) transfer or otherwise dispose of the whole or any part of its property whether in or out of Botswana other than in the ordinary course of its business;
- (c) effect a reduction of its paid-up share capital; or
- (d) amend its memorandum or articles of association.

(3) Without the prior written approval of the Bank, no foreign financial institution shall –

- (a) transfer or otherwise dispose of the whole or any part of its property in Botswana other than in the ordinary course of its business; or
- (b) effect a reduction of its assigned capital in Botswana.

Revocation of
licence of
financial
institution

15. (1) The Bank may revoke the licence of any financial institution which –

- (a) fails to commence operations within a period of one year following the grant of the licence or such other period as may be specified therein;
- (b) exceeds the terms of the licence or fails to comply with any conditions thereof or fails to comply with any requirement of the Bank under section 37 (a);

- (c) contravenes any of the provisions of this Act; or
- (d) ceases to carry on the business for which it is licensed.

(2) Before revoking the licence of a financial institution, the Bank shall give such institution not less than 28 days' notice of its intention so to do, and if such institution fails within such period to show cause satisfactory to the Bank why such licence should not be revoked, the Bank may then revoke such licence.

(3) Notwithstanding the provisions of subsection (2), the Bank may, without waiting for the expiration of the 28 day period of notice, apply to the High Court for an injunction to cause the financial institution to suspend all or any part of the business being conducted by such institution, and, upon good cause shown, the High Court may grant such injunction.

(4) When the Bank has revoked a licence, it shall, as soon as possible thereafter, publish or cause to be published in the Gazette, notice of the revocation, and in such other manner as is, in the opinion of the Bank, likely to inform the public of such revocation.

16. (1) For the purposes of this section –

Licensing
of agents, etc.

- (a) “investment institution” includes any person a substantial share of whose business includes the receiving of funds from the public or from members thereof through the acceptance of money deposits or any similar operation through the sale or placement of bonds, certificates, notes, or other securities, or the making of investments, loans, advances or any similar operation through the granting of credit or the acquisition of claims, for the account and at the risk of the person doing such business;
- (b) “agent of a foreign financial or investment institution” means any person who acts as agent of a financial or investment institution not licensed in Botswana, or represents any such institution or undertakes any activity on its behalf in Botswana, other than in the course of legal proceedings.

(2) No person, other than a licensed financial institution, shall serve as agent of a foreign financial or investment institution except under the authority and in accordance with the terms and conditions of a valid licence issued under this section for such purpose.

(3) In applying for a licence under this section, or for a renewal thereof, the applicant shall submit in writing to the Bank full particulars of –

- (a) his authority to represent or undertake any activity on behalf of such institution;
- (b) the type of business he proposes to carry on; and
- (c) the manner in which, and the places at which, he proposes to carry on such business.

(4) A licence under this section or a renewal thereof may be granted by the Bank upon payment to the Bank of the fee prescribed in the Schedule and shall be valid for such period as may be specified therein.

(5) In granting or renewing a licence under this section the Bank may impose such conditions as it considers necessary or desirable.

(6) A licence granted or renewed under this section may be revoked by the Bank if the licensee –

- (a) exceeds the terms of his licence or fails to comply with the conditions thereof or fails to comply with any requirement of the Bank under this Act;
- (b) contravenes any of the provisions of this Act;
- (c) fails to notify the Bank of any change in the particulars supplied to the Bank in his application for a licence within 28 days of such change;
- (d) is declared bankrupt or makes a composition with his creditors, whether within Botswana or abroad; or
- (e) is convicted of any offence involving dishonesty or fraud, whether committed within Botswana or abroad.

(7) Before revoking a licence under subsection (6) the Bank shall give the licensee not less than 28 days' notice of its intention so to do and shall afford him reasonable opportunity to show cause, satisfactory to the Bank, why such licence should not be revoked.

(8) Notwithstanding subsection (6), the Bank may, without waiting for the expiration of the 28 days' period of notice, apply to the High Court for an injunction to cause the licensee to suspend all or any part of the business being conducted by him, and upon good cause shown the High Court may grant such injunction.

(9) When the Bank has revoked a licence under this section, it shall as soon as possible publish or cause to be published in the Gazette, notice of the revocation, and in such other manner as is, in the opinion of the Bank, likely to inform the public of such revocation.

(10) Any person acting as an agent within the meaning of this section without a valid licence therefor shall be guilty of an offence and liable to a fine of R500 for each day for which the offence continues.

PART III. *Financial Requirements and Limitations*

Capital
requirements

17. (1) A financial institution shall at all times maintain, unimpaired paid-up share capital in the case of a local financial institution, or unimpaired assigned capital in the case of a foreign financial institution, equal to not less than such minimum amount as the Bank may determine from time to time in respect thereof:

Provided that –

- (i) such minimum shall in no case be less than the greater of R50 000, or 5% of such institution's deposit and similar liabilities to the public in Botswana in terms of the most recent balance sheet prepared in accordance with section 27 (1), nor more than the greater of R200 000 or 20% of such deposit and similar liabilities; and
- (ii) an institution required by a change in the minimum determined by the Bank under this subsection to augment its capital shall be permitted a reasonable period of time, being not less than 12 months, within which to comply.

(2) When the capital required of a financial institution under subsection (1) exceeds, in the case of a local financial institution the amount of its paid-up share capital, or, in the case of a foreign financial institution its assigned capital, such institution may provisionally, subject to the approval of the Bank and for such period as the Bank may approve, include in the computation of its capital any unimpaired balance in its Reserve Account in excess of the cumulative balance required to have been transferred to such account in accordance with section 18 (2).

18. (1) Every financial institution shall establish and at all times maintain a Reserve Account which shall be neither reduced nor impaired save as is provided in this section.

(2) A financial institution shall transfer to its Reserve Account, each financial year, a sum equal to not less than 25% of its net profits in such year after tax until the balance in the Reserve Account is equal to its minimum required capital.

(3) Whenever the unimpaired balance in the Reserve Account exceeds the cumulative balance required to have been transferred to such account in accordance with subsection (2), the Reserve Account, subject to the approval of the Bank, may be reduced to not less than such required cumulative balance.

(4) Notwithstanding the provisions of subsection (1), the impairment of a Reserve Account may be permitted when it is the only means of preventing an impairment of the capital, in which case the Bank shall be notified within 30 days of any such impairment.

(5) Nothing in this section shall be so construed as to prevent any financial institution from making, at any time, transfers to its Reserve Account in excess of or in addition to the amounts required to be transferred under subsection (2).

Restriction on declaration of dividend, etc.

19. No financial institution shall at any time declare credit or pay any dividend or make any other transfer from profits, other than a transfer required under section 18 (2), until all impairment of its paid-up share capital or its assigned capital, as the case may be, or of the cumulative balance required to have been transferred to its Reserve Account under section 18 (2) has been removed.

Provisions to be made for certain items

20. In making the calculations necessary to ascertain that a financial institution is complying with the requirements of sections 17 and 18 –

(a) provision shall be made to the satisfaction of the Bank, in consultation with the auditor appointed under section 25 (1) or (4), for the following items –

(i) depreciation of assets, including accumulated depreciation, and bad or doubtful debts (to be calculated at least once in each calendar year), including bad debts not yet written off;

(ii) operating and accumulated losses;

(iii) preliminary expenses representing expenses relating to organization or extension of the purchase of business or goodwill, and including underwriting commission;

(iv) the value of any assets lodged or pledged to secure liabilities incurred under any written law where all the liabilities (including contingent liabilities) so secured are not included in the calculation and where the effect of such lodging or pledging is that such assets are not available for the purpose of meeting the liabilities of the institution to the public; and

(v) such other items as may be prescribed;

(b) paid-up share capital, or assigned capital, as the case may be, and liabilities shall be of such kinds and computed in such manner as may be determined by the Bank.

Specified investments to be maintained

21. (1) The Minister may, on the advice of the Bank, by notice published in the Gazette, direct that every financial institution of a specified class or classes shall maintain in Botswana such investments as may be specified in such notice of an amount to be determined as a percentage, not exceeding 10%, to be specified in the notice, of its deposit and similar liabilities to the public as shown in its last preceding monthly statement furnished to the Bank under section 28 (a):

Provided that every such notice shall afford every institution required to maintain such specified investments a reasonable period, being not less than 3 months, in which to comply.

(2) For the purposes of subsection (1) the Minister shall specify only securities which are issued or guaranteed by Government or

securities issued by a statutory corporation or a corporation wholly owned by Government and approved by the Bank for the purposes of this section.

22. (1) The Bank may, with the approval of the Minister and by notice published in the Gazette, direct that every financial institution of a specified class or classes shall maintain minimum local assets of an amount to be determined as a percentage, not exceeding 100%, of the aggregate value of such institution's

Minimum
local assets
to be
maintained

- (a) deposit and similar liabilities to the public, as shown in the last preceding quarterly statement furnished to the Bank under section 28 (b); and
- (b) minimum required paid-up share capital or assigned capital, as the case may be, and Reserve Account:

Provided that no such institution shall be required to augment its holdings of local assets during any month by an amount in excess of 10% of the aggregate value referred to in this section.

(2) For the purposes of this section "local assets" means assets consisting of loans to, investments in, and deposits with residents of Botswana and such other assets, situate in Botswana, as the Bank may, in the notice issued under subsection (1), approve.

23. (1) (a) The Bank may, by notice delivered to the principal place of business in Botswana of every financial institution affected thereby, direct that every financial institution of a specified class or classes shall maintain liquid assets amounting to not less than a determined percentage or percentages of the total, or specified categories, of its deposit and similar liabilities to the public as shown in the last preceding monthly statement furnished to the Bank under section 28 (a):

Minimum
liquid assets
to be
maintained

Provided that the Bank shall not, without the prior approval of the Minister, require a financial institution to maintain, under this section, a total amount of liquid assets exceeding 35% of such deposit and similar liabilities.

(b) The distribution of the total amount required to be held under this section of the various classes or subclasses of liquid assets shall, unless the Bank otherwise directs, be made at the discretion of each financial institution.

(2) For the purposes of this section, "liquid assets" means freely transferable assets, unencumbered by any charge or lien whatsoever, of the following classes –

- (a) primary reserve assets comprising –
 - (i) notes and coins that are legal tender in Botswana;
 - (ii) balances held with the Bank; and
- (b) secondary reserve assets comprising –

- (i) net balances withdrawable on demand and money at call at any licensed financial institution in Botswana;
- (ii) Treasury bills and other securities issued by the Government and maturing within 370 days;
- (iii) net balances withdrawable on demand and money at call or at no more than 31 days' notice at such financial institutions, denominated in such currencies and located in such countries and available in accordance with such terms as the Bank may approve;
- (iv) negotiable instruments of such types as the Bank may approve bearing at least two good signatures, payable within a period of 186 days and drawn on such places, and denominated in such currencies, as the Bank may approve;
- (v) Treasury notes or bills issued by the governments of such countries, and denominated in such currencies, as the Bank may approve, and maturing within 370 days;
- (vi) such other assets as the Bank may, from time to time, approve.

Limitations
on specified
operations
and activities

24. (1) (a) Without the prior written approval of the Bank, acting after consultation with the Minister, no financial institution shall, directly or indirectly, grant to any person any loan, advance or credit facilities, or give any financial guarantee or incur any other liability on behalf of such person, so that the total value of such loans, advances or credit facilities to, and financial guarantee or other liabilities on behalf of, such person is at any time more than 10% of the unimpaired paid-up share capital or assigned capital and unimpaired balance in the Reserve Account of such financial institution:

Provided that the said limitation shall not apply in respect of the foregoing transactions if such transactions –

- (i) are upon, or with respect to, drafts or bills of exchange drawn in good faith against existing assets, or upon bankers' acceptance or bills of exchange of the kinds and maturities authorized by the Bank, or upon other commercial or business paper owned by the person discounting the same with or selling the same to such financial institution and endorsed without limitation or guaranteed by such person;
- (ii) are granted against security, covered by insurance to such extent and in such manner as the Bank may approve, having an ascertained market value, or otherwise having a value as security accepted in good faith by an officer of such financial institution, of at

least 15% more than the amount of the obligations secured thereby;

- (iii) represent loans, advances or credit facilities to, or guaranteed by, Government;
- (iv) represent such loans, advances or credit facilities to, or guaranteed by, such foreign governments as the Bank may specify for the purposes of this section; or
- (v) represent loans, advances or credit facilities guaranteed by persons who, in the opinion of the financial institution, are of established credit worthiness.

(b) If the Bank determines that the interests of a group of two or more persons are so interrelated that they should be considered as a unit, then, for the purposes of paragraph (a), the total indebtedness of that group shall be combined and deemed to be in respect of a single person:

Provided that where the Bank makes a determination under this paragraph whereby the combined indebtedness exceeds the limitation provided in paragraph (a), the financial institution concerned shall be permitted to dispose of the excess of such indebtedness within such reasonable period as the Bank shall determine.

(2) No financial institution shall, directly or indirectly, grant any loans, advances or credit facilities against the security of its own shares or, except with the prior approval in writing of the Bank, those of any other financial institution.

(3) No financial institution shall, directly or indirectly, except with the prior approval in writing of the Bank, grant or permit to be outstanding unsecured loans, advances or credit facilities of an aggregate amount in excess of R50 000 –

- (a) to its directors, or any of them, whether severally or jointly together with any other person;
- (b) to any person in which it or any one or more of its directors is interested as owner, shareholder, director, partner, manager, agent or member; and
- (c) to any person of whom or of which it or any one or more of its directors is a guarantor.

(4) No financial institution shall, directly or indirectly, grant or permit to be outstanding to any of its officers (other than a director) or employees unsecured loans, advances or credit facilities which in aggregate amount exceed one year's emoluments of such officer or employee.

(5) No financial institution shall, directly or indirectly, whether on its own account or on a commission basis, engage in the wholesale or retail trade, including the import or export trade, except insofar

as may exceptionally be necessary in the course of banking business or in the course of the satisfaction of debts due to it or in the course of any trusteeship or administration of the estate of a deceased person.

(6) No financial institution shall, directly or indirectly, acquire or hold any part of the share capital of any financial, commercial, agricultural, industrial or other undertaking except such shareholdings as may be acquired in the course of the satisfaction of debts due to it, which shareholdings shall, however, be disposed of at the earliest suitable moment:

Provided that this subsection –

(i) shall not prevent the purchase and sale of shares or stock for trust account or upon the order and for the account of a customer without recourse; and

(ii) shall not apply –

(a) to any shareholding in any company approved by the Bank and set up for the purpose of insuring deposits or of promoting the development of a money market or securities market in Botswana or of improving the financial mechanism for the financing of economic development;

(b) to any shareholdings in other undertakings the aggregate value of which does not at any time exceed 25% of the sum of its unimpaired paid-up or assigned capital and unimpaired balance in its Reserve Account;

(c) to any shareholdings acquired in the course of the administration of the estate of a deceased person.

(7) (a) No financial institution shall, directly or indirectly, purchase, acquire or take on lease immovable property except as may be necessary for the purpose of conducting its business, including provision for future expansion or housing its staff or in such other circumstances as the Bank may approve.

(b) In respect of any immovable property held or leased by a financial institution at the commencement of this Act for purposes other than those referred to in paragraph (a), the Bank shall allow such financial institution a reasonable period, being not less than 3 years, in which to comply with this paragraph.

(c) A financial institution may secure a debt on any immovable property and in default of repayment may acquire such property for resale as soon as possible thereafter.

(8) Any financial institution which, prior to the commencement of this Act, has entered into any transaction incompatible with the provisions of subsections (1) to (7) inclusive, shall, within 3 months after the commencement of this Act, submit a statement thereof to

the Bank and shall liquidate all such transactions within such period as the Bank shall determine.

PART IV. *Audit, Information and Examination*

25. (1) Every financial institution shall appoint annually an independent auditor, satisfactory to the Bank, whose duty shall be to report to the shareholders of a local financial institution or to the head office of a foreign financial institution upon the annual balance sheet and profit and loss account, and in every such report such auditor shall state whether in his opinion the balance sheet and profit and loss account are properly drawn up, whether they exhibit a true and fair statement of the financial institution's affairs and, if such auditor has called for explanations or information from the directors, officers or agents of the financial institution, whether such explanations or information were supplied and were satisfactory.

(2) Every auditor appointed under subsection (1) or (4) shall have the right of access at all times to such books, accounts, vouchers and securities of that institution, and shall be entitled to require from the officers, servants and agents of that institution such information and explanations as he requires correctly to perform his duties as an auditor.

(3) (a) The report of every auditor appointed under subsection (1) or (4) of a local financial institution shall be read together with the reports of the board of management at the annual meeting of the shareholders of such institution.

(b) The report of every auditor appointed under subsection (1) or (4) of a foreign financial institution shall be transmitted to the head office of such institution.

(c) A copy of every such auditor's report shall be sent to the Bank.

(4) If a financial institution fails to appoint an auditor in accordance with the provisions of subsection (1), the Bank may appoint an auditor whose remuneration shall be paid by the financial institution.

(5) None of the following persons shall be qualified for appointment under this section as auditor of a financial institution --

- (a) a director, officer or servant of that institution or any affiliate;
- (b) a person who is a partner of a director, officer or servant of that institution or any affiliate;
- (c) a person who is an employee or employer of a director, officer or servant of that institution or any affiliate;
- (d) a body corporate;
- (e) a person who, by himself, or his partner or his employee, regularly performs the duties of secretary or book-keeper to that institution or any affiliate; or

(f) a person who either directly or indirectly has any interest in that institution otherwise than as a depositor.

Financial records

26. Every financial institution shall keep such records in Botswana as are necessary to exhibit clearly and correctly the state of its affairs and to explain its transactions and financial position and to enable the Bank to determine whether the institution has complied with the provisions of this Act, and it shall preserve every such record for a period of at least 5 years as from the date of the last entry therein.

Annual accounts

27.- (1) Not later than 3 months after the expiration of its financial year, every local financial institution shall prepare, in respect of all business transacted by it in that year, and every foreign financial institution shall prepare, in respect of all business transacted through its places of business in Botswana in that year, a balance sheet and profit and loss account as of the last working day of that year in such form as the Bank may approve, audited in accordance with section 25 and under the joint signatures of the principal officer and majority of directors, in the case of a local financial institution, or of the principal officer and the next most senior officer in Botswana in the case of a foreign financial institution.

(2) Every financial institution shall –

(a) within 14 days after the preparation of a balance sheet and profit and loss account in accordance with the provisions of subsection (1) –

(i) send copies thereof to the Bank; and

(ii) publish a copy of such balance sheet in such manner as the Bank may direct; and

(b) exhibit throughout the year in a conspicuous position in each of its places of business in Botswana, other than a mobile agency, a copy of its latest such balance sheet.

Returns

28. Every financial institution shall send to the Bank in duplicate in such form as the Bank may determine –

(a) not later than 21 days after the last day of each month a statement showing the assets and liabilities of its places of business in Botswana at the close of business on the last business day of that month;

(b) not later than 40 days after the last day of each quarter ending on 31st March, 30th June, 30th September and 31st December, a statement giving an analysis of its assets and liabilities in Botswana at the close of the last business day of that quarter.

Bank may call for information

29. (1) The Bank may call for any information which it may require for the purpose of the administration of this Act from any financial institution about its operations in Botswana or those of its

affiliates in Botswana and, additionally, in the case of a local financial institution, about its operations and those of its affiliates abroad.

(2) Any financial institution which fails to supply any information called for by the Bank under subsection (1) or which supplies any false or misleading information shall be guilty of an offence and liable to a fine of R5 000.

30. Where under this Act any information or document is required to be supplied to the Bank within a stated period the Bank may, at the request of a financial institution, from time to time extend such period. Extension of time

31. (1) The Bank may, from time to time, examine or cause to be examined under conditions of secrecy the affairs of any financial institution in order to determine whether it is in a sound condition and whether the requirements of this Act have been and are being complied with in the administration of its affairs. Examinations

(2) For the purpose of determining the condition of a financial institution and its compliance with this Act in the course of an examination undertaken pursuant to subsection (1), the Bank may examine or cause an examination to be made of any of its affiliates in Botswana to the same extent and under the same conditions that an examination may be made of the financial institution.

(3) The Bank shall examine or cause an examination to be made to the same extent and under the same conditions that an examination may be made under subsection (1) where application is made by one-fifth of the total number of depositors, or by any number of depositors holding not less than one-third of the liabilities to the public in Botswana of that institution:

Provided that the applicants shall submit to the Bank such evidence as it may consider necessary to justify such examination.

32. (1) Every financial institution and every affiliate of such institution shall, for the purposes of an examination conducted under section 31, produce for the inspection of any examiner duly authorized by the Bank to examine their affairs, at such times and in such places as the examiner may specify (being times and places which, in the opinion of the examiner, would not be detrimental to the conduct of the normal daily business of such institution or affiliate), all books, minutes, accounts, cash, securities, documents, records and vouchers in their possession or custody, relating to their business, and shall supply all information concerning their business as may reasonably be required by such examiner within such time as the examiner may specify. Production of records and information for examiner

(2) If any books, minutes, accounts, cash, securities, documents, records and vouchers are not produced or information is not supplied in accordance with subsection (1), the defaulting financial institution or affiliate, or both, as the case may be, shall be guilty of an

offence and liable to a fine of R200 in respect of every day during which the default continues.

(3) If any information supplied or item produced under subsection (1) is false in any material particular, the financial institution or affiliate, or both, as the case may be, shall be guilty of an offence and liable to a fine of R5 000.

(4) As soon as possible after the conclusion of an examination, the Bank shall forward a summary of the examiner's report containing its salient points to the financial institution or affiliate concerned.

(5) All expenses of and incidental to an examination shall be paid by the financial institution concerned in such manner as the Bank may determine.

Offences and penalties

33. Any director, manager, principal officer or any other officer, employee, agent or other representative of a financial institution or affiliate who –

(a) obstructs –

(i) the proper performance by an auditor of his duties in accordance with the provisions of this Act; or

(ii) a lawful examination of such institution or affiliate by an examiner duly authorized by the Bank; or

(b) with intent to deceive, makes any false or misleading statement or entry in, or omits any statement or entry that should be made in, any book, account, report or statement of such institution or affiliate,

shall be guilty of an offence and liable to a fine of R1 000 and to imprisonment for 12 months.

Powers of Bank after examination

34. If, in the opinion of the Bank, an examination shows that a financial institution or affiliate concerned is conducting its business in an unlawful or unsound manner or that it is otherwise in an unsound condition, the Bank may, in addition to any other course of action open to it, –

(a) require such institution to take such measures as it may consider necessary to rectify the situation;

(b) appoint a person who, in the opinion of the Bank, has had the proper training and experience to advise the financial institution or affiliate on measures to be taken to rectify its situation, and shall fix his remuneration which shall be paid by such financial institution or affiliate.

Annual report

35. The Bank shall annually submit to the Minister a report on all financial institutions and agents licensed under this Act, and on all matters relating to such institutions and agents which have been dealt with by it during the year under review.

PART V. *Miscellaneous Provisions*

36. (1) Without prejudice to the provisions of any other written law, any person who is a director or manager, or principal officer of, or is otherwise directly or indirectly concerned in the management in Botswana of a financial institution, or is a licensed agent under section 16, shall cease to exercise such function —

Persons
debarred
from
management
or
representa-
tion

- (a) if he is declared bankrupt or makes a composition with his creditors whether in Botswana or elsewhere; or
- (b) if he is convicted of an offence involving dishonesty or fraud whether in Botswana or elsewhere.

(2) No person who has been a director or manager or principal officer of, or otherwise directly or indirectly concerned in the management of any financial institution which has been wound up, whether in Botswana or abroad, shall, without the approval in writing of the Bank, act or continue to act as a director or manager or principal officer of, or otherwise be directly or indirectly concerned in the management in Botswana of, any financial institution.

(3) Any person who contravenes the provisions of subsection (1) or (2) shall be guilty of an offence and liable to a fine of R2 000 and to imprisonment for 2 years.

37. Every financial institution shall either —

Provision for
losses due to
negligence
or dishonesty

- (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 director, manager, principal officer or any other officer or employee; or
- (b) insure itself against such loss, to an amount and in terms which the Bank deems adequate, with a person approved by the Bank and carrying on insurance business or the business of guaranteeing against such loss as aforesaid.

38. (1) Except with the approval of the Bank, every place of business of a financial institution shall remain open for business with the public on such days, other than public holidays, Sundays and financial holidays declared under subsection (2), and during such hours as may be prescribed.

Days and
hours of
business

(2) The Minister, after consultation with the Bank, may, by notice published in the Gazette, declare any day to be a financial holiday on which financial institutions shall remain closed for business with the public.

(3) Any financial obligation which can only be fulfilled at a financial institution, and which would fall due on any day on which such institution is not open for business under this section, shall be deemed to fall due on the next day on which such institution is open for business.

Substitution
for depositor's
signature

39. In all transactions connected with the opening of, deposit into, or withdrawal from, a deposit account, whenever the depositor is unable to sign his name, his thumb impression may be affixed in the presence of an officer of the financial institution and if so affixed shall have the same force and effect as if it were the depositor's signature.

Acceptance
of deposits
by insolvent
financial
institutions

40. (1) A financial institution which receives any deposit while insolvent shall be guilty of an offence and liable to a fine of R5 000.

(2) A director, manager, principal officer or other officer or employee of a financial institution who knows of or ought to know of the insolvency of such institution, and who receives, causes, or authorizes or permits the acceptance of, a deposit shall be guilty of an offence and liable to a fine of R5 000 and to imprisonment for 5 years.

PART VI. *Temporary Management by Bank*

Temporary
management
by Bank

41. (1) When the Bank is satisfied, or has reasonable cause to believe, in respect of any financial institution, that –

- (a) its paid-up share capital or assigned capital, as the case may be, does not meet the requirements of section 17;
- (b) its business is being conducted in an unlawful or imprudent manner, or that it is otherwise in an unsound condition;
- (c) the continuation of its activities is not in the best interests of its depositors;
- (d) it has refused or refuses to permit an examination to be made of its affairs in accordance with section 32 or has otherwise obstructed such examination; or
- (e) it has been served with notice of intention to revoke its licence under section 15,

it may, after consultation with the Minister, serve on the principal officer of such financial institution a notice, announcing its intention of temporarily managing the institution from such date and time as may be specified in the notice.

(2) A copy of the notice referred to in subsection (1) shall be transmitted to the High Court, and posted at each place of business in Botswana of the financial institution.

(3) Upon the date and time specified in the notice referred to in subsection (1), there shall vest in the Bank full and exclusive powers of management and control of the financial institution, including, without prejudice to the generality of the foregoing, power to continue or discontinue its operations, to stop or limit the payment of its obligations, to employ any necessary officers or employees, to execute any instrument in the name of the institution, and to initiate, defend and conduct in its name any action or proceedings to which the institution may be a party.

(4) As soon as possible after the Bank has assumed temporary management of a financial institution, the Bank shall prepare an inventory of the property vested in, belonging to or held by such institution, and transmit a copy thereof to the High Court, where it shall be available for examination by interested parties.

(5) All expenses of and incidental to the temporary management of a financial institution shall be paid by such financial institution in such manner as the Bank may determine.

(6) Upon the date and time specified in the notice, and subject to any appeal to the High Court, any term, statutory, contractual or otherwise, on the expiry of which a right of action of the financial institution would expire or be extinguished, shall be extended by 6 months or until 15 days after the Bank restores the financial institution to its board of management or owners, as the case may be, whichever event shall first occur.

42. (1) A financial institution on which notice has been served under section 41 may, within a period of 10 days after the date of such service, appeal to the High Court.

Appeal

(2) The High Court may, on sufficient cause being shown, extend such period of 10 days.

43. When the Bank has served notice on a financial institution under section 41, it shall, within a period of 60 days from the date specified in such notice or within such longer period as may be permitted by the High Court --

Limitation on duration of take-over

- (a) restore the financial institution to its board of management or owners, as the case may be;
- (b) petition the High Court for a winding-up or judicial management order in respect of the financial institution; or
- (c) propose a compromise or arrangement between the financial institution and its creditors under section 161 of the Companies Proclamation, 1959, or a reconstruction of such financial institution under section 163 of the said Proclamation:

Provided that for the purposes of this paragraph the provisions of sections 161 to 164 inclusive of the said Proclamation shall apply *mutatis mutandis* to external companies.

44. No execution shall be returned against the property of a financial institution during any period during which it is managed by the Bank under the provisions of section 41.

Limit on execution during management

PART VII. *Winding-up and Judicial Management*

45. (1) Subject to the provisions of this Part, the provisions of the Companies Proclamation, 1959, relating to the winding-up and judicial management of companies (Part IV) or the winding-up of external companies (Part VI), as the case may be, shall be applicable to licensed financial institutions which are companies, or

Exceptions to Companies Proclamation

external companies, respectively, within the meaning of the said Proclamation:

Provided that –

- (i) notwithstanding the provisions of section 292 (2) of the Companies Proclamation, 1959, sections 264 and 271 inclusive of the Companies Proclamation, 1959, shall be applicable *mutatis mutandis* to licensed financial institutions which are external companies;
- (ii) the powers and functions assigned to the Master under the Companies Proclamation, 1959, shall be exercised by the Bank or a person approved by the Bank; and
- (iii) the provisions of the Companies Proclamation, 1959, specially applicable to a creditor's voluntary winding-up (sections 218 to 221 inclusive), shall not apply to licensed financial institutions.

Winding-up
or judicial
management

46. Before any winding-up whether voluntary or by the court, or judicial management of a licensed financial institution may be commenced, 14 days' prior notice in writing shall be given to the Bank, and the Bank may –

- (a) take action under section 41;
- (b) in the case of a voluntary winding-up, permit the winding-up to proceed on such terms and conditions as the Bank may determine; or
- (c) in the case of a winding-up by the court or a judicial management, permit the petition to proceed, in which case the Bank shall be entitled to appear before the court at the hearing of the petition and make representations.

Evidence of
claims
Cap. 82

47. For the purposes of any winding-up and notwithstanding anything to the contrary in sections 187 (2) and 226 (2) of the Companies Proclamation, 1959, or in the Insolvency Proclamation, any entry in the books, accounts or records of a financial institution relating to deposits shall be *prima facie* evidence of the claims of the depositors.

Voidable and
undue
preferences

48. For the purposes of sections 236 and 269 of the Companies Proclamation, 1959, when the Bank has, under section 41, taken over the temporary management of a financial institution which is subsequently wound-up, or which is placed under judicial management and becomes insolvent, the taking over shall be deemed to correspond with a sequestration order under the Insolvency Proclamation.

Exception to
section 90 (2)
of Insolvency
Proclamation

49. Notwithstanding the provisions of section 256 of the Companies Proclamation, 1959, and section 90 (2) of the Insolvency Proclamation, in the winding-up of a financial institution unable to pay its debts, any balance of the free residue after making provision

for the payment of the secured and otherwise preferred claims, shall be applied in payment of the remaining claims in the following order --

- (a) deposits and interest accrued thereon up to an amount not exceeding R100 per depositor;
- (b) other deposits and interest accrued thereon;
- (c) other claims.

50. (1) Any sums of money remaining unclaimed after the winding-up of a financial institution shall be deposited in the Guardian's Fund established or continued under the Administration of Estates Act, 1972.

Unclaimed monies or property after winding-up 20 of 1972

(2) Any other property held by the financial institution as a trustee, fiduciary, lessor of a safe deposit box or bailee, which has not been returned to its rightful owners in the course of the winding-up of such institution, shall, together with the inventories pertaining thereto, be placed in the custody of the Bank and, if unclaimed after a period of not less than 2 years, shall be disposed of in such way as may be prescribed.

PART VIII. *General Provisions, Transition and Repeal*

51. (1) The following items held or owing by a financial institution are presumed to have been abandoned --

Abandoned property

- (a) any deposit made with such institution together with any interest thereon and in respect of which the depositor has not for 15 years after the last deposit increased or decreased the amount of the deposit or presented the passbook or other record for the crediting of interest or corresponded with the financial institution concerning such deposit; and
- (b) other property deposited with the financial institution, including the contents of any safe deposit box upon which the lease or rental period has expired and in respect of which the owner thereof has not for 15 years following such deposit or such expiry, corresponded with such financial institution or in any other manner indicated an interest therein.

(2) Every financial institution holding any items presumed to have been abandoned under subsection (1) shall report such holdings to the Bank and thereafter --

- (a) in the case of any deposit, pay the same into the Guardian's Fund established or continued under the Administration of Estates Act, 1972, and deliver to the Master the name and last-known address of the depositor; and
- (b) in the case of any other property, deliver the same to the Bank, together with the name and last-known address of the owner thereof.

(3) Upon paying abandoned deposits to the Master and delivery of other abandoned property to the Bank, a financial institution shall be relieved of all liability for any claim in respect thereof to the extent of the value of such deposits or other property.

(4) Any person claiming to be entitled to any abandoned deposit or other property and proving such entitlement to the satisfaction of the Master or the Bank, as the case may be, shall have the same returned to him.

Regulations

52. (1) The Minister may, after consultation with the Bank, make regulations for the better carrying out of the provisions and purposes of this Act including the prescribing of anything required by this Act to be prescribed.

(2) The Minister may, after consultation with the Bank, by regulation made under this section, vary the fees specified in the Schedule.

Failure to
comply with
requirement
of Bank

53. Any person who fails to comply with any requirement of the Bank under this Act shall be guilty of an offence and liable to a fine of R1 000.

Confiden-
tiality

54. (1) Nothing in this Act shall be deemed to authorize the Minister to enquire or cause any enquiry to be made into the affairs of any individual customer of a financial institution.

(2) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required so to do by a court or under the provisions of any written law, no person appointed, employed or duly authorized by the Bank to examine the affairs of, or advise concerning, any financial institution shall disclose any information which he has acquired in the performance of his duties or the exercise of his functions.

(3) Every person appointed under or employed in carrying out or duly authorized under the provisions of this Act, except the Minister, shall make an oath or declaration of secrecy in the manner and form prescribed.

(4) Every person who, in contravention of the oath or declaration of secrecy made by him under subsection (3) and without lawful excuse discloses information or reveals any matter which has come to his knowledge in his official capacity shall be guilty of an offence and liable to a fine of R2 000 and to imprisonment for 2 years.

(5) Any person who, being required by this section to take the prescribed oath, acts in the execution of his office before he has made such oath shall be guilty of an offence and liable to a fine of R20.

(6) With respect to any licensed financial institution or licensed agent and notwithstanding the provisions of subsection (2), the Bank shall disclose upon request --

- (a) the nature of the licence;
- (b) any conditions and limitations attached to such licence;
- (c) the place or places of business where the licensee may, according to its licence, conduct business; and
- (d) the name of the person upon whom process may be served in lieu of such licence when a certificate of designation has been lodged with the Bank under section 11 (2).

55. The Bank may publish in whole or in part, in such form and at such time as it may determine, any information or data furnished or collected under this Act: Publication of information

Provided that no information or data shall be published which might disclose the particular affairs of a financial institution or of a customer of a financial institution unless the consent of that financial institution or customer, as the case may be, has been obtained.

56. (1) Any decision taken by the Bank under this Act relating to any refusal or revocation of a licence shall be subject to appeal to the Minister. Appeal to Minister

(2) An appeal under this section shall be noted and prosecuted in the manner and within the time prescribed.

57. (1) Except as otherwise expressly provided by this Act, nothing in this Act shall be construed so as to relieve a financial institution from compliance with the provisions of the Companies Proclamation, 1959. Requirements of other laws

(2) The issue of a licence under this Act shall not be deemed to exempt a financial institution or agent within the meaning of section 16 from the necessity of obtaining any other licence, permit or authority under any other written law, in respect of any activity carried on by such financial institution or agent.

58. No act or thing done by any officer of the Bank or any person acting under the direction of the Bank shall, if the act or thing done was *bona fide* for the purpose of carrying this Act into effect, subject such officer or person to any liability, action, claim or demand whatsoever. Protection of officers and agents from personal liability

59. (1) The provisions of sections 5 and 16 shall not apply to any financial institution which was carrying on banking business, or to any person acting as agent within the meaning of section 16, at the date of commencement of this Act for a period of 90 days from such date of commencement but otherwise the provisions of this Act shall apply to such financial institution or agent as if it or he were licensed under this Act: Transitional

Provided that, notwithstanding the provisions of section 17, the Bank, in determining a financial institution's required minimum capital prior to the submission by such financial institution of its

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first balance sheet prepared in accordance with section 27 (1), may, in lieu of such balance sheet, use the financial institution's most recent statement of its deposit and similar liabilities submitted under the Statistics Act, 1967.

(2) If, at the commencement of this Act, the Bank has not been established, the Minister shall appoint a person to exercise the powers conferred herein upon the Bank until such time as the Bank is established.

(3) Any action taken or thing done under this Act by a person appointed under subsection (2) shall remain in force unless and until modified by action of the Bank.

Amendment
of Trading
Act, 1966

60. The Trading Act, 1966, is amended –

(a) in section 4 (1) thereof –

(i) by deleting the words “Banker licence or”, which appear in paragraph (a) thereof; and

(ii) by deleting the words “Banker licence or”, which appear in paragraph (b) thereof;

(b) in section 48 (4) thereof by deleting item (d) relating to “Banker”;

(c) in paragraph 1 (3) of the First Schedule thereto by substituting for the words “the holder of a banker licence” the words “a financial institution licensed under the Financial Institution Act, 1975”;

(d) in the First Schedule thereto by deleting paragraph 3 relating to “Banker Licence”; and

(e) in the Second Schedule thereto by deleting the item relating to “Banker”.

SCHEDULE

	R
Investigation fee	2 500
Annual fee	2 000
Agent's fee	250

Passed by the National Assembly this 3rd day of April, 1975.

I.P. GONTSE,
Clerk of the National Assembly.