

CHAPTER 169

THE FINANCIAL INSTITUTIONS (NON-BANKING) ACT

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FINANCIAL INSTITUTIONS (NON-BANKING)

An Act to make provision for the licensing and regulation of the business of financial institutions other than commercial banks and for matters connected therewith.

(1st November, 1985.)

21/1985.

1. This Act may be cited as the Financial Institutions (Non-Banking) Act. Short title.

Part I

Preliminary

2. In this Act—

Interpretation.

"advertisement" includes every form of advertising, whether in a publication, or by display of notices, or by means of circulars or other documents, or by an exhibition of photographs or cinematograph films, or by way of sound broadcasting or television, and references to the issue of an advertisement shall be construed accordingly;

"business of banking" means the business of receiving deposits of money from the public on current account or deposit account which may be withdrawn on demand, by cheque, draft or order, and generally the undertaking of any business appertaining to the business of commercial banking including the performance of the functions and duties of a trustee, administrator, executor or attorney;

"business of a financial nature" means the collection of funds in the form of deposits, shares, loans, premiums, and the investment of such funds in loans, shares or other securities, and includes the performance of the functions and duties of a trustee, administrator, executor or attorney but does not otherwise include the business of commercial banking;

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"commercial bank" or "bank" means any domestic or foreign company licensed under the Banking Act to carry on the business of banking;

"financial institution" means a company licensed under this Act to carry on business of a financial nature and includes a finance house, a trust company which solicits business of a financial nature from the public, a development bank, a merchant bank, a mortgage bank, a unit trust, a confirming house, and such other institution as the Minister may from time to time with the approval of Cabinet prescribe;

"Inspector" means the Inspector of Financial Institutions appointed under section 24 and includes any person appointed to act temporarily in place of the Inspector;

"licence" means a licence issued under this Act.

Restriction on the use of certain titles.

3. Except with the approval of the Minister, a financial institution shall not be licensed under this Act if its name or description includes the words "bank", "central bank" or "reserve bank".

Part II

Licensing of Financial Institutions

Licensing of financial institutions.

4. (1) No person other than a company incorporated or registered under the Companies Act shall be licensed under this Act to carry on the business of a financial institution.

(2) The Minister may with the approval of Cabinet make such regulations as he may deem expedient to regulate the establishment of branches of financial institutions licensed under this Act.

Application for licence.

5. Every application for a licence to carry on the business of a financial institution shall be made to the Minister on the prescribed form and shall be accompanied by—

(a) a statement which shall contain the name and description of the applicant, the address of its registered

office in Antigua and Barbuda, and the name, address and nationality of each director;

(b) a certified copy of its memorandum and articles of association together with a certified copy of its certificate of incorporation or registration as the case may be;

(c) in the case of an applicant who has been carrying on business of a financial nature prior to the coming into operation of this Act, a copy of its Profit and Loss Account, and Balance Sheet and the auditor's report thereon for the three consecutive years immediately preceding its application, except that where such applicant has been functioning for less than three years, a copy of its Profit and Loss Account and Balance Sheet and the auditor's report thereon for each year it has been in operation;

(d) such proof as the Minister may require that the company has a minimum authorised share capital of one million dollars of which eight hundred thousand dollars or more is paid up in cash;

(e) such other information as the Minister may require.

6. (1) The Minister may upon being satisfied that the provisions of this Act and regulations made thereunder have been complied with, and with the consent of the Cabinet, within ninety days from the date of the application approve of the application.

**Approval and
issue of licence.**

(2) Where the Minister has given his approval under subsection (1), he shall issue a licence to the applicant in such form as may be prescribed, and the licence shall take effect on such date as is specified in the licence.

(3) A licence issued under subsection (2) or renewed under section 7 (1) may contain such conditions relating to the class or classes of business that may be carried on by the financial institution as may be specified by the Minister with the approval of Cabinet.

(4) Subject to subsection (5), a licence fee of twenty thousand dollars shall be payable upon the issue of a licence under subsection (2).

(5) A licence issued under this section shall be valid up to the end of the year in which it is issued, save that where a licence is issued for the first time after the first quarter in any year, the licence fee payable shall be calculated on a pro rata basis of the fee then payable.

(6) The Minister shall upon the issue of a licence, cause the particulars of that licence to be published in the *Gazette*.

Renewal of
licence.

7. (1) An application for the renewal of a licence shall be made at the end of every year and if the Minister is satisfied that all the provisions of this Act and regulations made thereunder have been complied with; he shall renew the licence upon the payment of a renewal fee of twenty thousand dollars.

(2) The Minister may by order from year to year with the approval of Cabinet, vary the fees mentioned in section 6(4) and subsection (1) of this section. Such order shall be laid before Parliament for a period of thirty days and shall be subject to negative resolution of the House.

(3) For the purpose of section 6(5) and of this section "year" shall be construed to mean calendar year.

Licence fees to
form part of the
Consolidated
Fund.

8. All licence fees paid under this Act shall be credited to the general revenue of the Government and shall form part of the Consolidated Fund.

Restriction on
carrying on
business of a
financial
institution.

9. (1) Where a company carries on business of a financial nature without a licence issued under this Act the directors of such a company are guilty of an offence, and on summary conviction are subject to a fine of twenty thousand dollars and imprisonment for two years.

(2) Where a company carries on business of a financial nature without a licence issued under this Act it is guilty of an offence and is liable on summary conviction to a fine of one hundred thousand dollars.

(3) A director convicted of an offence under subsection (1) is liable to an additional penalty of five thousand dollars for every day that the offence continues.

(4) A company carrying on business of a financial nature convicted of an offence under subsection (2) is liable to a fine of ten thousand dollars for every day that the offence continues.

10. (1) A company which has been carrying on business of a financial nature before the date of commencement of this Act shall be deemed to be provisionally licensed on that date. **Provisional licence.**

(2) A financial institution to which this section applies shall within ninety days of the date of the commencement of this Act apply for a licence in accordance with the procedure laid down in section 5.

(3) Where a financial institution fails to comply with subsection (2), such failure is an offence under section 9.

(4) Where a company to which this section applies has been refused a licence such refusal has the effect of an order of revocation and is regarded as an order for the purposes of section 11.

11. (1) The Minister at any time with the approval of Cabinet may by order published in the *Gazette* revoke a licence for any contravention of this Act or any regulations or order made thereunder. **Revocation of licence.**

(2) Before an order is made under subsection (1), the Minister shall give to the financial institution notice in writing of his intention so to do, specifying therein the grounds on which he proposes to make an order, and shall require the financial institution to submit to him within thirty days of the date of the notice a written statement of any objection to the making of the order and thereafter the Minister shall advise the financial institution of his decision.

(3) Where any financial institution is aggrieved by an order made under subsection (1), such financial institution may appeal to a judge of the High Court in Chambers setting

forth the grounds of appeal within fourteen days of the publication of the order in the *Gazette*, and the Court may after considering the grounds of appeal vary, reverse or confirm such order.

(4) Where the Minister—

(a) proposes to make an order of revocation under subsection (1); or

(b) is of the opinion that a company is carrying on business of a financial nature without being licensed under this Act,

he may direct the Inspector to occupy the premises and to assume control of all or any portion of the assets of the financial institution or the company as the case may be for the purpose of safeguarding the interest of depositors, creditors and shareholders of the institution or the company as the case may be until the appeal is determined or the company has been duly licensed as the case may be.

(5) The Minister may with the approval of Cabinet prescribe the powers of and the procedure to be followed by the Inspector where he acts under subsection (4).

Part III

Directors and Officials of Financial Institutions

Persons debarred
from
management.

12. (1) No person may without express authorisation from the Minister act or continue to act as a director, or be concerned in the management of a financial institution if such a person—

(a) was a director of or was engaged in the management of a financial institution or a commercial bank which had been wound-up by the Court;

(b) has been adjudged a bankrupt under the Bankruptcy Act;

(c) was at any time within seven years prior to the coming into effect of this Act, convicted of any offence involving dishonesty and has not received a full pardon in respect of that offence; or

(d) was convicted of an offence under section 9(1) of this Act.

(2) Any person who contravenes the provisions of this section is guilty of an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for one year.

(3) A financial institution in which a person referred to in subsection (2) acts as a director or in the management of which such person is concerned is guilty of an offence and is liable on summary conviction to a fine of fifteen thousand dollars.

(4) A person convicted of an offence under subsection (2) is liable to an additional penalty of five hundred dollars for every day that he continues to commit the offence.

(5) A financial institution convicted of an offence under subsection (3) is liable to a fine of five thousand dollars for every day that the offence continues.

13. (1) No director of a financial institution shall be present or shall vote on a resolution of the board of directors of that institution when a loan or an advance to or by—

Restriction on voting power of director.

(a) him or his associate, or

(b) a company of which he or his associate is an employee, or in which he or his associate owns not less than ten per cent of the paid up share capital,

is being considered.

(2) In this section "associate", in relation to a director of a financial institution means—

(a) the wife, husband, son or daughter of that director; or

(b) any person who is an employee or partner of that director;

and for purposes of this section, "son" includes a stepson, and "daughter" includes a step-daughter.

No officer or employee to act as insurance agent.

14. No officer or employee of a financial institution shall—

- (a) act as an agent for any insurance company or for any person in the placing of insurance; or
- (b) exercise any undue influence upon a borrower to place insurance in any particular insurance company as security for a loan granted by the financial institution.

Part IV

Prohibitions

Prohibition as regards activities of financial institutions.

15. (1) Subject as provided in this section, a financial institution shall not—

- (a) engage in the taking of deposits with maturities of less than one year;
- (b) grant loans for periods of less than one year;
- (c) engage in any trade except so far as may be necessary in the ordinary course of business operations and services including the satisfaction of debts due to it and the due performance of its function as a trustee, executor, administrator or attorney;
- (d) acquire land except so far as may be necessary for—
 - (i) the purpose of conducting its business or housing its offices or employees;
 - (ii) the satisfaction of debts due to it, and the due performance of its function as a trustee, executor, administrator or attorney;
- (e) acquire or deal in its own shares or lend money or make advances on the security of its own shares;
- (f) beneficially hold any land acquired in the course of the satisfaction of debts due to it for a period exceeding three years, but shall forthwith on the expiry of that period sell or otherwise dispose of the land absolutely so that the financial institution has no direct or indirect control or interest therein, except by way of security;
- (g) grant unsecured credit facilities, the principal sum of which exceeds five per cent of its paid up capital and reserve fund, to any company, firm or corporation

in which the financial institution its manager or director has an interest equivalent to ten per cent of the paid up capital of the borrowing company, firm or corporation;

(*h*) grant unsecured credit facilities to any of its officers or employees exceeding the amount of two years emoluments of such officer or employee or five per cent of its paid up capital, whichever is the less;

(*i*) grant unsecured credit facilities to any one person exceeding in the aggregate ten per cent of its paid up capital and reserve fund;

(*j*) pay any dividend on its shares, until all its capitalised expenditure (including preliminary expenses, organisation expenses, share selling commission and brokerage) not represented by tangible assets are completely written off.

(*k*) grant secured credit facilities to any one person exceeding ten per cent of its loan portfolio;

(*l*) solicit funds by way of deposit with any inducement other than the rate of interest offered on such deposits.

(2) (a) Paragraph (*b*) of subsection (1) shall not apply to confirming houses.

(*b*) Paragraphs (a) and (*b*) of subsection (1) do not apply to merchant banks where deposits are taken by or loans granted to other financial institutions, banks, insurance companies, the Social Security Board, or any other institution which the Minister may with the approval of Cabinet direct.

(*c*) Notwithstanding paragraph (a) of subsection (1) and paragraph (*b*) of this subsection, a merchant bank may accept deposits from sources outside Antigua and Barbuda with maturities of any duration.

(3) The Minister may direct that the time specified in paragraph (*f*) of subsection (1) for the sale or disposal of land be extended for a further period not exceeding three years.

(4) Nothing in this section shall prohibit a financial institution from providing in accordance with any scheme for the time being in force, money for the purchase by trustees of fully paid up shares in that financial institution, to be held by or for the benefit of employees of the financial institution, including any director holding a salaried employment or office.

Advertisement.

16. (1) No person other than a financial institution licensed under this Act shall issue or cause to be issued any advertisement inviting the public to deposit money with that person or institution or with some other person or institution.

(2) For the purpose of this section—

(a) an advertisement issued by any person by way of display or exhibition in a public place shall be treated as issued by him on every day on which he causes or permits it to be displayed or exhibited;

(b) an advertisement issued by any person on behalf of or on the order of another person shall be treated as an advertisement issued by that other person;

(c) an advertisement inviting deposits with a person specified in the advertisement shall be presumed, unless the contrary is proved, to have been issued by that person.

(3) An advertisement issued under this section shall be in such form and shall contain such particulars as may be prescribed by the Minister.

(4) Any person who contravenes this section shall be liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months.

Part V

Liquid Reserves, Reserve Account, Maximum Liability; Control

17. (1) Every financial institution shall hold and maintain—

Reserve
requirements of
financial
institutions

(a) an account with the Accountant-General to be known as a reserve account which shall bear a ratio to the total deposit liabilities of that institution in such form and to such extent as the Minister may fix by Order published in the *Gazette*.

(b) a reserve fund into which no less than ten per cent of the net profit of the institution after deduction of taxes shall be transferred each year until the amount standing to the credit of the reserve fund is equal at least to the paid up capital of that institution.

(2) For the purposes of this section, the Minister may by notice published in the *Gazette*—

(a) define the classes of deposit liabilities;

(b) prescribe different ratios in respect of each class of deposit liabilities;

(c) when in the opinion of the Minister special monetary conditions so warrant, fix additional reserve account ratios in respect of increases in total deposit liabilities.

(3) For purposes of determining the amount of the reserve account required to be maintained by any financial institution during a period of one week—

(a) the amount of the deposit liabilities of such financial institution shall be the average of its deposit liabilities at the close of business on Wednesday in each of the four preceding consecutive weeks ending with the last Wednesday but one;

(b) the amount of the reserve account of such financial institution with the Accountant-General shall be the average amount of such balance at the close of business on each day of the current week.

(4) Subject to subsection (5), whenever any financial institution fails to maintain the amount in the reserve account required to be maintained under this section, the Accountant-General shall notify such financial institution of the deficiency, and the financial institution shall pay to the Accountant-General interest on the amount of the deficiency at such rate, not in excess of one-thirtieth of one per cent per day, as the

Accountant-General may fix by notice published in the *Gazette*.

(5) If any financial institution fails to maintain the amount in the reserve account required by this section for longer than a period of one week, the Accountant-General may require such financial institution to pay additional interest not in excess of twice the amount of interest fixed in accordance with subsection (4).

Power of Accountant-General to require information.

18. The Accountant-General may require any financial institution to furnish within such time and in such form as the Accountant-General determines such information as the Accountant-General may consider necessary to ensure that the minimum reserve account requirement is or has been complied with.

Selective credit control.

19. (1) In order to determine what steps, if any, are necessary to be taken to encourage the expansion of credit in any or all sectors of the economy, the Minister shall from time to time consult with the financial institutions.

(2) The Minister may, after consultation with the financial institutions, and with the approval of the Cabinet impose controls upon which credit may be made available to all or any sectors of the economy, when in his judgment, the imposition of such controls is necessary to restrict or prevent an undue expansion of credit.

(3) The imposition of any controls under the provisions of subsection (2) shall be by notice published in the *Gazette*, and the provisions of any such notice shall take effect on or after the date of publication as may be stated in the notice and shall apply uniformly to all financial institutions.

Minister to fix the maximum of working balance.

20. (1) The Minister may, from time to time,

(a) prescribe the manner of determination of the maximum balances which financial institutions may hold in foreign currencies generally or in any specified currency or currencies;

(b) require such financial institutions to sell all or any specified part of the surpluses in excess of such maximum amount.

(2) The Minister may permit any financial institution to hold working balances in any specified foreign currency in excess of the maximum amount fixed or determined for such currency under subsection (1).

(3) In ascertaining whether the working balances of any financial institution in any foreign currency are in excess of the maximum amount fixed or determined as hereinbefore provided, there may be deducted from such balances the net liabilities of that financial institution in currencies into which such currency is convertible.

21. The Minister may, by notice published in the *Gazette*, determine the minimum ratio that after the expiration of six months from the date of service of the notice, Antigua and Barbuda assets held by financial institutions will bear to their respective liabilities in Antigua and Barbuda; but any variation of such ratio shall not exceed ten percentage points in any one period of six months.

Proportion of local assets to liabilities in Antigua and Barbuda.

22. No financial institution shall incur in Antigua and Barbuda deposit liabilities of an amount exceeding twenty times the sum of its paid up capital and reserve fund.

Maximum liability.

23. (1) A financial institution shall so conduct its business as to ensure that in the placing of its liquid assets preference is at all times given to short-dated instruments originating in Antigua and Barbuda.

Preference to securities, and fixing of ratio.

(2) The Minister may fix the percentage which the liquid assets of a financial institution should bear to its respective total deposit liabilities and the percentage which its respective liquid assets originating in Antigua and Barbuda should bear to the total of its liquid assets.

Part VI

Inspection of Financial Institutions

24. For the purposes of this Act an examiner appointed by the Eastern Caribbean Central Bank under the Banking Act shall be the Inspector of financial institutions and he shall subject to the provisions of this Act, have such powers and perform such functions in relation to financial institutions as he is authorised to do under the Banking Act in relation to banks.

Appointment and powers of Inspector.

Assistants to the Inspector.

25. Persons who may be appointed under the Banking Act to assist an examiner in the performance of his duties under that Act shall assist the Inspector in the performance of his functions under this Act.

Restriction on power to borrow.

26. A person holding the position of Inspector or any other person appointed as an examiner under the Banking Act shall not borrow money from a financial institution unless he first obtains the permission of the Minister so to do.

Duties of the Inspector.

27. (1) The Inspector shall—

(a) examine all applications for licences and make recommendations thereon to the Minister;

(b) make or cause to be made such examinations and enquiry into the affairs or business of each financial institution as he may deem to be necessary or expedient for the purpose of satisfying himself that the provisions of this Act are being observed and that the financial institution is in a sound financial condition;

(c) at the conclusion of each examination and enquiry, report thereon to the Minister; and

(d) subject to the direction of the Minister take and maintain such steps or proceedings as are necessary for the winding up of any financial institution or for the appointment of a receiver thereof.

(2) In the performance of his duties under this Act, the Inspector shall at all reasonable times have the right of access to all books, records, vouchers, documents and securities of any financial institution, and to call upon any director, officer, auditor or employee of any such institution for any information, explanation or for both such information and explanation as he may deem necessary for the performance of his duties.

(3) Any person who fails to comply with a request made pursuant to subsection (2) by the Inspector or by any other person authorised by him in writing to make such a request, shall be guilty of an offence, and shall be liable on summary conviction to a fine of one thousand dollars and to imprisonment for twelve months.

28. (1) Where the Inspector is satisfied after examination of the affairs of any financial institution or upon information received from it, that it is insolvent or unlikely to meet the demands of its depositors or that its continuation in business is likely to involve a loss to its depositors or creditors the Inspector shall report such findings to the Minister.

Inspector to report on insolvency.

(2) Where a report is submitted by the Inspector under subsection (1), the Minister may, after considering all the relevant facts and circumstances and with the approval of Cabinet, order the financial institution to suspend business forthwith and may direct the Inspector to take charge of all the books, records, and assets of the financial institution and to take all such measures as may be necessary to prevent the continuation in business by that institution during the period of suspension.

(3) Notwithstanding the provisions of any other law, no action or proceedings may be instituted in any court for the purpose of securing the enjoining, review or revocation of any order made or direction given under subsection (2) or in respect of any loss or damage incurred, or likely to be or alleged to be incurred by reason of such order or direction.

(4) An order by the Minister under subsection (2) shall cease to have effect—

(a) if the Minister makes an order permitting the financial institution to resume business either unconditionally or subject to such conditions as the Minister may deem necessary in the public interest or in the interests of the depositors and other creditors of such financial institutions; or

(b) upon the expiration of a period of thirty days from the date on which it is made, unless the Minister causes the Inspector to apply on behalf of the depositors to the Court for an Order for the winding up of the financial institution or for the appointment of a receiver thereof.

(5) When an Order is made by the Minister under paragraph (a) of subsection (4) permitting the resumption

of business subject to such conditions as may be specified in the order, the financial institution may apply to the Court for an Order to resume business unconditionally, or subject to such modifications as the Court may deem appropriate.

(6) In an application made under subsection (5) the Inspector shall be joined as a respondent with the Minister.

(7) In any case where application is made by the Inspector for the winding up of any financial institution in accordance with paragraph (b) of subsection (4)—

(a) the financial institution shall not carry on business during the pendency of the application unless it is authorised so to do by the Court and except in accordance with such conditions, if any, as may be specified by the Court; and

(b) the Court, if it is of the opinion after such enquiry as it may consider necessary that the financial institution is not insolvent, may permit the institution to resume business either unconditionally or subject to such conditions as the Court may consider necessary in the public interest or in the interests of the depositors and other creditors thereof.

(8) In any case where an Order of Court is made, whether in pursuance of an application under this section or otherwise, for the winding-up of any financial institution, then notwithstanding the provisions of any other law, the Inspector or such other person as may be nominated by the Minister shall be appointed as liquidator for the purposes of such winding-up.

Rules as to
proceedings in
Court.

29. The procedure governing applications made to the Court under section 28 and for the enforcing of Orders made thereunder and for all matters incidental thereto shall be such as is provided for by the Rules of the Supreme Court.

Disclosure of
information
prohibited.

30. (1) An Inspector shall not disclose any information regarding the operation of any financial institution to any person other than such person as may be designated by the Minister.

(2) An Inspector shall not disclose the affairs of a customer of a financial institution other than for the purposes of this Act or of the Eastern Caribbean Central Bank Act.

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(3) Any person who contravenes any of the provisions of this section is guilty of an offence and is liable on summary conviction to a fine of ten thousand dollars and imprisonment for twelve months.

31. Where in the interest of the depositors of a financial institution it appears desirable to do so, the Minister may appoint one or more competent persons to investigate and report to the Minister on the state and conduct of the business of the institution concerned, or on any particular aspect of that business.

Investigations on behalf of depositors.

Part VII

General

32. (1) Every financial institution shall deliver to the Minister within such period as may be specified and in such form as the Minister may from time to time approve the following documents—

Submission of periodical statements to Minister.

(a) a monthly statement showing its assets and liabilities;

(b) a quarterly statement of its loans and advances; and

(c) a yearly statement showing its earnings and expenses.

(2) No statement or return shall in any case be required in respect of the affairs of any particular customer of a financial institution.

33. (1) Every financial institution shall within sixty days after the end of its financial year publish in the *Gazette* and a daily newspaper a statement showing all accounts payable by the financial institution in Antigua and Barbuda in respect of which during the period of ten years or any longer period, no transaction has taken place and no

Publication of inactive accounts.

statement of account has been requested or acknowledged by the creditor for a period of at least ten years.

(2) Every statement published under subsection (1) shall require the person to whom the account is payable or his legal personal representative to submit a claim to the financial institution within three months from the date of publication in the *Gazette*.

(3) Where any sum included in the statement published under subsection (1) remains unclaimed for a period of three months after publication of the statement in the *Gazette* such sum shall after deduction therefrom of the cost of publication be paid to the Accountant-General and credited to the Consolidated Fund.

(4) Nothing contained in this section shall be deemed to affect the rights of any depositor to recover a debt due to him by the financial institution.

(5) Every financial institution paying any sums to the Accountant-General under this section shall be indemnified by the Government for any loss which it may incur as a result of any such payment.

Publications of audited balance sheet.

34. (1) Every financial institution shall within three months after the close of its financial year publish in a newspaper and exhibit in a conspicuous place in each of its offices a Profit and Loss Account and Balance Sheet and the auditor's report thereon.

(2) Every financial institution which fails to comply with subsection (1) is guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars.

Supply of information of financial position to Minister.

35. (1) Notwithstanding the provisions of sections 32 and 34, the Minister may in writing require the manager or any person in charge of the activities of a financial institution to supply within such time as may be specified any information relating to the financial affairs of the institution.

(2) Any person who fails to comply with the requisition of the Minister under subsection (1) is guilty of an offence

and liable on summary conviction to a fine of five thousand dollars.

Part VIII

Offences and Exemptions

36. (1) Any person who in purported compliance with any requirement under this Act or regulations made thereunder, furnishes any information, provides any explanation or makes any statement which he knows or has reasonable cause to believe to be false or misleading in a material particular, is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for twelve months. Offences.

(2) In any proceedings for an offence under this Act it is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by any person under his control.

(3) Without prejudice to subsection (2), in any proceedings for an offence under section 16 it shall be a defence for the person charged to prove that he is a person whose business is to publish or to arrange for the publication of advertisements, and that he received the advertisement in the ordinary course of business and did not know and had no reason to suspect that the publication would constitute such an offence.

37. (1) The provisions of this Act shall not apply to the institutions set out in the Schedule. Exemption.
Schedule.

(2) The Minister may from time to time by order add any institution to the list contained in the Schedule and may, in similar fashion, remove any institution from that list whether that institution was included in the list as originally enacted or was added to it by virtue of this subsection.

38. (1) A financial institution may apply to the Minister for exemption from complying with the provisions of paragraphs (h), (i) and (k) of section 15 (1), of paragraph (b) of section 17 (1), and of section 22, and the Minister Application for
exemption.

may after consultation with the Inspector make an order granting such exemption.

(2) Where subsequent to the making of an order under subsection (1) the Minister is satisfied that the financial institution is in a position to comply with paragraph (b) of section 17 (1) or of section 22, he may, after consultation with the Inspector terminate or vary such order as he thinks fit.

(3) Notice of any exemption granted under subsection (1) or of any termination or variation under subsection (2) or of any amendment of the Schedule under section 37 (2) shall be published in the *Gazette*.

Part IX

Miscellaneous

Regulations.

39. The Minister may from time to time with the approval of Cabinet make regulations for any matter required to be prescribed under this Act, and generally for giving effect to the provisions of this Act.

SCHEDULE

Section 37

EXEMPTED INSTITUTIONS

- Cap. 395. **1.** The Government Savings Bank constituted under the Savings Bank Act and any Branch Savings Bank opened in accordance with that Act.
- Cap. 24 **2.** The Antigua and Barbuda Development Bank established under the Antigua and Barbuda Development Bank Act.
- Cap. 60 **3.** Any Society registered under the Building Societies Act.
- Cap. 184. **4.** Any Society registered under the Friendly Societies Act.
- Cap. 103. **5.** Any undertaking registered under the Co-operative Societies Act.

