

ANTIGUA AND BARBUDA



THE MONEY SERVICES BUSINESS ACT, 2010

No. 7 of 2010

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THE MONEY SERVICES BUSINESS ACT, 2010

ARRANGEMENT

Sections

**PART I
PRELIMINARY**

1. Short title and commencement
2. Interpretation
3. Application of the Act

**PART II
LICENCES**

4. Requirement for licence
5. Classes of Licences
6. Application for licence, formalities and considerations
7. Alteration of facts disclosed in application
8. Adequacy of capital
9. Period of licence and licence fee
10. Authorisation of location and approval of new business premises and subagents
11. Display of licence certificate
12. Restrictions of names likely to mislead
13. Advertisement
14. Actions of fundamental change requiring approval
15. Change in Directorship

**PART III
AUDIT INFORMATION AND EXAMINATION**

16. Annual audit, report and publication of financial statements and results
17. Notice of termination of auditor's appointment
18. Accounting records and systems of business control
19. Returns
20. Extension of time for providing information
21. Retention of records
22. Obligation where release of record required by law
23. Examination by the Commission
24. Confidential information
25. Exchange of information

**PART IV
SEGREGATED ACCOUNTS
BANKRUPTCY OR INSOLVENCY OF LICENSEE**

- 26. Segregated Accounts
- 27. Bankruptcy or insolvency of licensee
- 28. Utilisation of deposits, etc.

**PART V
ABANDONED PROPERTY**

- 29. Abandoned property
- 30. Report, publication and disposal of abandoned property
- 31. Sale and handling of proceeds of sale of abandoned property
- 32. Claims on abandoned property
- 33. Penalties for failure to file abandoned property report

**PART VI
ENFORCEMENT**

- 34. Persons carrying on money services business without a licence
- 35. Suspension of licence or money services activity
- 36. Revocation of licence and declaration of discontinuance of service
- 37. Appointment of receiver
- 38. Commission may apply to Court to preserve customers' interests
- 39. Powers of the Commission in respect of licensees
- 40. Transactions effected prior to suspension or revocation of licence
- 41. Powers and duties of the Commission
- 42. Criteria for prudent management
- 43. Management's liability for non-compliance with Act
- 44. False or misleading information
- 45. Removal and disqualification of Director
- 46. Offences by officers of corporate bodies
- 47. General penalty

**PART VII
MISCELLANEOUS**

- 48. Immunity
- 49. Prudential guidelines
- 50. Regulations
- 51. Transitional and Savings
- 52. Repeal

[L.S.]



I Assent,

Louise Lake-Tack,
Governor-General.

19th July, 2010.

ANTIGUA AND BARBUDA

THE MONEY SERVICES BUSINESS ACT, 2010

No. 7 of 2010

AN ACT to consolidate provisions respecting the licensing and regulation of money services business, to repeal the Money Services Business Act, 2007 and to make provision for related matters.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I
PRELIMINARY

1. Short title and commencement

(1) This Act may be cited as the Money Services Business Act, 2010.

(2) The Minister may by notice published in the *Gazette* appoint a date on which this Act shall come into force.

2. Interpretation

In this Act—

“affiliate” in relation to a licensee means—

(a) a company which is or has at any relevant time been—

- (i) a holding company or subsidiary of the licensee;
 - (ii) a subsidiary of a holding company of the licensee; or
 - (iii) a holding company of a holding company or a subsidiary of a subsidiary of the licensee;
- (b) a company or firm over which the licensee has control;
- (c) a company or firm over which the licensee and any persons associated with the licensee has control;
- (d) a company or firm which has common ownership with the licensee;
- (e) a company or firm which has the same beneficial owner and shares common management and interlinked businesses with the licensee;

“agent” means a person who provides money services business under the direction of or by contract with a licensee and is empowered to act exclusively on behalf of or to conduct money service business on behalf of that licensee;

“applicant” means the person who makes an application for a licence under section 6;

“Central Bank” means the Eastern Caribbean Central Bank established under Article 54 of the Agreement establishing the Eastern Caribbean Central Bank which came into effect in accordance with section 3 of the Eastern Caribbean Central Bank Agreement Act;

“Commission” means the Financial Services Regulatory Commission established under section 316 of International Business Corporation Act, Cap. 222;

“correspondent” means a financial institution that performs services or acts as an intermediary in a market for another institution that does not have access to that market;

“Court” means the High Court of Justice established by the Supreme Court Order 1967;

“currency exchange” means exchange of one currency for another;

“Currency Union” refers collectively to the territories of Anguilla, Antigua and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Christopher and Nevis, Saint Lucia and Saint Vincent and the Grenadines which use the Eastern Caribbean currency as their official currency;

“customer” means a person who engages the services of a money services business;

“designated licensee” means a licensee who has been designated as a funds transfer system under the Payment System Act 2007;

“FATF” means the Financial Action Task Force, an intergovernmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing;

“financial year”, means in relation to a licensee, a period of not more than twelve (12) months for which the audited financial statements of a licensee are prepared in accordance with this Act;

“franchise holder” means a person who enters into an agreement with a money services business and purchases the rights to use the company’s trademarked name and business model to do money services business;

“licence” means a Money Services Business Licence granted under section 6 (4);

“licensee” means a person holding a licence under this Act;

“location” means a place of business designated in the licence where the licensee is authorised to carry on money services business;

“Minister” means the Minister responsible for Finance;

“money service business” means the business of providing any one or more of the following—

- (a) transmission of money or monetary value in any form;
- (b) cheque cashing;
- (c) currency exchange;
- (d) the issuance, sale or redemption of money orders or traveller’s cheques; and
- (e) any other services the Minister may specify by Notice published in the *Gazette*; or

“net worth” means excess assets over liabilities as presented under international accounting standards subject to adjustment for non-admitted assets as determined by the Commission;

“significant shareholder” means a person who either alone or with an affiliate or related or connected person, is entitled to exercise or control 10% or more of the voting power at a general meeting of the licensee or another company of which the licensee is a subsidiary; and

“subagent” means a person who provides money services business under the direction of or by contract with an agent and is empowered to act exclusively on behalf of or to conduct money service business on behalf of that agent.

3. Application of the Act

- (1) This Act does not apply to—

- (a) a person licensed under the Banking Act unless that person is operating as agent or franchise holder of a money services business;
- (b) the Central Bank;
- (c) an organisation licensed as a clearing agency under the Securities Act; and
- (d) an operator of a clearing house or funds transfer system.

(2) A money services business which is licensed under this Act is not required to be licensed under any other Act for the purpose of those services.

PART II LICENCES

4. Requirement for licence

(1) Subject to subsection (4), a person shall not carry on money services business in Antigua and Barbuda unless that person—

- (a) holds a licence in accordance with this Act;
- (b) is an agent; or
- (c) is a subagent.

(2) A person holding funds which that person has obtained by conducting money services business without being in possession of a licence granted under this Act shall settle its obligations in accordance with Regulations issued by the Minister.

(3) A person who contravenes subsections (1) or (2) commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars or to imprisonment for a term of two years or both such fine and imprisonment.

(4) The Minister may by Order exempt a local government body or agency from the licence requirement contained in subsection (1).

5. Classes of Licences

(1) The classes of licences which may be applied for and granted subject to the provisions of this Act are as specified in Schedule I.

(2) A licence under this Act shall authorise the holder, for the period specified in the licence, to carry on money services business as specified in this subsection and not otherwise—

- (a) a “Class A” licence permits the holder to transmit money or monetary value in any form;

- (b) a “Class B” licence permits the holder to issue, sell or redeem money orders or traveller’s cheques;
- (c) a “Class C” licence permits the holder to carry on the business of cheque cashing;
- (d) a “Class D” licence permits the holder to carry on the business of currency exchange; and
- (e) a “Class E” licence permits the holder to carry on all or any combination of money services business permitted by a Classes A through Class D licence.

6. Application for licence, formalities and considerations

(1) In order to obtain a licence as a money services business, a person shall apply in writing to the Commission and submit the documents and other information as specified in Schedule II and pay the application fee prescribed in Schedule IV.

(2) In considering an application for a licence, the Commission shall conduct such investigation as it may deem necessary to ascertain—

- (a) the validity of the documents submitted in accordance with Schedule II;
- (b) the financial condition and history of the applicant;
- (c) the nature of the business of the applicant;
- (d) the experience of the persons who are to constitute its management,
- (e) the source of the initial capital; and
- (f) the convenience and needs of the community to be served by the granting of the licence.

(3) In considering an application for a Class A, Class B or Class E licence the Commission shall, in addition to the matters specified in subsection (2), take into consideration—

- (a) the adequacy of the capital structure; and
- (b) the earning prospects of the applicant.

(4) Within a reasonable time of its receipt of an application for a licence the Commission shall if it is satisfied that an application under subsection (1) is in order and that the applicant is a fit and proper person to be licensed to conduct money services business and that it can fulfil the obligations of a licensee under this Act -

- (a) approve the application and issue a licence to the applicant in the form set out in Schedule III, subject to the applicant paying the licence fee prescribed in Schedule IV and, subject

to such other terms, conditions and restrictions it considers necessary;

- (b) on issuing the licence to the applicant submit a copy of the licence to the Central Bank and recommend to the Central Bank that the licensee be designated in accordance with section 11 of the Payment System Act.

(5) In considering whether an applicant is a fit and proper person to be licensed, the Commission—

- (a) shall have regard to, in respect of each of its significant shareholders, directors and executive management and officers—

- (i) his financial status;
- (ii) his educational or other qualifications or experience having regard to the nature of his application;
- (iii) his ability to perform his proposed function efficiently, honestly and fairly; and
- (iv) his reputation, character, financial integrity and reliability; and

- (b) may take into account any matter relating to—

- (i) any person who is or is to be employed by, or associated with, the applicant for the purposes of the business to which the application relates;
- (ii) any person who will be acting as a principal or representative in relation to such business; and
- (iii) any significant shareholder, director or officer of the applicant, any other company or firm in the same group of companies or any director or officer of any such company or firm.

(6) The Commission shall not approve an application for a licence to conduct money services business unless it is satisfied that the institution it has a correspondent relationship with outside Antigua and Barbuda —

- (a) is subject to adequate AML/CFT regulation and supervision;
- (b) is effectively implementing the FATF recommendations; and
- (c) has exercised adequate prudential regulation.

(7) For the purposes of this section, the Commission may have regard to any information in its possession whether furnished by the applicant or not.

(8) A licence to carry on money services business under this Act –

- (a) shall not be granted to an individual; and
- (b) is not transferable.

(9) The Commission may at any time vary or repeal the conditions or restrictions it imposed pursuant to subsection (4).

(10) The Minister may amend Schedules I, II and IV by Order published in the *Gazette*.

7. Alteration of facts disclosed in application

(1) An applicant shall forthwith give written notice to the Commission of —

- (a) any proposed alteration to, or
- (b) the occurrence of any event which it knows affects or may affect in a material respect, information supplied to the Commission in relation to the application, being a proposal or event made or occurring while the application is pending a decision by the Commission.

(2) The Commission may, in its discretion, refuse to issue a licence or revoke a licence where there is failure by an applicant to comply with subsection (1).

8. Adequacy of capital

(1) A licensee shall —

- (a) maintain adequate capital in the prescribed form and according to the prescribed formula; and
- (b) maintain adequate insurance coverage, to the satisfaction of the Commission, to cover the risk inherent in the nature and scale of the money services business.

(2) The Commission will, in the course of its on-site examination of a licensee, review, *inter alia*, the adequacy of the insurance coverage.

(3) The Minister may by Order prescribe the form, formula and portion referred to in subsection (1).

(4) Where there is a deficiency in the prescribed capital, the Commission shall require the licensee to present a plan that is satisfactory to the Commission to reconstitute its capital within thirty days or such longer period as may be allowed by the Commission.

(5) Where the licensee—

- (a) fails to present a satisfactory plan pursuant to subsection (4), or
 - (b) fails to implement a plan presented pursuant to subsection (4),
- the Commission shall take such remedial action as it deems necessary in accordance with section 39.

(6) The Minister may by Order exempt a local government body or agency from the requirements of this section.

9. Period of licence and licence fee

(1) A licence to carry on money services business is valid from the date of first issue to the 31st December of that year and, subject to subsection (2), is renewable each year on the payment on or before the 15th day of January of the annual fee set out in Schedule IV.

(2) A licence shall not be renewed unless the licensee satisfies the requirements for the issuance of the licence.

(3) All licence fees payable under this Act shall be paid to the Commission.

10. Authorisation of location and approval of new business premises and subagents

(1) A licence granted under this Act authorises the licensee to carry on money services business in Antigua and Barbuda at the place of business designated in the licence and at such other place as the Commission may authorise in writing.

(2) A licensee shall not –

- (a) open a new place of business, issue a subagent agreement or change the location of an existing place of business in Antigua and Barbuda without the prior approval of the Commission;
- (b) open a place of business outside Antigua and Barbuda without the prior written approval of the Commission;
- (c) close an existing place of business in Antigua and Barbuda or terminate a subagent agreement without having given thirty days prior written notification to the Commission;
or
- (d) close a place of business outside of Antigua and Barbuda without having given thirty days prior written notification to the Commission.

(3) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars.

11. Display of licence certificate

(1) A licensee shall display or cause to be displayed and shall keep displayed a copy of the certificate of its licence granted under this Act in a conspicuous place in the public part of any place of business of the licensee.

(2) An agent, subagent shall display or cause to be displayed and shall keep displayed a copy of the certificate of licence granted to the licensee under this Act in a conspicuous place in the public part of any place of business of the subagent.

12. Restrictions of names likely to mislead

(1) The Commission shall not issue a licence under a name which —

- (a) is identical to that of any company, firm or business house, whether within Antigua and Barbuda or not, or that so nearly resembles that name as to be misleading;
- (b) falsely suggests the patronage of or connection with some person or Minister, whether within Antigua and Barbuda or not; or
- (c) falsely suggests that the money services business has a special status in relation to or derived from the Government, has the official backing of or acts on behalf of the Government or any department, branch, agency or organ of Government, or of any officer of Government, or is recognised in Antigua and Barbuda as a national or central money services business.

(2) Where after the issuance of a licence under this Act the Commission determines any condition for the refusal of a licence under subsection (1) existed in relation to a licensee, it may revoke the licence and notify the licensee of the reasons for the revocation.

(3) A person whose licence is revoked under subsection (2) shall within fourteen (14) days of receipt of notification of the revocation cease to carry on business as a money services business under the name which led to the revocation of the licence.

(4) A person who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of two years or both.

13. Advertisement

(1) A person who is not a licensee shall not —

- (a) whether in English or a foreign language, represent in the description or title under which that person carries on business within Antigua and Barbuda, that that person is carrying on money services business;
- (b) make any representation in any billhead, letter, letterhead, circular, paper, notice or advertisement or in any other manner that that person is carrying on money services

business within Antigua and Barbuda; or

(c) in any manner solicit or receive money from any person for the purpose of carrying on money services business within Antigua and Barbuda.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars or to imprisonment for a term of two years or both.

(3) Subsection (1) does not apply to a person who is exempted from the licensing requirements under section 4.

14. Actions of fundamental change requiring approval

(1) A licensee shall not, without the prior written approval of the Commission —

(a) change its name;

(b) change its principal office or location;

(c) transfer the whole or any substantial part of its assets or liabilities in Antigua and Barbuda other than in the ordinary course of its business; or

(d) enter into a merger or consolidation within Antigua and Barbuda.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of two years or both.

15. Change in Directorship

(1) A licensee shall not appoint a director or other senior officer without the prior written approval of the Commission for appointment of the proposed appointee as director or other senior officer as the case may be.

(2) A licensee desirous of appointing a director or other senior officer shall, no less than thirty days before the proposed date of appointment of such director or other senior officer submit to the Commission a completed Form B in Schedule II and the prescribed application form in respect of each proposed appointee.

(3) Upon receipt of the completed Form B in Schedule II and the prescribed application form the Commission shall conduct an investigation to determine whether the proposed appointee satisfies the fit and proper criteria established in section 6(5).

(4) Within fifteen days of the receipt of the completed Form B in Schedule II and the prescribed application form the Commission shall—

(a) approve the appointment of the proposed appointee to the proposed post and notify the

licensee; or

- (b) inform the licensee that the proposed appointee does not satisfy the fit and proper criteria and refuse approval for appointment of the proposed appointee to the proposed post.

(5) Notwithstanding subsection (1), where prior notification of the appointment of a proposed appointee as director or other senior officer of a licensee is not possible, the licensee may appoint the proposed appointee as director or other senior officer as the case may be, conditional on the approval of the Commission in accordance with subsection (4).

(6) Where a licensee makes an appointment pursuant to subsection (5), it shall within five days of such appointment submit to the Commission the forms prescribed under subsection (2) and a letter specifying the reasons for the appointment of the proposed appointee without prior approval.

(7) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of two years or both.

PART III AUDIT INFORMATION AND EXAMINATION

16. Annual audit, report and publication of financial statements and results

(1) A licensee shall appoint annually an auditor who must be a chartered accountant, a certified public accountant, a member of the Institute of Chartered Accountants of the Eastern Caribbean (ICAEC) or some other professionally qualified accountant, satisfactory to the Commission to —

- (a) examine the books and records and to make a report on the annual financial statements and financial position; and
- (b) perform all or any of the following duties as may from time to time be imposed on the auditor by the licensee at the request of the Commission:
 - (i) to submit such additional information in relation to the audit of the licensee as the Commission considers necessary;
 - (ii) to carry out any other examination or establish any procedure in any particular case;
 - (iii) to submit a report on any of the matters referred to in sub-paragraphs (i) and (ii);
 - (iv) to submit a report on the financial and accounting systems and risk management controls of the licensee;
 - (v) to provide an opinion on whether suitable measures to counter money laundering and to combat the financing of terrorism have been adopted by the licensee and are being implemented in accordance with the applicable laws.

(2) A licensee shall within three (3) months of the end of the financial year forward the audited financial statements referred to in subsection (1) to the Commission, unless prior written approval for an extension has been granted by the Commission.

(3) The audited financial statements referred to in subsection (1) shall cover a period of not more than eighteen months beginning on the date the licensee was incorporated, or if the licensee has previously prepared audited financial statements, beginning at the end of the period covered by the most recent audited financial statements.

(4) A licensee shall remunerate the auditor in respect of the discharge by the auditor of all or any of the duties set out in subsection (1).

(5) If in the course of the performance of his duties an auditor is satisfied that -

- (a) there has been a serious breach of or non-compliance with the provisions of this Act or any regulation, notice, order, guidelines or directions issued under this Act, the auditor shall immediately report the matter to the licensee and the Commission; or
- (b) there is evidence—
 - (i) that a criminal offence involving fraud or other dishonesty may have been committed; or
 - (ii) of any suspicious transaction as defined in the Money Laundering Prevention Act, 1996, the auditor shall immediately report the matter to the Office of National Drug and Money Laundering Control Policy.

(6) The Commission may request copies of reports submitted to the licensee by both its internal and external auditors.

(7) An auditor shall report to the Commission any matter it is required to report on any licensee to any investigative, regulatory or other institution, simultaneously with its report to that institution, except in the case of a money laundering or money laundering related matter, in which case the auditor shall report to the Office of National Drug and Money Laundering Control Policy.

(8) A licensee who fails to secure compliance with a request under subsection (1) (b) commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars for each such failure.

(9) If a licensee fails to appoint an auditor satisfactory to the Commission, the Commission may appoint an auditor for and at the expense of such licensee, and the remuneration of the auditor shall be determined by the Commission.

(10) The Commission may appoint an auditor, at the expense of the licensee, to conduct an independent audit of a licensee, in accordance with the instructions of the Commission, and to report

the findings or results thereof to the Commission.

(11) An auditor shall not be liable for breach of any duty solely by reason of compliance with the provisions of subsection (1), (5) or (7) or any other request for information by the Commission.

(12) A person having an interest in any licensee otherwise than as a customer, and a director, manager, secretary, employee or agent of a licensee shall not be eligible for appointment as auditor for such licensee.

(13) A person who, after an appointment as auditor under this Act, acquires any interest in a licensee, or becomes a director, manager, secretary, employee or agent of such licensee shall immediately cease to be such auditor for the purposes of this Act.

(14) The Minister may by Order—

- (a) exempt any local government body or agency from the audit requirements contained in subsection (1);
- (b) waive compliance with the audit requirement contained in subsection (1) in respect of any local government body or agency; and
- (c) require the Commission to conduct an ad hoc audit of any local government body or agency in respect of which an Order under paragraph (a) or (b) applies.

(15) The Commission may assess a licensee for the reasonable expenses of conducting any ad hoc audit ordered by the Minister under paragraph (c) of subsection (14).

17. Notice of termination of auditor's appointment

A licensee shall notify the Commission in writing of its intention to terminate the appointment of its auditor and shall state in the notification, the reasons for its decision to terminate the appointment of its auditor.

18. Accounting records and systems of business control

(1) A licensee shall in accordance with this section -

- (a) keep accounting records;
- (b) establish and maintain systems -
 - (i) of internal control and record keeping, and
 - (ii) for inspection and report; and
- (c) keep a current list of its agents, subagents and locations.

(2) The systems referred to in subsection (1) (b) shall be such as to ensure that the money services business is so conducted and its records so kept that -

- (a) the information necessary to enable the directors and the business to discharge their duties and functions is sufficiently accurate, and is available with sufficient regularity or as needed and with sufficient promptness, for those purposes; and
- (b) the information obtained by or furnished to the Commission under or for the purposes of this Act is sufficiently accurate for the purpose for which it is obtained or furnished.

(3) A licensee shall institute procedures to ensure that its accounting records and systems of business control comply with the requirements of the Money Laundering (Prevention) Act, 1996.

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars or to imprisonment for a term of two years or both.

19. Returns

(1) The holder of a Class A licence, a Class B licence or a Class E licence who is authorised to provide services referred to in section 5 (2) (a) or (b), shall, in the format provided by the Commission, file quarterly returns with the Commission within fifteen (15) days of the end of a quarter, along with a written declaration that the information set out in the application for the licence remains correct and gives a full and fair picture of its money services business.

(2) The holder of a Class C licence, a Class D licence or a Class E licence who is authorised to provide services referred to in section 5 (2) (c) or (d), shall, within fifteen (15) days of the end of the financial year, file an annual return with the Commission along with a written declaration that the information set out in the application for the licence remains correct and gives a full and fair picture of its money services business.

(3) The Commission may assess a penalty of an amount not exceeding twenty thousand dollars against any corporation or a director of a corporation who fails to

- (a) file the quarterly returns within the stipulated time specified in subsection (1);
- (b) provide complete and accurate information with respect to a return or other information required by this Act; or
- (c) comply with any directions given in writing by the Commission.

(4) A penalty imposed under this section constitutes a debt due to the Commission and is immediately payable and may be recovered as a debt in any court.

(5) Interest shall be charged on the unpaid amount of a penalty on a day to day basis on all amounts in arrears at the rate of two percent above Central Bank rate.

20. Extension of time for providing information

The Commission may, at the request of a person obliged to furnish any document or information under this Act extend, from time to time, the period within which that person is obliged to furnish that document or information.

21. Retention of records

(1) A licensee shall maintain –

- (a) all necessary records on transactions, both domestic and international, for at least six years following completion of the transaction; and
- (b) records of the identification data, account files and business correspondence for at least six years following the termination of the licensee's money services business.

(2) The retention period specified in subsection (1)(a) applies whether the licensee's money services business is ongoing or has been terminated.

(3) For the purposes of subsection (1), the transaction records maintained must be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.

(4) A licensee shall ensure that all customer and transaction records and information are available to the Commission on a timely basis.

(5) The retention of records under this section may be effected by electronic means.

(6) Notwithstanding subsection (1), a licensee shall maintain the records for such longer period as may be directed by the Commission or other competent authority.

(7) A licensee that contravenes any provision of this section commits an offence and is liable –

- (a) on summary conviction to a fine of one hundred and fifty thousand dollars; or
- (b) on conviction on indictment to a fine of one hundred thousand dollars.

22. Obligation where release of record required by law

(1) Where licensee is required by law to release an original of a record required to be maintained under section 21 before the end of the minimum retention period applicable, the licensee shall retain a complete copy of the record until the end of the applicable period or the return of the record, whichever occurs first.

(2) A licensee shall maintain a register of the records released under subsection (1).

- (3) A licensee that contravenes subsection (1) or (2) commits an offence and is liable –
- (a) on summary conviction to a fine of one hundred and fifty thousand dollars; or
 - (b) on conviction on indictment to a fine of one hundred thousand dollars.

23. Examination by the Commission

(1) The Commission shall examine or cause an examination to be made of each licensee from time to time, or whenever in its judgement such examination is necessary or expedient, in order to determine that such licensee is in a sound financial condition and that the requirements of this Act and any enactment dealing with money laundering prevention or the prevention of terrorism have been complied with in the conduct of its business.

(2) For the purpose of determining the condition of a licensee and its compliance with this Act, the Commission may at any time examine or cause an examination to be made of any affiliate or subagent of the licensee in Antigua and Barbuda to the same extent that an examination may be made of the licensee.

(3) The Commission may assess a licensee for the reasonable expenses of conducting an examination under subsections (1) and (2).

(4) A licensee refusing to make available for examination any books, accounts and records having been requested to do so by the Commission commits an offence and is liable on conviction to a fine of one hundred thousand dollars or imprisonment for a term of two years, or both.

24. Confidential information

A person who has acquired knowledge in his capacity as director, manager, secretary, officer, employee or agent of any licensee or as its auditor or receiver or official liquidator or as director, officer, employee or agent of the Commission, shall not disclose to any person or governmental authority the identity, assets, liabilities, transactions or other information in respect of a customer of the licensee except—

- (a) with the written authorisation of the customer or of his heirs or legal personal representatives;
- (b) for the purpose of the performance of his duties within the scope of his employment in conformity with the provisions of this Act;
- (c) when lawfully required to make disclosure by any court of competent jurisdiction within Antigua and Barbuda; or
- (d) under the provisions of any law of Antigua and Barbuda.

25. Exchange of information

Notwithstanding section 24, the Commission may share any information received or any report prepared by it in the performance of its duties under this Act with the Central Bank, or any foreign authority responsible for the supervision or regulation of affiliates of a licensee, or for maintaining the integrity of the financial system on a reciprocal basis, and subject to—

- (a) an agreement of confidentiality and a Memorandum of Understanding between the Commission and the Central Bank or such authorities; and
- (b) any law on the protection of confidential information.

**PART IV
SEGREGATED ACCOUNTS
BANKRUPTCY OR INSOLVENCY OF LICENSEE**

26. Segregated Accounts

(1) A licensee in receipt of funds from a customer shall immediately and irrevocably segregate the amount intended for transmission or delivery to the payee customer exclusively for the purpose of the proper payment of the funds in due course to the payee customer.

(2) Any funds which are not delivered or transmitted to the payee customer by or on behalf of the licensee shall be a first charge on the assets of a bankrupt or otherwise insolvent licensee and shall be—

- (a) re-paid to the payor customer; or
- (b) paid to the payee customer,

by the licensee, receiver, liquidator or administrator out of the segregated account to which it was placed or was deemed to have been placed.

27. Bankruptcy or insolvency of licensee

(1) A licensee shall notify the Commission as soon as practicable after bankruptcy or insolvency proceedings are instituted.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars.

(3) A licensee does not contravene subsection (1) if it took reasonable steps to comply with that subsection.

28. Utilisation of deposits, etc.

(1) Notwithstanding anything to the contrary in the Bankruptcy Act or the Companies Act, any funds delivered to a licensee by or on behalf of a customer, prior to the issue of any bankruptcy,

winding up or receivership order against that licensee shall be utilised by the licensee, receiver or liquidator solely to discharge the licensee's contractual obligations to the customer.

(2) Notwithstanding anything in the Bankruptcy Act or the Companies Act, if a licensee goes into bankruptcy, receivership or is wound up, any provision contained in a written agreement between that licensee and a customer is binding upon the liquidator, receiver or administrator in respect of any payment or settlement obligation.

(3) A person who contravenes the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars.

PART V ABANDONED PROPERTY

29. Abandoned property

(1) Subject to subsection (2) the following items which are held or owing by a licensee shall be presumed to be abandoned—

- (a) any funds paid in Antigua and Barbuda toward the purchase of shares or other interests in a licensee, together with any interest or dividend, but excluding any lawful charges;
- (b) any sum payable on written instrument issued in Antigua and Barbuda on which a licensee is directly liable; and
- (c) any sum delivered to the licensee for transmittal to a person in Antigua and Barbuda or in another jurisdiction for and on behalf of a payee.

(2) The items enumerated in subsection (1) shall not be presumed to be abandoned if the owner has, within two (2) years of the date of deposit, payment of funds or issuance of instruments, as the case may be—

- (a) corresponded in writing with the licensee concerning the items; or
- (b) otherwise indicated an interest in the items as evidenced by a memorandum concerning them written by a licensee.

30. Report, publication and disposal of abandoned property

(1) Within thirty (30) days after the end of its financial year a licensee shall cause to be published in the Gazette and in a newspaper of general circulation in Antigua and Barbuda, the name of the owner and particulars concerning property referred to in section 29 and shall mail a notice to the owner at his last known address containing particulars concerning the property.

(2) A licensee shall within ninety (90) days after the publication required in subsection (1), report the unclaimed property held in accordance with section 29.

(3) Upon paying or delivering property referred to in subsection (2) into the custody of the Commission a licensee is, to the extent of the value of the property, relieved of liability for any claim in that respect.

31. Sale and handling of proceeds of sale of abandoned property

(1) A licensee may sell at public sale all property other than money presumed to be abandoned after the expiration of sixty (60) days from the later date of publication or mailing required by section 30(1) following such advertisement of the sale as the Commission may direct.

(2) A purchaser shall receive title to the property free from all claims of the owner or prior holder and from all persons claiming through or under him.

(3) A licensee shall deposit with the Commission the proceeds of the sale of property in accordance with subsection (1) less all reasonable costs incurred by it in connection with the sale, mailing of notices, and service as it may deem appropriate to assure the prompt payment of claims which may subsequently be made and approved by the Commission.

(4) Any property remaining unsold shall be delivered to the Commission and shall be disposed of by the Commission in such manner as the Commission deems fit.

32. Claims on abandoned property

(1) A person claiming an interest in any property which has been paid to, or delivered into the custody of the Commission or in the proceeds from the sale may file a claim with the Commission and, after an appropriate hearing the decision of which shall be communicated to the claimant and made a public record, the Commission may deliver up the property or make payment.

(2) A person aggrieved by a decision of the Commission may commence an action in the High Court to establish his claim within thirty (30) days following the decision of the Commission.

33. Penalties for failure to file abandoned property report

(1) A licensee shall not wilfully fail to file the report or to pay or deliver property presumed to be abandoned into the custody of the Commission in accordance with section 30(2) or 31(4).

(2) A licensee who contravenes subsection (1) commits an offence, and is liable on summary conviction to a fine of one thousand dollars or to imprisonment for a term of three (3) months or to both.

PART VI ENFORCEMENT

34. Persons carrying on money services business without a licence

(1) If the Commission has reasonable cause to suspect that —

- (a) a person is carrying on money services business without a licence granted under this Act; and
- (b) evidence of contravention of section 4(1) is to be found on any premises in Antigua and Barbuda,

the Commission may lay information on oath before a Magistrate as regards its suspicions.

(2) If it appears to a Magistrate, upon the information on oath under subsection (1) and after such enquiry as the Magistrate considers necessary, that there is reasonable cause to believe that —

- (a) a person is carrying on money services business without a licence granted under this Act; and
- (b) evidence of contravention of section 4(1) may be found on premises in Antigua and Barbuda specified in the information,

the Magistrate may issue a warrant authorising a police officer, at any reasonable time, by day or by night, to enter and search such premises and seize any equipment, electronic devices, books, accounts, records, vouchers and other documents, cheques, securities and any cash as may be found on the premises relating to the conduct of money services business, and deliver them to the Commission.

(3) A warrant issued under this section shall include —

- (a) a statement of the purpose for which the warrant is issued, and a reference to the nature of the offence;
- (b) a description of the kind of property to be seized; and
- (c) the time, not being later than fourteen days from date of issue, when the warrant expires.

(4) Where, by reason of its nature, size or amount, it is not practicable to remove any thing seized under this section, the police officer may, by any means, seal such thing in the premises in which it is found.

(5) A person who, without lawful authority breaks, tampers with or damages the seal referred to in subsection (4) or removes any thing under seal pursuant to subsection (4), or attempts to do so, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years.

(6) A warrant issued under this section may authorise—

- (a) the Commission to detain the equipment, electronic devices, books, accounts, records, vouchers and other documents, cheques, securities and any cash for a period not exceeding

thirty (30) days;

- (b) the officer to make copies of the books, accounts, records, vouchers and other documents, cheques, securities and any cash; and
- (c) the Commission to retain copies of the books, accounts, records, vouchers and other documents, cheques, securities and any cash.

(7) The person authorised by a warrant to search any premises may—

- (a) seize any equipment, electronic devices, books, accounts, records, vouchers and other documents, cheques, securities or any cash found—
 - (i) in the premises; or
 - (ii) in the possession of any person described in paragraph (b), if he has reasonable grounds for believing that the equipment, electronic devices, books, accounts, records, vouchers or other documents, cheques, securities or any cash relate to the conduct of money services business on the premises;

(b) search a person who—

- (i) is found in the premises; or
- (ii) has recently left or is about to enter the premises, whom he has reasonable grounds to believe is in possession of any equipment, electronic devices, books, accounts, records, vouchers or other documents, cheques, securities or any cash in respect of the conduct of money services business on the premises.

(8) In pursuance of any warrant issued under this section, no person shall be searched by an officer of the opposite sex.

(9) Where under this section a person has the power to enter any premises, he may if necessary use reasonable force to enter the premises.

(10) Where any equipment, electronic devices, books, accounts, records, vouchers or other documents, cheques, securities or any cash is seized under this section, the police officer shall prepare a list of the things seized and immediately deliver a copy signed by him to the occupier of the premises which has been searched, or to his agent or servant, at the premises.

(11) A person who obstructs the Commission or any other person in the exercise of any powers conferred under this section commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of six months or both such fine and imprisonment.

35. Suspension of licence or money services activity

(1) The Commission may, if it thinks it necessary—

- (a) as a matter of urgency for the protection of the public, or
- (b) as a result of any investigation under this Act suspend a licence granted under this Act or a money services activity of the licensee for the period, or until the happening of an event, as the Commission considers appropriate.

(2) Where the Commission suspends a licence or a money services activity under this Act, it shall notify the person whose licence is suspended or the licensee whose money services activity is suspended.

(3) A person whose licence is suspended or the licensee whose money services activity is suspended shall, for the purpose of this Act, be deemed not to be licensed or licensed in respect of the money services activity, as the case may be, from the date of notification of suspension.

(4) Notice under subsection (2) shall be served at the licensee's last known address and shall be published in the Gazette and in a newspaper of general circulation in Antigua and Barbuda.

(5) A licensee who is aggrieved by any decision made under subsection (1) may appeal to the High Court within fourteen (14) days of such decision, setting out the grounds of such appeal, and the High Court may revoke or confirm the said decision.

36. Revocation of licence and declaration of discontinuance of service

(1) The Commission may revoke any licence to carry on money services business in Antigua and Barbuda if the licensee—

- (a) fails to commence operations within a period of three (3) months following the granting of the licence;
- (b) fails to comply with the conditions or restrictions of its licence;
- (c) is in breach of any of the provisions of this Act which is applicable thereto;
- (d) ceases to carry on money services business in Antigua and Barbuda for a period in excess of ten months;
- (e) is conducting its affairs in a manner detrimental to the public interest or to the interest of its customers;
- (f) goes into liquidation or is wound up or otherwise dissolved; or
- (g) by reason of any other circumstances, is no longer a fit and proper person to hold a licence.

(2) The Commission shall revoke a licence at the request of the licensee.

(3) Before revoking a licence under subsection (1), the Commission shall give the licensee notice in writing of its intention to do so, specifying therein the grounds upon which it proposes to make the revocation and shall require the licensee to submit to it within a specified period, being not less than thirty (30) days, a statement of objections to the making of the revocation and thereafter, the Commission shall advise the licensee of its decision.

(4) Notice under subsection (3) shall be served at the licensee's last known address or shall be published in the Gazette or in a newspaper of general circulation in Antigua and Barbuda.

(5) A licensee who is aggrieved by any decision made under subsection (1) may appeal to the High Court within fourteen (14) days of such decision, setting forth the grounds of such appeal, and the High Court may revoke or confirm the said decision.

(6) Where a licence to carry on money services business in Antigua and Barbuda has been revoked, the Commission shall, as soon as possible thereafter cause a notice of the revocation to be published in the Gazette and in a newspaper of general circulation in Antigua and Barbuda and cause such other steps to be taken as are deemed to be necessary to inform the public of such revocation.

(7) The holder of a class A, Class B or Class E licence shall within 45 days, or such longer period as the Commission may allow, of the date on which the licence is revoked under subsection (1) or (2), submit to the Commission a letter of closure issued by its auditors confirming that –

- (a) all moneys received from the licensee's customers have been received by the intended recipients of such moneys;
- (b) provision has been made to satisfy all statutory obligations; and
- (c) adequate provision has been made to meet any unforeseen liabilities in respect of the money services business.

37. Appointment of receiver

(1) Without prejudice to section 4(1), where a person is found conducting money services business without a licence, the Commission may apply to the court for appointment of a receiver to liquidate the business.

(2) Before applying for the appointment of a receiver under subsection (1), the Commission shall give the person concerned notice in writing of its intention to do so and shall require the person to comply with the requirements of this Act within a specified period, being not less than thirty days, and thereafter the Commission shall advise the person of its decision.

38. Commission may apply to Court to preserve customers' interests

(1) The Commission may, in a case where a licensee, or a person who has at any time been a

licensee, is being wound up voluntarily, apply to the Court if the Commission considers that the winding up is not being conducted in the best interests of the licensee's customers or creditors, and the Court shall make any order it considers appropriate.

(2) If it appears to the Commission that there is reasonable ground for suspecting that an offence against this Act has been or is being committed by any person, the Commission may, with the approval of the court, take any action it considers necessary, in the interest of the person's customers or creditors, to preserve any assets held by that person.

39. Powers of the Commission in respect of licensees

(1) If the Commission is of the opinion that—

- (a) a licensee is or appears likely to become unable to meet its obligations as they fall due;
- (b) a licensee is carrying on business in a manner detrimental to the public interest or the interest of its customers or creditors;
- (c) a licensee has contravened this Act;
- (d) a licensee has failed to comply with a condition of its licence;
- (e) there has been or is, on the part of a licensee or its directors, a failure to satisfy any one or more of the criteria of prudent management set out in section 42;
- (f) a licensee, or a director, manager, secretary or other officer concerned in the management of a licensee refuses to cooperate with the Commission in the performance of its functions under section 41;
- (g) a licensee is carrying on business in an unlawful manner;
- (h) a licensee has failed to maintain the prescribed capital; or
- (i) a licensee is violating any law, regulation or guideline to which the licensee is subject;

the Commission may take one or more of the measures set out in subsection (2).

(2) Without prejudice to sections 35 and 36, the Commission may, for the purposes of subsection (1)—

- (a) impose conditions, or further conditions, as the case may be, upon the licence and may amend or revoke any of the conditions;
- (b) require the suspension or removal of a director or officer of the licensee;
- (c) at the expense of the licensee, appoint a person to advise the licensee on the proper

conduct of its affairs and to report to the Commission within three months of the date of his appointment, or any extension of appointment and at such intervals as the Commission may require;

- (d) at the expense of the licensee, appoint a person to assume control of the licensee's affairs who shall have all the powers of a person appointed as a receiver or manager under the Bankruptcy Act, who shall report to the Commission within three months of the date of his appointment, or any extension of appointment and at such intervals as the Commission may require;
- (e) require a licensee, to take, refrain from taking, or discontinue any action as the Commission considers necessary;
- (f) revoke the licence.

(3) The Commission may, on receipt of a report under subsection (2)—

- (a) revoke the appointment of the person appointed under subsection (2)(c) or (d);
- (b) extend the period of appointment of a person appointed under subsection 2 (c) or (d);
- (c) subject to any conditions that the Commission may impose, allow the licensee to reorganise its affairs in a manner approved by the Commission; or,
- (d) revoke the licence.

(4) Where the Commission decides to revoke a licence pursuant to subsection 2(f) or 3(d), it shall comply with the procedures established in section 36 (3), (4), (5) and (6).

(5) A licensee who is aggrieved by any decision made under subsection (2) may appeal to the High Court within fourteen (14) days of such decision, setting out the grounds of such appeal, and the High Court may revoke or confirm the decision.

40. Transactions effected prior to suspension or revocation of licence

The suspension of a licence under this Act does not operate so as to avoid or affect any agreement, transaction or arrangement relating to a provision of money services business entered into by the licensee before the suspension or revocation of the licence and does not affect any right, obligation, or liability arising under any such agreement, transaction or arrangement.

41. Powers and duties of the Commission

(1) It is the duty of the Commission to ensure the proper administration of this Act and without limiting the generality of the foregoing the Commission shall —

- (a) maintain a current register of the names and addresses of licensed money services and their directors and beneficial shareholders, and be responsible for ensuring compliance with licensing requirements;
- (b) maintain a general review of money services business practice in Antigua and Barbuda;
- (c) whenever it thinks fit, examine the affairs or business of any licensee carrying on business within Antigua and Barbuda for the purpose of satisfying itself that this Act and any enactment relating to the prevention of money laundering or the prevention of terrorism have been or are being complied with and that the licensee is in a sound financial position and is managing its business in a prudent manner;
- (d) assist in the investigation of any offence against the laws of Antigua and Barbuda which it has reasonable grounds to believe has or may have been committed by a licensee or by any of its directors or officers in their capacity as directors or officers;
- (e) examine
 - (i) returns furnished to it under section 19, and
 - (ii) audited financial statements forwarded to it, under section 16; and
- (f) require or perform consolidated supervision of affiliates whenever it thinks fit.

(2) In the performance of its functions under this Act the Commission is entitled at all reasonable times—

- (a) to have access to the premises, books, records, vouchers, documents, cash and securities of any licensee;
- (b) to remove and make copies of any books, records, vouchers and documents found on the premises of a licensee;
- (c) to request the information, matter or thing from any person who it has reasonable grounds to believe is carrying on money services business in contravention of section 4(1); and
- (d) to call upon the manager of the licensee or any similar person or an officer designated by either of them, for any information or explanation the Commission may require for the purpose of enabling it to perform its functions under this Act.

(3) A person who fails to comply with a requirement of the Commission in the exercise of a function under subsection (2) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of two years or both.

42. Criteria for prudent management

For the purpose of section 41(1) (c), the criteria for prudent management are—

- (a) the maintenance of—
 - (i) adequate reserves and other capital resources in amounts which may be prescribed by the Commission;
 - (ii) adequate assets in liquid form in amounts which may be prescribed by the Commission;
 - (iii) a system for managing and containing risks to the net worth of the licensee's business and risks to its net income, whether arising from fluctuations in interest or exchange rates or from other factors;
 - (iv) the requisite accounting records;
 - (v) systems of internal control and record keeping; and
 - (vi) systems for inspection and report;
- (b) the management conducted with prudence and integrity by a sufficient number of persons, having regard to the range and scale of the business, who are fit and proper to be directors or, as the case may be, officers of the licensee in accordance with the criteria established under section 6(5); and
- (c) the conduct of the licensee's business with adequate professional skills.

43. Management's liability for non-compliance with Act

A director, manager, secretary or other officer concerned in the management of a licensee who fails to take all reasonable steps to secure compliance by the licensee with the requirements of this Act commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term of six months or to both.

44. False or misleading information

A licensee, director or an officer of a licensee who knowingly or wilfully supplies false or misleading information to the Commission commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term of one year or both.

45. Removal and disqualification of Director

(1) A person who is a director, manager or other officer concerned with the management of a licensee shall cease to hold office upon —

- (a) notification by its management team of a finding by two-thirds of its members of his permanent incapacity or serious neglect of, or misconduct in, office;
- (b) his being declared bankrupt or compounding with, or suspending payment to, his creditors;
- (c) his conviction in a court of law of any offence involving fraud or dishonesty;
- (d) his being sentenced for an offence involving a term of imprisonment of or exceeding six months or in default of a payment of a fine; or
- (e) his being deemed not to be a fit and proper person in accordance with the criteria established under section 6(5).

(2) A person who has been a director of, or directly or indirectly concerned in, the management of a licensee the licence of which has been revoked shall not, without the approval of the Commission, act or continue to act as a director, or be directly or indirectly concerned in the management of any licensee.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of one year or to both.

46. Offences by officers of corporate bodies

- (1) Where an offence under this Act has been committed by a body of persons which is—
- (a) a body corporate, society or other body of persons, every person who at the time of the commission of the offence was a director, manager, secretary or other officer of the body corporate, society or other body of persons as well as that body corporate, society or other body of persons commits the offence;
 - (b) a partnership or firm, every partner of the partnership or firm as well as that partnership or firm commits the offence,

and liable to be proceeded against and punished accordingly.

(2) A person shall not be convicted of an offence pursuant to subsection (1) if he proves that—

- (a) the act constituting the offence took place without his knowledge or consent, or
- (b) he exercised all due diligence to prevent the commission of the offence.

47. General penalty

A person who contravenes any provision or requirement of this Act for which no offence is specifically created or penalty provided commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of two years or both.

**PART VII
MISCELLANEOUS**

48. Immunity

Neither the Commission nor an employee of the Commission shall be liable for anything done or omitted in the discharge or purported discharge of its functions under this Act unless it is shown that the act or omission was in bad faith.

49. Prudential guidelines

The Commission may, in administering the provisions of this Act, issue prudential guidelines and related orders respecting—

- (a) policies, practices and procedures for evaluating the quality of assets,
- (b) policies, procedures and systems for identifying, monitoring and controlling transfer risk, market risk, operational risk; and such other risks as the Commission shall specify;
- (c) corporate governance;
- (d) auditors;
- (e) procedures to be adopted by licensees and the Commission; and
- (f) anti money laundering and combating the financing of terrorism matters.

50. Regulations

(1) The Minister may make regulations for giving effect to the provisions of this Act, and without limiting the generality of the foregoing, may make Regulations respecting—

- (a) the form of advertising by licensees;
- (b) registers and records to be kept under this Act;
- (c) forms to be used by licensees;
- (d) fees payable under this Act;
- (e) the penalties which the Commission may impose for breach of its rules or orders; and
- (f) any matter which, under this Act, is required or permitted to be prescribed or which is necessary or expedient to be prescribed.

(2) Regulations made under the Act shall be subject to a negative resolution of the House of Representatives and may prescribe in respect of any contravention of the regulations, a penalty not exceeding ten thousand dollars or imprisonment for a period not exceeding twelve months or both

51 Transitional and Savings

(1) Any subordinate legislation made under the Money Services Business Act, 2007 and in force immediately before the coming into force of this Act, so far as it is not inconsistent with the provisions of this Act, shall continue in force as if made under this Act.

(2) Every form issued or approved for use under the Money Services Business Act, 2007 is to be regarded as issued or approved for use under this Act until another form is issued or approved under this Act in place of that form.

(3) Every guideline, rule or order issued by the Commission pursuant to the Money Services Business Act, 2007 is to be regarded as issued pursuant to this Act until another guideline, rule or order is issued under this Act in place of that guideline, rule or order.

(4) A licence granted under the Money Services Business Act, 2007, and in force at the commencement of this Act –

(a) shall have effect as from the commencement of this Act as if granted under this Act; and

(b) in the case of a licence for a specified period, shall remain in force, subject to the provisions of this Act, for the unexpired portion of that period.

(5) An application made under the Money Services Business Act, 2007 which was wholly or partly heard at the commencement of this Act is to be continued and dealt with in all respects as if this Act had not come into force.

(6) An application made under the Money Services Business Act, 2007 which has not been wholly or partly heard at the commencement of this Act is to be taken to be an application made under this Act and this Act applies accordingly.

(7) Where a period of time specified in the Money Services Business Act, 2007 is current at the commencement of this Act, this Act has effect as if it had been in force when that period of time began to run.

(8) An exemption granted by the Minister under and in respect of a provision of the Money Services Business Act, 2007 continues to have effect as if it had been granted under this Act.

(9) Except as may be expressly provided in this Act, this Act does not affect the rights of any party to any proceedings commenced in any court before this Act comes into force.

(10) All proceedings in respect of an offence committed or alleged to have been committed against

the Money Services Business Act, 2007 may be commenced or continued as if this Act had not come into force.

(11) Where a document refers expressly or by implication to the Money Services Business Act, 2007 the reference shall, except where the context otherwise requires, be construed as a reference to the corresponding provision of this Act.

52. Repeal

Money Services Business Act, 2007 is hereby repealed.

Schedule I

[section 5]

Class of Licence	Description of Licence
Class A	Money Transmission
Class B	Issuance, Sale and Redemption of money orders/travellers cheques.
Class C	Cheque Cashing
Class D	Currency Exchange
Class E	All or any combination of Classes A through Class D

SCHEDULE II

[section 6]

INFORMATION TO BE CONTAINED IN AND TO ACCOMPANY AN APPLICATION FOR THE GRANT OF A LICENCE

1. The name and address of the money services business in respect of which the licence is sought.
2. The name and address of the applicant.
3. The type of money services business the applicant proposes to conduct.
4. The source and quantum of funds for initial capital or acquisition of the money services business.
5. The address of the principal office of the applicant and of its registered office if different.
6. If the applicant is a corporation, limited liability company, partnership or other entity,
 - (a) the date and place of incorporation or formation and a copy of the memorandum and articles of association, Act, charter, partnership agreement or other instrument constituting and defining the constitution of the applicant verified by a declaration made by one of its directors or partners or its secretary; and
 - (b) a brief description of the structure or organisation of the applicant, including any parent

or subsidiary of the applicant.

7. The name and address of each person who—

- (a) owns or controls the money services business;
- (b) is a director or officer of the money services business;
- (c) is an agent of the applicant;
- (d) otherwise participates in the conduct of the affairs of the money services business.

8. The following information is also required from the named persons in Item 7 and each significant shareholder—

- (a) legal name and any alias and residential address;
- (b) occupation (over the previous 5 years) and business address;
- (c) date of birth;
- (d) citizenship;
- (e) social security number;
- (f) passport number;
- (g) two (2) character references, a police or other certificate satisfactory to the Commission that the person has not been convicted of a serious crime or any offence involving dishonesty.

9. The name and address of any depository institution at which a transaction account is maintained for the purposes of the money services business.

10. Where appropriate a statement in writing in a form acceptable to the Commission from the body responsible for the administration of the laws relating to money services businesses and the supervision of the businesses in the country in which the applicant or its parent company is incorporated that the body has no objection to the application being made.

11. If the applicant is a company the following information is required where applicable—

- (a) the annual accounts for the two year period immediately preceding the date of the application of each significant shareholder which is a body corporate, together with similar accounts for the parent body, if any, of each of the bodies corporate or the annual accounts for the current year, in the case of a body corporate which is in existence for less

- than two years;
- (b) two or more references verifying the good financial standing of each significant shareholder who is a natural person;
 - (c) the name and address of its proposed auditor;
 - (d) a statement giving the date for the drawing up of the annual accounts of the applicant;
 - (e) confirmation in writing under the hand of the presiding officer of the applicant and the presiding officer of its parent body, if any, that they concur in the making of the application;
 - (f) three business references of which at least one shall be from a bank;
 - (g) a detailed business plan, containing details of the current money services business activities, if any, of the applicant and its proposed activities if the licence applied for is granted, including
 - (i) the reasons for applying for the licence;
 - (ii) the business aims of the applicant in respect of the money services business and its potential client base;
 - (iii) a detailed statement setting out its proposed initial assets and its proposed assets and expected liabilities at the end of each of the two years next succeeding the date of such grant together with an estimate of expected income;
 - (iv) particulars of its management structure and personnel;
 - (v) the names and addresses of the registered offices of all subsidiary companies of the applicant together with a statement as to how much of the capital of each company constitutes an asset of the applicant;
 - (vi) a chart showing the relationship to its subsidiaries and affiliates and any holding company;
 - (vii) a brief description of each of its subsidiaries and affiliates; and
 - (viii) details of the identified economic needs that the company intends to meet, growth prospects in that service area over the next five years, the exact nature and source of capital financing to be made available to the company for start-up and ongoing operations;
 - (h) details of the applicant's proposals for establishing and maintaining, in respect of the money services business, systems of control, inspection and report, if the licence applied for is granted; and

- (i) in the case of a company incorporated outside Antigua and Barbuda, the name and address of the supervisory or regulatory authority responsible for the supervision of each of the applicant’s agents operating outside Antigua and Barbuda.

12. If the applicant is a franchise holder the contract and any other documents relating to the operation of the franchise.

13. A description of any money services business, other than that which is the subject of the application, previously or currently engaged in by the applicant.

14. Completed copies of a Personal Questionnaire for each executive officer, director and significant shareholder.

15. Copies of the applicant’s most recent audited financial statements.

16. Any other information requested by the Commission.

**FORM B
PERSONAL QUESTIONNAIRE FOR PERSONS LISTED IN ITEM 7
PART A**

NAME: _____
 PREVIOUS NAMES (IF ANY): _____
 ALIASES: _____ DATE OF BIRTH: _____
 CITIZENSHIP: _____
 PLACE OF BIRTH: _____
 SOCIAL SECURITY NUMBER: _____
 PASSPORT NUMBER: _____
 PLACE AND DATE OF ISSUE: _____
 ADDRESS (Home & Business): _____
 OCCUPATION: _____

1. Have you at any time been charged or convicted of any offence by a Civil, Criminal or Military Court? (excluding minor Road Traffic offences). If so, please give details of charge, and if convicted, the date of conviction and full particulars of the offence and the penalty imposed.

2. Have you ever been the subject of investigation/disciplinary procedures, censured, disciplined by professional body to which you belong or have belonged? If so, give particulars.

3. Have you ever been refused entry to any profession or vocation? If so, give particulars.

4. Have you ever been dismissed or requested to resign from any office or employment? If so, give particulars.

5. Have you ever been censured, disciplined or publicly criticised by, or made the subject of a Court Order at the instigation of

(a) any regulatory authority?

(b) any officially appointed enquiry?

(c) any other established body concerned with the regulation of a relevant activity (as described in the glossary at the end of this form)? If so, give particulars.

6. In connection with the formation or management of any corporation, have you been adjudged by a court civilly or criminally liable for any fraud, misfeasance or other misconduct towards that corporation or any member of the corporation? If so, give particulars.

7. In connection with the formation or management of any corporation have you been disqualified by a court from being a director or from acting in the management or conduct of the affairs of any corporation? If so, give particulars.

8. Have you ever

(a) been adjudged bankrupt by a Court in any jurisdiction?

(b) had a receiving order made against you?

(c) had your estate sequestrated?

(d) entered into a Deed of arrangement, or other composition or arrangement with your creditors? If so, give particulars.

9. Has a bankruptcy petition ever been served on you? If pending, give details of the circumstances and if not pending, how was the matter resolved?

10. Have you, your company or your employer previously dealt on a regular basis with any person carrying on a relevant activity (as described in the glossary at the end of this form) who has, to your knowledge, at any time indicated that he is unwilling to effect further transactions with you, your company or your employer, by reason of any act or omission by you? If so, give particulars.

11. Will you be actively engaged in the business or the entity to which this application relates and devote the major portion of your time to it?

**PART B
RELATED OR OTHER INTEREST**

1. Are you a Director of any company, partnership, corporate body or any other business organization engaged in money services business? If so, state

- (a) name of company/corporation/etc.,
- (b) nature of business;
- (c) date of commencement of directorship;
- (d) whether or not employed on service contract (e.g. managing directorship) in any case.

2. Have you been a director of a deposit taking institution, credit extending institution, other financial service provider, any other limited company or corporation other than those stated in the previous questions? If so, state

- (a) name of company/corporation;
- (b) nature of business;
- (c) date of commencement of directorship;
- (d) date of cessation of directorship.

3. Are you or have you been engaged

- (a) in partnership?; or
- (b) in business as a principal on your own account?

If so, give particulars.

4. Are you a beneficial owner of any controlling interest in any unlisted private or public company?

If so, give particulars.

5. Have you ever been a director of, or directly concerned with the management of a bank or other financial institution

- (a) that has been wound up by a Court?
- (b) the licence of which has been revoked?
- (c) which has been placed in receivership?
- (d) which has entered into a composition with its creditors?
- (e) whose business had been adjudged to have been conducted imprudently or fraudulently?
- (f) which has failed to meet the solvency requirements prescribed by law?

If so, give particulars.

6. Have you ever been a director, or been directly concerned with the management or conduct of affairs of any company which has gone into liquidation, whilst you were, or within one year of your being a director, or so concerned? If so, give details of the circumstances including the following:

- (a) name of company;
- (b) name of liquidator;
- (c) address of liquidator.

7. Have you ever been concerned with the management or conduct of affairs or any corporation which, by reason of any matter relating to a time when you were so concerned, has been censured, or disciplined by

- (a) any regulatory authority?
- (b) any official appointed enquiry?

(c) any other body concerned with regulation of a relevant activity?

If so, give particulars.

8. Do you (in your personal capacity or through any entity controlled by you) have outstanding debt of any amount sixty or more days in arrears? If so, state the following:

- (a) form
- (b) amount
- (c) source
- (d) maturity date

9. Has any person, firm or company guaranteed the indebtedness? If so, give particulars (see previous question).

10. Are you at present guaranteeing the debts and obligations of any third parties? If so, give particulars.

I, certify that all the statements contained in this questionnaire are true, accurate and fair to the best of my knowledge and belief.

.....
Signature

AUDITED FINANCIAL STATEMENTS

1. If the applicant is a business that was in existence and operating prior to the date of application, copies of audited financial statements (balance sheet, profit and loss, auditor's report and notes to accounts) for the five consecutive years immediately preceding its application, except however that where such applicant has been functioning for less than five years, a copy of its audited financial statements for each year it has been in operation shall be sufficient.

2. Where item 1 is not applicable the opening balance sheet, (audited).

3. Operating projections for the proposed licensee's first five years of business. This should include balance sheet, income statement and cash flow projections prepared in an acceptable accounting format. Details of any financial or economic assumptions on which these projections are based should be clearly indicated.

4. Where applicant is a subsidiary or affiliate of another company, submit in addition to item 1 or 2, audited financial statements of the parent company and all other “connected” companies.

GLOSSARY

“connected” in relation to a company means two or more companies or group of companies with interests which are so interrelated that they should be considered as a single unit;

“corporation” means a body corporate, incorporated in Antigua and Barbuda or elsewhere;

“relevant activity” means

- (a) banking, finance, insurance, money-lending, money management, debt-financing, hire purchase financing, leasing or other financial activities;
- (b) dealing in securities;
- (c) providing investment or financial advice and management.

SCHEDULE III

[section 6]

FORM OF LICENCE



MSB No.

**ANTIGUA AND BARBUDA
FINANCIAL SERVICES REGULATORY COMMISSION**

Class (): Licence to Conduct Money Services Business

is licensed under the Money Services Act 2010, to carry on **the business of money transmission/ issuance, sale and redemption of payment instruments/cheque cashing/currency exchange/ within Antigua and Barbuda subject to the following conditions/restrictions:** The licensee shall forthwith notify the Commission of any change in the information supplied in the application for this licence.

This licence is valid as of January 1, to December 31, year

 Administrator/CEO
 Financial Services Regulatory
 Commission

 Manager of IBCs & NBFIs
 Financial Services Regulatory
 Commission

Approved
 Location: _____

Granted at St. Johns
 Antigua, this day of

Schedule IV

[section 6 & 9]

Fees

Description	Application Fee	Annual Licence Fee	Annual Subagent Fee	Annual Location Fees*	Other Fees
Class A: Money Transmission	\$5,000.00	\$5,000.00	\$2,500.00	\$2,500.00	
Class B: Issuance, Sale and Redemption of Payment Instruments	\$5,000.00	\$5,000.00	\$2,500.00	\$2,500.00	
Class C: Cheque Cashing	\$5,000.00	\$5,000.00	\$2,500.00	\$2,500.00	
Class D: Currency Exchange	\$5,000.00	\$5,000.00	\$2,500.00	\$2,500.00	
Class E: Composite Licensee Filing Fees	\$5,000.00				
		\$	\$		\$100.00

* *The annual location fee is applicable on the third and each subsequent location.*

Passed by the House of Representatives on the 27th day of May, 2010.

Passed by the Senate on the 10th day of June, 2010.

D. Gisele Isaac-Arrindell,
Speaker.

Hazlyn M. Francis,
President.

T. Thomas,
Clerk to the House of Representatives.

T. Thomas,
Clerk to the Senate.