

OBJECTS AND REASONS

This Bill would amend the *Financial Institutions Act*, Cap. 324A to

- (a) make better provision for the effective supervision of financial institutions by the Central Bank;
- (b) make provision for the supervision of financial holding companies;
- (c) provide for the regulation of money or value transmission service providers;
- (d) make provision for the regulation and supervision of a new class of licensee to be known as the foreign currency earning bank; and
- (e) provide for related matters.

Arrangement of Sections

1. Short title
2. Amendment of section 2 of Cap. 324A
3. Amendment of section 3 of Cap. 324A
4. Amendment of section 6 of Cap. 324A
5. Amendment of section 7 of Cap. 324A
6. Amendment of section 10 of Cap. 324A
7. Amendment of section 11 of Cap. 324A
8. Amendment of section 12 of Cap. 324A
9. Amendment of section 13 of Cap. 324A
10. Amendment of section 16 of Cap. 324A
11. Amendment of section 17 of Cap. 324A
12. Repeal and replacement of section 18 of Cap. 324A
13. Amendment of section 20 of Cap. 324A
14. Repeal and replacement of section 21 of Cap. 324A
15. Repeal and replacement of Part III of Cap. 324A

16. Insertion of new Parts into Cap. 324A
17. Application of Cap. 308 and Cap. 303
18. Amendment of section 42 of Cap. 324A
19. Repeal and replacement of section 43
20. Amendment of section 44 of Cap. 324A
21. Repeal and replacement of section 45 of Cap. 324A
22. Amendment of section 46 of Cap. 324A
23. Amendment of section 48 of Cap. 324A
24. Amendment of section 50 of Cap. 324A
25. Repeal and replacement of section 52 of Cap. 324A
26. Repeal and replacement of section 69 of Cap. 324A
27. Repeal of section 97 of Cap. 324A
28. Amendment of section 99 of Cap. 324A
29. Amendment of section 101 of Cap. 324A
30. Amendment of section 104 of Cap. 324A
31. Insertion of new sections 114A and 114B into Cap. 324A
32. Amendment of section 115 of Cap. 324A
33. Insertion of new section 118 into Cap. 324A

- 34.** Continuation of licensee
- 35.** Savings of rights, benefits and obligations
- 36.** Repeal
- 37.** Commencement

SCHEDULE

BARBADOS

A Bill entitled

An Act to amend the *Financial Institutions Act*, Cap. 324A.

ENACTED by the Parliament of Barbados as follows:

Short title

- 1.** This Act may be cited as the *Financial Institutions (Amendment) Act, 2018*.

Amendment of section 2 of Cap. 324A

2. Section 2 of the Financial Institutions Act, Cap. 324A, in this Act referred to as the principal Act, is amended

- (a) *in the definition of “advertisement” by*
 - (i) *deleting the word “or” appearing at the end of paragraph (d);*
 - (ii) *by inserting the word “or” immediately after the semi-colon at the end of paragraph (e); and*
 - (iii) *adding the following new paragraph as paragraph (f) thereof:*
 - “(f) by way of any other media;”;
- (b) *in the definition of “auditor” by inserting the words “and includes a partnership of auditors” immediately after the words “section 46(14)”;*
- (c) *in the definition of “licensee” add the words “or society” after the word “company”;*
- (d) *in subsection (2)(b) by inserting the words “at that time” immediately after the words “with each other”.*
- (e) *by inserting the following definitions in the appropriate alphabetical order:*

“capital base” means the sum of stated capital and published reserves of the licensee and any other capital account approved by the Central Bank;

“Community” means the Caribbean Community established by Article 2 of the Treaty;

“control” means the power of a person,

- (a) either alone or with a related party;

- (b) with another person;
- (c) by an agreement; or
- (d) in any other manner,
 - (i) to exercise more than fifty per cent of the voting rights at any meeting of shareholders of a licensee, company or unincorporated body;
 - (ii) to elect a majority of the directors of a licensee, company or unincorporated body;
 - (iii) to exercise dominant influence over the conduct of the business and affairs of a licensee, company or unincorporated body,

and the term “controlling interest” shall be construed accordingly;

“deposit” means

- (a) the unpaid balance of the aggregate of money or its equivalent received or held by a licensee from or on behalf of a person in the usual course of its deposit-taking business, including interest
 - (i) for which the licensee has given or is obliged to give to that person’s chequing, savings, demand or time account; or
 - (ii) for which the licensee has issued a certificate, receipt, cheque, money order, draft or other instrument in respect of which it is primarily liable; and
- (b) any other type of deposit that the Central Bank may prescribe;

“exposure” means claims, commitments and contingent liabilities arising from on and off balance sheet transactions and includes

- (a) credit facilities such as loans, advances, financial leases and lines of credit whether or not with accrued interest amounts;
- (b) investments such as debt securities, equity securities, participations;
- (c) guarantees;
- (d) acceptances;
- (e) contingent liabilities which would arise from the drawing down in full of undrawn advised facilities, whether revocable or irrevocable or conditional or unconditional, that the licensee has committed itself to provide, arrange, purchase or underwrite;
- (f) placements with another financial institution;
- (g) derivative instruments;

“financial group” means a group whose activities include banking business and any other ancillary business approved by the Central Bank;

“financial holding company” means a company engaged in

- (a) establishing or acquiring financial entities and administering the holdings of the financial group it controls;
- (b) providing banking and ancillary services to subsidiaries and affiliated companies in the financial group it controls; or
- (c) any other ancillary business approved by the Central Bank;

“financial institutions” includes commercial banks, trust companies, finance companies, merchant banks and money or value transmission service providers;

““former Act” means the *International Financial Services Act*,
Cap. 325 repealed by this Act;

“foreign currency” has the meaning assigned to it by the *Income Tax Act*, Cap. 73;

“group” means

- (a) in relation to a company, that company and
 - (i) any other company which is its holding company or financial holding company or subsidiary;
 - (ii) any other company which is a subsidiary of its holding company or financial holding company;
 - (iii) any company which directly or indirectly controls or is controlled by a company referred to in sub-paragraph (i) or (ii);
 - (iv) any company which is controlled by a person who directly or indirectly controls a company referred to in sub-paragraph (i), (ii) or (iii);
 - (v) any company in which a group of immediate relatives has a controlling interest;
- (b) in relation to a person other than a company,
 - (i) a group of immediate relatives where each member of the group is substantially dependent upon the same income source;
 - (ii) a group of persons in which one member has power directly or indirectly to control the other members; or
 - (iii) any other group of persons that may be prescribed by the Central Bank;

“large exposure” means an exposure to a person or group that is greater than or equal to 10 per cent of the licensee’s capital base;

“money or value transmission service provider” means any person carrying on a money or value transmission service;

“related party” means

- (a) the holding companies, financial holding companies, subsidiaries or affiliates of a licensee and the directors and senior officers of such companies;
- (b) any person that a licensee exerts control over or that exerts control over a licensee;
- (c) any person who holds more than 20 per cent of a licensee’s shares;
- (d) an entity in which a licensee owns at least 20 per cent of the shares;
- (e) a director or senior officer of a licensee;
- (f) an immediate relative of a director or senior officer of a licensee or immediate relative of a director or senior officer of a holding company, a financial holding company, a subsidiary or an affiliate of a licensee;
- (g) any firm which is controlled by a director or senior officer of a licensee or controlled by an immediate relative of a director or senior officer of a licensee;
- (h) any person, firm or corporation, where the credit facilities of that person, firm or corporation are guaranteed by a director or senior officer of a licensee or guaranteed by an immediate relative of a director or senior officer of a licensee; or
- (i) any other similar person or group of persons determined by the Central Bank;”.

Amendment of section 3 of Cap. 324A

- 3.** *Section 3 of the principal Act is amended by deleting the definitions “control” and “group”.*

Amendment of section 6 of Cap. 324A

- 4.** *Section 6 of the principal Act is amended in subsection (1) by deleting the words “it is the duty of the Minister to” and substituting the words “The Minister shall”.*

Amendment of section 7 of Cap. 324A

- 5.** *Section 7 of the principal Act is amended in subsection (1) by deleting the words “it is his duty to” and substituting the words “he shall”.*

Amendment of section 10 of Cap. 324A

- 6.** *Section 10 of the principal Act is amended*

- (a) by deleting subsection (1) and substituting the following:*

“(1) A licence issued under this Part shall be subject to the following conditions:

- (a)* with respect to a foreign bank, that the licensee immediately notifies the Central Bank of any change of its principal office in Barbados or of any of the officers designated under paragraph *(b)* or *(c)* of section 8;
- (b)* with respect to a Barbados bank,
 - (i)* that no person shall, without the approval of the Central Bank and subject to such conditions as the Central Bank may consider necessary, directly or indirectly acquire or hold any significant interest in the licensee;

(ii) that where approval has been obtained to increase the shareholding in accordance with sub-paragraph (i) of this subsection, no person shall hold shares the value of which exceeds the amount approved by the Central Bank.”.

(b) by adding the following new subsections immediately after subsection (1A):

“(1B) A licensee that is incorporated in Barbados must obtain the written approval of the Central Bank before

- (a) creating a branch, subsidiary, or representative office within Barbados; or*
- (b) opening a place of business outside Barbados.*

(1C) Where a foreign bank that is licensed in another jurisdiction intends to establish a representative office in Barbados, it must seek the approval of the Minister before doing so; and where the Minister gives his approval, he may specify such conditions as he deems fit.”.

(c) in subsections (2) and (3) by deleting the word “Minister” wherever it appears and substituting the words “Central Bank”.

Amendment of section 11 of Cap. 324A

7. *Section 11 of the principal Act is amended in paragraph (c) of subsection (1) by deleting the words “or the regulations” and substituting the words “the regulations, or under the Money Laundering and Financing of Terrorism (Prevention and Control) Act, Cap. 129.”.*

Amendment of section 12 of Cap. 324A

8. *The principal Act is amended by deleting section 12 thereof and substituting the following:*

“Appeal against revocation of a licence

12.(1) Any person who is aggrieved by the revocation of a licence by the Minister under section 11 may, within 30 days of the giving of the notice under section 11(2), appeal the revocation to a Judge in chambers.

(2) The Minister may, pending an appeal under subsection (1) of any person aggrieved by the revocation of a licence, suspend the revocation of the licence in relation to any existing business of the licensee, pending the determination of the appeal.

(3) Where the Minister revokes a licence and there is no appeal or where there is an appeal and the appeal is disallowed, the notice of revocation must be published in the *Official Gazette* and in a daily newspaper published and circulated in Barbados.”.

Amendment of section 13 of Cap. 324A

9. *Section 13 of the principal Act is amended in subsection (4) by*

(a) *deleting the word “Minister” wherever it appears and substituting the words “Central Bank”; and*

(b) *deleting subsection (5) and substituting the following:*

“(5) Having regard to any information or particulars received under subsection (1), (2), (3) or (4), the Central Bank may, notwithstanding the fact that the bank concerned is a licensee, require the licensee to apply for a new licence under this Part within such time as the Central Bank determines.”.

Amendment of section 16 of Cap. 324A

10. Section 16 of the principal Act is amended

- (a) *in subsection (1) by adding after the words “\$4 000 000”, the words “or such other amount as the Central Bank may in any particular case determine.”;*
- (b) *by inserting the following new subsection immediately after subsection (2):*

“(3) The Central Bank may vary the amount of the stated or assigned capital required for the purposes of subsection (1) and such guidelines may contain such supplementary and ancillary provisions as appear to the Central Bank to be necessary or expedient for the purpose of giving effect to the guidelines.”.

Amendment of section 17 of Cap. 324A

11. Section 17 of the principal Act is amended by

- (a) *renumbering that section as subsection (1) of that section; and*
- (b) *inserting the following new subsections:*

“(2) Notwithstanding subsection (1), the Central Bank may require a licensee to provide such additional capital as the Central Bank determines.

(3) The Central Bank may vary the amount of the stated or assigned capital required for the purposes of subsection (1) and such guidelines may contain such supplementary and ancillary provisions as appear to the Central Bank to be necessary or expedient for the purpose of giving effect to the guidelines.”.

Repeal and replacement of section 18 of Cap. 324A

12. *Section 18 of the principal Act is deleted and the following is substituted:*

“Reserve Fund

18.(1) Subject to subsection (2), a licensee shall maintain a reserve fund and shall out of the net profits of each year and before any dividend is paid, transfer to the fund

- (a) a sum equal to not less than 25 per cent of those profits wherever the amount of the reserve fund is less than the stated capital of the licensee; or
- (b) such other sum as is prescribed.

(2) Subsection (1) does not apply to a licensee for which it is shown to the satisfaction of the Central Bank that the capital base of the licensee is adequate in relation to its business.

(3) A licensee may only pay an interim dividend out of the profits of previous years or out of the reserves of previous years.

(4) The Central Bank may set a minimum limit on the reserve fund and may waive the requirement to maintain a specific maximum limit if it is satisfied that the licensee has adequate reserves.”.

Amendment of section 20 of Cap. 324A

13. *Section 20(a) of the principal Act is amended in sub-paragraph (ii) by deleting the words “stated capital of all classes” and substituting the words “its capital base”.*

Repeal and replacement of section 21 of Cap. 324A

14. *Section 21 of the principal Act is deleted and the following is substituted:*

“Restrictions on business activities

21.(1) Subject to subsection (2), a licensee

- (a) shall not directly or indirectly incur exposures to one person or group so that
 - (i) the total value of such exposures at any time exceeds 25 per cent of the capital base of the licensee;
 - (ii) where a portion of the exposures referred to in sub-paragraph (i) is unsecured credit facilities, that portion exceeds 10 per cent of the capital base of the licensee;
- (b) shall not directly or indirectly incur any large exposure to a person or a group where by so doing the aggregate amount of all such large exposures would exceed 800 per cent of the capital base or such other limit as the Central Bank determines;
- (c) shall not incur exposures to a related party
 - (i) on terms and conditions more favourable than the terms and conditions generally applicable to borrowers;
 - (ii) so the total value of such exposures at any time exceeds 10 per cent of the capital base of the licensee;
 - (iii) so that the aggregate amount of such exposures referred to in sub-paragraph (ii) exceeds 25 per cent of the capital base;

except that an equity investment in a wholly owned subsidiary that is a financial institution shall not be taken into account in the determination of an exposure;

- (d) shall not grant unsecured credit facilities of an aggregate amount in excess of \$40 000 or one per cent of the capital base of the licensee, whichever is the greater or give any financial guarantee in excess of such amount without security, or incur any other liability in excess of that amount without security
 - (i) to or on behalf of any of its directors whether or not such credit facilities, financial guarantees or liabilities are obtained by or on account of the directors jointly or severally;
 - (ii) to or on behalf of any person in whom it or any of its directors is interested as a director, partner, manager or agent or as guarantor; or
 - (iii) to its holding company, its financial holding company, any subsidiary, an affiliate or to any of its directors;
- (e) shall not grant to its officers or employees unsecured advances or unsecured credit which exceed in aggregate for any one officer or employee, one year's emoluments of that officer or employee;
- (f) shall not, except in so far as may be necessary with respect to the interests or shareholding that a bank may acquire in satisfaction of debts due to it
 - (i) engage in or otherwise have a direct interest in, whether on its own account or on a commission basis, the wholesale or retail trade, including the business of import and export ; or

- (ii) acquire or hold in an aggregate amount exceeding 25 per cent of the sum of the capital base of the licensee, any part of the share capital of any commercial, agricultural, industrial or other undertaking,

but all such interests or shareholding, as the case may be, shall be disposed of within a period not exceeding 5 years unless permission to extend this period has been given by the Central Bank;

(g) shall not purchase, acquire or lease real estate unless

- (i) such real estate is necessary for the purpose of conducting its business or providing housing or amenities for its staff, having regard to any reasonable requirements for the future expansion of its business or staff; and

- (ii) the market value of the real estate does not exceed the capital base of the licensee,

except that where the licensee exercises its legal right in respect of any property which is the security for any debt, the licensee may acquire such property, but in that case, the property shall not be retained for a period in excess of 5 years without the permission of the Central Bank; and

(h) shall not

- (i) acquire, deal in or underwrite its own shares or the shares of its holding company or its financial holding company; or

- (ii) grant any credit facility secured by its own shares or the shares of its holding company or its financial holding company or the shares of a subsidiary of the licensee.

- (2) The provisions of subsection (1)(a) shall not apply to
 - (a) any financial exposures to the Government, statutory corporation or any other person where repayment is guaranteed by the Government;
 - (b) transactions in respect of which the portion thereof in excess of 25 per cent of the capital base of the licensee is fully supported by collateral in the form of cash deposits or securities issued by the Government; or
 - (c) exposures in such other form as the Central Bank may determine.
- (3) Where prior to the commencement of the this Act, a licensee has given to any person any exposure referred to in subsection (1), no action shall be taken under this Act against the licensee in relation to such exposure for a period of 3 years after that date.
- (4) Subsection (3) does not apply where the licensee has within the period specified in that subsection increased the amount of the exposure or where the licensee fails to comply with the conditions given by the Central Bank.”.

Repeal and replacement of Part III of Cap. 324A

15. *The principal Act is amended by deleting Part III and substituting the following:*

“PART III

TRUST COMPANIES, FINANCE COMPANIES, MERCHANT
BANKS AND MONEY OR VALUE TRANSMISSION SERVICE
PROVIDERS

Licensing Requirements

Interpretation

22. In this Part, "licensee" means

- (a) a company licensed under this Part to carry on business as a trust company, a finance company or a merchant bank or similar financial institution licensed under this Part; or
- (b) a money or value transmission service provider licensed under this Part.

Business of trust company, finance company and merchant bank

23.(1) The business of a trust company, a finance company or a merchant bank or similar financial institution is

- (a) banking business; or
- (b) the business of the acquisition of funds by
 - (i) the acceptance of deposits;
 - (ii) the issue of shares;
 - (iii) the grant of loans;
 - (iv) the collection of premiums,and the investment of those funds; or

- (c) performing functions as trustee, administrator or executor in conjunction with its business conducted pursuant to paragraphs (a) and (b); or
 - (d) such other business of a similar nature that is not specifically prohibited by the Central Bank by notice published in the *Official Gazette*.
- (2) A trust company, a finance company or a merchant bank shall not offer chequing facilities.
- (3) In subsection (2), "chequing facilities" means the acceptance of deposits that are repayable on demand and the payment of amounts to a third party by virtue of a claim drawn on the licensee and convertible into cash.

Business of a money or value transmission service provider

23A. In this Part, "money or value transmission service" means the business of accepting cash, cheques or any other monetary instrument or other means of storing value and paying a corresponding sum in cash or in another form to a beneficiary, by means of a communication, message or transfer or through a clearing system to which the money or value transmission service belongs.

Prohibition

- 24.(1)** No person other than a bank licensed under Part II or under Part IIIB
- (a) shall carry on the business of a trust company, a finance company or a merchant bank without a licence issued under this Part; or
 - (b) carry on the business of a money or value transmission service provider without a licence issued under this Part.

(2) Notwithstanding subsection (1)(b), every person carrying on the business of a money or value transmission service provider shall, not later than 3 months after the commencement of this Act, apply for a licence under section 25A to carry on that business.

Contents of application

25.(1) A company that wishes to carry on the business of a trust company, a finance company or a merchant bank shall apply to the Minister in such form as the Minister may approve and shall

- (a) give the names and addresses of its directors;
- (b) give the particulars of the business it proposes to carry on;
- (c) give the expected minimum and maximum maturity periods of its advances;
- (d) provide such other documents and information of a financial or other nature as the Minister requires.

(2) An application for a licence shall be accompanied by a copy of the articles, by-laws or other documents constituting the company.

(3) An application for a licence and all documents submitted pursuant to this Part in support of the application shall be signed by the directors of the company making the application.

(4) Where an application is made under subsection (1), the applicant shall pay such fee as may be prescribed in relation thereto.

Contents of application: money or value transmission service provider

25A. A company that wishes to carry on the business of a money or value transmission service provider shall apply to the Minister in such form as the Minister may approve and shall furnish the Minister with such information as he may require.

Issue of licence

26. Where the Minister is of the opinion that it is in the public interest to do so, he may issue a licence under this Part to the applicant upon payment of the prescribed fee.

Conditions of licence

27.(1) A licence issued under this Part shall show the class or classes of business to be carried on by the licensee.

(2) A licence issued under this Part is subject to such conditions as the Minister may specify in respect of the class or classes of business to be carried on by the licensee.

(3) A licence under this Act remains valid until revoked pursuant to this Part, but it is a condition of every licence that an annual fee be paid by the licensee in the amount and at the time prescribed.

Application of certain sections

28. Sections 6, 7, 10, 11, 12 and 13 apply, *mutatis mutandis*, to a company under this Part as they apply to a bank licensed under Part II.

Sections not applicable to money or value transmission service providers

28A. Sections 31, 33, 45 and Part IIIB shall not apply to money or value transmission service providers.

Capital requirements

29.(1) A licence may not be issued under this Part to a company unless the stated or assigned capital of the company is \$2,000,000 or such other amount as the Central Bank may in any particular case determine.

(2) The Central Bank may vary the amount of the stated or assigned capital required for the purposes of subsection (1) and such guidelines may contain such supplementary and ancillary provisions as appear to the Central Bank to be necessary or expedient for the purpose of giving effect to the guidelines.

(3) The fair market value of the fixed unencumbered assets of the licensee in Barbados as approved by the Central Bank may form part of the assigned capital for the purposes of subsection (1).

Reserve requirements

30. The Minister may, on the advice of the Central Bank, impose reserve requirements on any class of company licensed under this Part.

Application of further sections

31. Sections 17, 19, 20 and 21 apply, *mutatis mutandis*, to a company licensed under this Part as they apply to a bank licensed under Part II.

Restrictions on business activities

32. Section 21 shall apply *mutatis mutandis* to a company licensed under this Part as it applies to a licensee under Part II.

Reserve fund

33.(1) Subject to subsection (2), a licensee shall maintain a reserve fund and shall out of its net profits of each year and before any dividend is paid, transfer to the fund

- (a) a sum equal to not less than 15 per cent of those profits wherever the amount of the reserve fund is less than the stated capital of the licensee; or
- (b) such other sum as is prescribed.

(2) Subsection (1) does not apply to a licensee for which it is shown to the satisfaction of the Central Bank that the capital base of the licensee is adequate in relation to its business.

Separation of trust assets

- 34.** It is the duty of a licensee in carrying on its business
- (a) to keep all assets held in trust separate from its other assets; and
 - (b) subject to section 35, to keep separate from those of its other accounts the assets of each trust account unless they are properly identified as the property of the trust account.

Common trust fund

35.(1) A licensee may in the course of its business establish, maintain and administer one or more common trust funds and subject to subsection (2), invest assets held in trust accounts in a common trust fund.

(2) The assets of a trust account may only be invested in a common trust fund if the instrument creating the trust expressly permits the investment and the consent in writing of any co-trustee is obtained to the investment.

(3) A common trust fund is a trust that operates by the process of pooling funds from a number of participants in the trusts who share, as beneficiaries under the trust, in the income or other gains derived from the acquisition, holding, management or disposal of assets acquired for the trust.

Declaration of trust

36.(1) Every common trust fund of a licensee shall be established, administered and maintained in accordance with a written declaration of a trust in a form approved by the directors of the licensee.

(2) A licensee may sell assets held by it in a trust account to another trust account held by the licensee, if

- (a) the transaction is fully disclosed to the parties who have an interest in those accounts and their consent is obtained prior to the transaction;
- (b) the transaction is fair to both accounts; and
- (c) the transaction is not prohibited by the terms of the instruments creating the trusts.

Trust funds awaiting disposition

37.(1) A licensee holding trust funds awaiting investment or distribution shall not hold those funds uninvested or undistributed any longer than is reasonable for the proper management of the account.

(2) Unless it is contrary to the terms of the instrument establishing the trust, the trust funds described in subsection (1) may be held in the commercial or savings department of the licensee subject to such conditions as may be prescribed.

Contents of declaration

38. A declaration of trust establishing a common trust fund must, subject to or in addition to other prescribed provisions, contain provisions relating to

- (a) the manner in which the common trust fund is to be administered;

- (b) the investment powers of the licensee with respect to the common trust fund, including the nature of investment to be made by the common trust fund;
- (c) the allocation and apportionment of income, profits and losses of the common trust fund;
- (d) the terms and conditions governing the admission or withdrawal of investments for participation in the common trust fund;
- (e) the auditing and settlement of accounts of the licensee with respect to the common trust fund;
- (f) the basis and method of valuing assets in the common trust fund;
- (g) the basis on which the common trust fund may be liquidated or interests therein may be disposed of;
- (h) the expenses to be charged for management of the common trust fund; and
- (i) such other matters as are necessary or proper to define the rights of participants in the common trust fund.

Dealing with trust assets

39. Subject to the terms of the instrument creating the trust, the assets comprising the funds of the trust may be sold, converted, re-invested, exchanged, transferred or otherwise changed or disposed of at any time by the licensee administering the trust.

Interest in common fund

40.(1) Each trust account that participates in a common trust fund has a beneficial interest in so much of the common trust fund as is proportionate to the amount of that participation.

(2) An interest in a common trust fund is not negotiable or assignable, but an interest in the fund may be disposed of in the manner provided by the declaration of trust or as may be prescribed in the absence of any provision relating thereto in the declaration of trust establishing the fund.

Status of licensee as trustee

41. The licensee in the carrying out of its trust business has all the powers, rights, duties and obligations applicable to trustees but subject to any requirements under this Act. ”.

Insertion of new Parts into Cap. 324A

16. *The principal Act is amended by inserting the following new Part immediately after Part III:*

“PART IIIA

LICENSING REQUIREMENTS FOR FINANCIAL HOLDING
COMPANIES

Contents of application for financial holding companies

41A.(1) A company that wishes to carry on the business of a financial holding company shall apply to the Minister in such form as the Minister may approve and submit

- (a) a copy of its articles, by-laws or other instrument under which the company is incorporated or organised;
- (b) a copy of the audited financial statements of the company for the past three years, if applicable; and
- (c) any other documents and information, whether or not of a financial nature which are required by the Minister.

(2) An application for a licence and all documents submitted pursuant to this Part in support of the application shall be signed by the directors of the company making the application.

(3) Where an application is made under subsection (1), the applicant shall pay such fee as may be prescribed in relation to the application.

Application of sections relating to licensing requirements

41B. Sections 6, 7, 9 and subsections (1)(b), (1A), (2), (3), (4) and (5) of section 10 and sections 11, 12, 13, 14, and 15 relating to licensing requirements apply *mutatis mutandis* to a company licensed under this Part as they apply to a bank licensed under Part II.

Conditions of a licence for financial holding company

41C.(1) A licence issued under this Part shall be subject to

- (a) the condition that the capital available to the financial group is adequate;
- (b) the condition that the financial group controlled by the licensee is structured and managed in such a manner that it may be adequately supervised by the Central Bank; and
- (c) any other conditions which the Central Bank may impose in respect of the permitted business to be carried on by the licensee.

(2) The Central Bank may require a licensee to

- (a) submit information that allows the Central Bank to assess its cross-border banking operations; and
- (b) provide access to its cross-border banking operations to facilitate the Central Bank's assessment of the group's safety and soundness.

(3) A licence issued under this Part remains valid until revoked pursuant to this Part, but it is a condition of every licence that an annual fee be paid by the licensee in the amount and at the time prescribed.

(4) A licensee must obtain the written approval of the Central Bank before creating a branch, subsidiary or representative office within or outside Barbados.

Financial obligations

41D.(1) A licence may not be issued under this Part to a bank unless, in the case of a Barbados bank, the stated capital is at least \$4,000,000 or such other amount as the Central Bank may in any particular case determine.

(2) Subject to this Part, a licensee shall not at any time have a capital adequacy ratio on a solo or a consolidated basis of less than such percentage as may be prescribed; and that percentage shall be calculated in the prescribed manner.

(3) Notwithstanding subsection (2), a licensee may be required to provide such additional capital as the Central Bank determines.

Application of certain sections relating to financial obligations

41E. Sections 18, 19 and 20 relating to the financial obligations of a licensee, apply *mutatis mutandis* to a company licensed under this Part as they apply to a Bank licensed under Part II.

Restrictions on business activities

41F.(1) Subject to this section, a licensee

(a) on a solo basis shall not incur exposures

(i) to any subsidiary or affiliated company in an amount exceeding 10 per cent of the capital base of the licensee;

- (ii) so that the aggregate amount of exposures referred to in sub-paragraph (i) exceeds 25 per cent of the capital base of the licensee; or
 - (iii) so that where a portion of the exposures referred to in sub-paragraph (i) consists of unsecured credit facilities, that portion exceeds one per cent of the capital base of the licensee;
- (b) on a consolidated basis shall not directly or indirectly
 - (i) incur aggregate exposures to its affiliated companies in such a manner that the total value of such exposures at any time exceeds 25 per cent of the capital base of the licensee;
 - (ii) incur an exposure to a person or group in an amount that exceeds 25 per cent of the capital base; or
 - (iii) incur any large exposure to a person or group if by doing so the aggregate amount of all such large exposures would exceed 800 per cent of the capital base or such other limit as the Central Bank determines.
- (2) The provisions of subsection (1) shall not apply to
 - (a) any financial exposure to the Government, statutory corporation or a person where repayment is guaranteed by the Government;
 - (b) exposures to the extent that they are secured against securities issued by the Government;
 - (c) exposures to the extent that they are secured against cash deposits;
 - (d) exposures to the extent that they are guaranteed by a central government, central bank or monetary authority outside

Barbados or secured against such central government securities as approved by the Central Bank;

(e) exposures to related parties where the licensee is fulfilling a treasury role on behalf of the financial group and the financial group is subject to consolidated supervision; or

(f) exposures in such other form as the Central Bank may determine.

(3) For the purposes of subsection (1)(a), an equity investment in a wholly owned subsidiary that is a financial institution shall not be taken into account in the determination of an exposure.

(4) A financial holding company shall not guarantee on behalf of any person, the payment or repayment of any sum of money except where the person is a member of the financial group controlled by the licensee.

Transitional provision for holding companies

41G. Any company licensed under Part II, Part III or Part IIIB of this Act at the commencement of this Act which carries on the functions of a financial holding company, shall at the commencement of this Act, be deemed to be licensed under Part IIIA of this Act and the provisions of this Part shall apply accordingly.

PART IIIB

LICENSING REQUIREMENTS FOR FOREIGN CURRENCY EARNING BANKS

Interpretation

41H.(1) In this Part,

“company” includes a society with restricted liability and an approved entity;

“director”

- (a) means an individual occupying that position and performing the functions of a director however his position is designated and includes the manager of a society with restricted liability; and
- (b) reference to "directors" refers to the board of directors or the body directing the affairs of a company, firm or society;

“eligible company” means a company which is incorporated or registered under the *Companies Act*, Cap. 308, a society with restricted liability or an approved entity

- (a) whose objects or business activities are restricted to the carrying on of foreign currency earning banking business from within Barbados;
- (b) which has at least one director who is a citizen of a Member State and who is resident in Barbados;
- (c) whose articles and bye-laws are acceptable to the Central Bank; and
- (d) whose stated capital accords with the requirements of section 41O;

“foreign currency earning bank” means a bank carrying on foreign currency earning business;

“foreign currency earning business” means

- (a) the business of receiving solely foreign currency through
 - (i) the acceptance of foreign money deposits payable upon demand or after a fixed period or after notice;

- (ii) the sale or placement of foreign bonds, foreign certificates, foreign notes or other foreign debt obligations or other foreign securities; or
 - (iii) any other similar activity involving foreign money or foreign securities;
- (b) the business of using the foreign currency so acquired, either in whole or in part, for
- (i) loans, advances and investments;
 - (ii) the activities of the licensee for the account of or at the risk of the licensee;
 - (iii) the purchase or placement of foreign bonds, foreign certificates, notes or other foreign debt obligations or other foreign securities; or
 - (iv) any other similar activity involving foreign money or foreign securities; or
- (c) the business of accepting in trust
- (i) amounts of money in foreign currencies or in foreign securities or both;
 - (ii) foreign personal property or foreign movable property; or
 - (iii) foreign real property or foreign immovable property; or
- (d) any other financial service, related to or ancillary to an activity described in (a), (b) or (c) hereof and which the Central Bank may by regulations declare to be the business of a foreign currency earning bank for the purposes of this Part.

“licensee” means a foreign currency earning bank which holds a licence under this Part;

“Member State” means a Member State of the Community, excluding an Associate Member within the meaning of Article 231 of the Treaty;

“qualified foreign currency earning bank” means

- (a) a company that at 31st December, 2018 is a foreign bank that is licensed under the former Act; or
- (b) a company that is a foreign bank with the capitalisation and assets specified in section 41O and that is not licensed under this Act 31st December, 2018; or
- (c) a company approved by the Central Bank that is directly or indirectly a wholly-owned subsidiary of a foreign currency earning bank;

“Treaty” means the Revised Treaty of Chaguaramas establishing the Caribbean Community, including the CARICOM Single Market and Economy, that was signed in the Bahamas on 5th July, 2001.

- (2) Any company, society, firm or approved entity that
 - (a) carries on foreign currency earning business; or
 - (b) any other financial service related or ancillary to foreign currency earning business

is an eligible company and upon the issue of a licence under this Act, is a bank for the purposes of this Part and shall be regulated by the Central Bank in accordance with this Act.

Application to this Part

41I. Sections 6, 7, 11, 12, 20, 35, 36, 37, 38, 39, 40, 41, 45(1), 46(6), 46(7), 46(10), 46(13), 50(c), 50(3), 50(4), and 99 shall apply *mutatis mutandis* to this Part as they do to entities licensed under Part II.

Licensing requirements and contents of application

41J.(1) An applicant for a licence under this Part to operate as a foreign currency earning bank from within Barbados must

- (a) be an eligible company or a qualified foreign currency earning bank;
- (b) give the names and addresses of its directors;
- (c) give particulars of the business that it proposes to carry on from within Barbados;
- (d) give the names and addresses of the shareholders and the number of shares directly or indirectly held by them; and
- (e) provide such other information of a financial or other nature as the Minister may require in any general or particular case.

(2) An application for a licence by an eligible company must be accompanied by

- (a) a copy of the articles and bye-laws of the applicant certified by the Registrar of Corporate Affairs and Intellectual Property Office; and
- (b) such other documents as may be prescribed.

(3) An application for a licence by a qualified foreign currency earning bank must be accompanied by the prescribed documents.

(4) An application for a licence shall be signed by not less than 2 directors of the applicant.

Conditions for issue of licence

41K.(1) A licence issued under this Part must show the class of business to be carried on from within Barbados by the licensee.

- (2) A licence is subject to such conditions as the Minister may specify in respect of the class of business to be conducted by the licensee from within Barbados.
- (3) A licence under this Part remains valid until revoked or suspended, but it is a condition of every licence that an annual fee be paid by the licensee in the amount and at the time prescribed.
- (4) It is a condition of a licence that the licensee must obtain the written approval of the Central Bank,
- (a) before creating a branch, subsidiary company, agency or representative office; or
 - (b) before opening a place of business outside Barbados.
- (5) Subsection (4) does not apply to a licensee that is a qualified foreign currency earning bank but the licensee shall not, without notifying the Central Bank of its intention to do so, create any branch, subsidiary company, agency or representative office.
- (6) It is a condition of every licence that the licensee must notify the Central Bank in writing of any change in the directors or senior officers within 7 days of the change.

Other special conditions

- 41L.(1)** It is a condition of a licence that
- (a) any shares of the licensee's capital will be in registered form;
 - (b) the licensee will not, without the approval of the Central Bank,
 - (i) enter into a merger, amalgamation or consolidation;
 - (ii) transfer, otherwise than in the ordinary course of its business, the whole or any substantial part of its assets or liabilities;

- (iii) change its name from that set out in its licence;
- (iv) alter its articles;
- (v) transfer any of its shares or alter its share structure;
- (vi) take any action to reduce or impair in any respect its capital; or
- (vii) repurchase its own shares or take any action which may have a similar effect.

(2) It is a condition of a licence issued to a qualified foreign currency earning bank that it will, in the manner and to the extent prescribed, separate its foreign currency earning banking business from its other business in Barbados and keep separate records of its foreign currency earning banking business and will permit and assist in an audit of all its undertakings in Barbados by auditors approved by the Central Bank.

(3) Before giving an approval to any matter mentioned in subsection (1)(b), the Central Bank may carry out such investigations as the Central Bank thinks fit.

(4) No person or group that is under the control of another person or group shall, without the approval of the Minister and subject to such conditions as he may consider necessary, acquire or hold shares of a value of more than 10 per cent of the stated capital of the licensee.

(5) Subsection (1)(b) and subsection (4) do not apply to a qualified foreign currency earning bank.

(6) Where approval has been obtained to increase the shareholding in accordance with subsection (4), no person or group that is under the control of another person or group shall hold shares the value of which exceeds the amount approved by the Minister.

(7) No person shall carry on any foreign currency earning banking business in or from within Barbados at any time when that person is not a licensee.

- (8) No licence may be issued under this Part to any person other than an eligible company or a qualified foreign currency earning bank.
- (9) No licence may be issued under this Part unless the company
- (a) has a place of business in Barbados approved by the Central Bank which will be its registered office;
 - (b) has, if the Central Bank so directs, appointed a person in Barbados who is approved by the Central Bank to be its agent; and
 - (c) has appointed a person in Barbados who is approved by the Central Bank to be its agent in the absence or inability to act of the person referred to under paragraph (b).
- (10) A licensee shall not
- (a) cease to have a place of business in Barbados;
 - (b) change its place of business without the written approval of the Central Bank;
 - (c) cease to have an authorised agent if required under subsection (9);
 - (d) change its authorised agent without the written approval of the Central Bank.
- (11) Any person who contravenes this section is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000.

Financial Obligations

- 41M.(1)** A licence may be issued under this Act to a company
- (a) that accepts third party deposits if the stated or assigned capital of the company is at least \$4 000 000 or such other amount as the Central Bank may in any particular case determine; or

- (b) that does not accept third party deposits if the stated or assigned capital of the company is at least \$1 000 000 or such other amount as the Central Bank may in any particular case determine.
- (2) A licensee shall not at any time have a capital adequacy ratio of less than the prescribed percentage.
- (3) The capital adequacy ratio shall be calculated in the prescribed manner.
- (4) Notwithstanding subsections (1) to (3), the Central Bank may at any time require a licensee to provide such additional capital as the Central Bank determines.
- (5) The Central Bank may vary the amount of the stated or assigned capital required for the purposes of subsection (1) and such guidelines may contain such supplementary and ancillary provisions as appear to the Central Bank to be necessary or expedient for the purpose of giving effect to the guidelines.
- (6) For the purposes of this section, "assigned capital" means such portion of the capital of a company represented by such unencumbered assets as approved by the Central Bank and specifically assigned by the company to its local branch operations.

Restriction on business activities

41N.(1) Subject to subsection (2), a licensee

- (a) shall not directly or indirectly incur exposures to one person or group so that
 - (i) the total value of such exposures at any time exceeds 25 per cent of the capital base of the licensee;

- (ii) where a portion of the exposures referred to in sub-paragraph (i) is unsecured credit facilities, that portion exceeds 10 per cent of the capital base of the licensee;
- (b) shall not directly or indirectly incur any large exposure to a person or a group where by so doing the aggregate amount of all such large exposures would exceed 800 per cent of the capital base or such other limit as the Central Bank determines;
- (c) shall not incur exposures to a related party
 - (i) on terms and conditions more favourable than the terms and conditions generally applicable to borrowers;
 - (ii) so the total value of such exposures at any time exceeds 10 per cent of the capital base of the licensee;
 - (iii) so that the aggregate amount of such exposures referred to in sub-paragraph (ii) exceeds 25 per cent of the capital base;

except that an equity investment in a wholly owned subsidiary that is a financial institution shall not be taken into account in the determination of an exposure;

- (d) shall not grant unsecured credit facilities of an aggregate amount in excess of \$40 000 or one per cent of the capital base of the licensee, whichever is the greater or give any financial guarantee in excess of such amount without security, or incur any other liability in excess of that amount without security
 - (i) to or on behalf of any of its directors whether or not such credit facilities, financial guarantees or liabilities are obtained by or on account of the directors jointly or severally;

- (ii) to or on behalf of any person in whom it or any of its directors is interested as a director, partner, manager or agent or as guarantor; or
 - (iii) to its holding company, its financial holding company, any subsidiary, an affiliate or to any of its directors;
- (e) shall not grant to its officers or employees unsecured advances or unsecured credit which exceed in aggregate for any one officer or employee, one year's emoluments of that officer or employee;
- (f) shall not, except in so far as may be necessary with respect to the interests or shareholding that a bank may acquire in satisfaction of debts due to it
- (i) engage in or otherwise have a direct interest in, whether on its own account or on a commission basis, the wholesale or retail trade, including the business of import and export; or
 - (ii) acquire or hold in an aggregate amount exceeding 25 per cent of the sum of the capital base of the licensee, any part of the share capital of any commercial, agricultural, industrial or other undertaking,

but all such interests or shareholding, as the case may be, shall be disposed of within a period not exceeding 5 years unless permission to extend this period has been given by the Central Bank;

- (g) shall not without the approval of the Central Bank, invest in shares of an entity so that the value of the investment at any time exceeds 10 per cent of the capital base of the licensee;

- (h) shall not purchase, acquire or lease real estate unless
 - (i) such real estate is necessary for the purpose of conducting its business or providing housing or amenities for its staff, having regard to any reasonable requirements for the future expansion of its business or staff; and
 - (ii) the market value of the real estate does not exceed the capital base of the licensee,

except that where the licensee exercises its legal right in respect of any property which is the security for any debt, the licensee may acquire such property, but in that case, the property shall not be retained for a period in excess of 5 years without the permission of the Central Bank; and

- (i) shall not
 - (i) acquire, deal in or underwrite its own shares or the shares of its holding company or its financial holding company;
 - (ii) grant any credit facility secured by its own shares or the shares of its holding company or its financial holding company or the shares of a subsidiary of the licensee.

(2) The provisions of

- (a) subsection (1)(a) to (c) shall not apply to
 - (i) exposures to the extent that they are fully supported by collateral in the form of cash deposits or securities issued by the Government, the Central Bank or any monetary authority outside Barbados or secured against such Government securities as approved by the Central Bank; or

- (ii) exposures in such other form as the Central Bank may determine;
- (b) subsection (1) shall not apply where a licensee does not accept third party deposits.
- (3) For the purposes of this Part, “third party deposits” means deposits from persons other than a licensee’s shareholders or related parties.

Directors, Officers and Auditors

410.(1) A director or a senior officer of a licensee shall cease to hold that office

- (a) if he becomes bankrupt or suspends payment to his creditors;
 - (b) if he is convicted in Barbados of an offence triable on indictment;
 - (c) if he is convicted outside Barbados of an offence that would be triable on indictment had it been committed in Barbados;
 - (d) if he makes an arrangement with his creditors; or
 - (e) if he becomes the auditor of the licensee.
- (2) Where a person ceases to hold office under subsection (1), that person may not be appointed to any other office of the licensee without the consent of the Central Bank.
- (3) Where subsection (1) or (2) is contravened, the director or the senior officer, as the case may be, and the licensee are guilty of an offence and are liable on conviction on indictment to a fine of \$25 000 or to imprisonment for 12 months, or to both.
- (4) No person may be appointed an auditor of a licensee
- (a) if he has any proprietary interest in the licensee;

- (b) if he is a director, or agent of the licensee or of an affiliate of the licensee; or
- (c) if he is an officer or employee of the Central Bank.

Disqualification of Directors

41P.(1) A person who has been a director or a senior officer of a company whose licence is revoked under this Act shall not be appointed to the office of director, the office of senior officer or to any other office of any licensee without the approval of the Central Bank.

(2) Where subsection (1) is contravened, the director, senior officer or officer, as the case may be, and the licensee are guilty of an offence and are liable on conviction on indictment to a fine of \$25 000 or to imprisonment for 12 months, or to both.

Disclosure of interest

41Q.(1) A director of a licensee who is interested, directly or indirectly, in an advance or loan from the licensee shall, as soon as possible, declare the nature of his interest to its directors at a meeting thereof.

(2) Subsection (1) does not apply when the interest of a director in an advance or a loan consists only of being a creditor of, or having an interest in, a firm that is interested in an advance or a loan from the licensee if, in either case, the interest of the director is not a substantial interest.

(3) A declaration by a director of a licensee that he is interested in any advance or loan that may, after the date of the declaration, be made by the licensee, is a sufficient declaration of interest in relation to any advance or loan made after the declaration, if

- (a) the declaration specified the nature and extent of the interest;
and

- (b) the interest of the director is not different in nature from or greater than, the nature and extent so specified in the declaration at the time any advance or loan is made.
- (4) Notwithstanding sections 88, 89 and 90 of the *Companies Act*, Cap. 308, a director or an officer of a licensee shall not be present at or in any way participate in a meeting of the Board of Directors or a committee of the Board of Directors of that licensee when a loan, an advance or any other credit facility is being considered for
- (a) the director, officer or any of his relatives;
 - (b) a company in which the director, officer or a relative owns more than 25 per cent of the stated share capital; or
 - (c) a company over which the director, officer or any of his relatives exercises control.

Declaration of interest

41R.(1) A director of a licensee who holds any office or has any interest in any property whereby, directly or indirectly, his functions under this Act are likely to be in conflict with his personal interest shall declare the nature, character and extent of that office or interest to the directors at a meeting thereof.

- (2) A declaration required under this section shall be made
- (a) at the first meeting of the directors that is held after the acquisition by the declarant of that relevant office or interest; or
 - (b) if the declarant was not at that time a director, after he becomes a director.

Recording of declaration

41S. A director of a licensee who has declared any interest referred to in section 41Q or 41R shall

- (a) cause the declaration made by him thereunder to be brought up and read at the next meeting of the directors after it was given; and
- (b) cause the declaration to be recorded in the minutes of the meeting at which it was made or read, or both.

Offence

41T. A director of a licensee who contravenes section 41Q, 41R or 41S is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000 or to imprisonment for 12 months, or to both.

Insider information

41U.(1) A person who has acquired confidential information concerning a licensee

- (a) as a director, officer, employee, or auditor of the licensee;
- (b) as a custodian of the licensee; or
- (c) as an employee of the Central Bank,

shall not disclose that information to any person except as permitted under subsection (2), or use that information for any personal benefit not related to the duties through which the information was acquired.

(2) Subsection (1) does not apply to the giving of confidential information

- (a) where the information is a general credit rating of a person that is supplied by a director, officer or employee of the licensee following a *bona fide* business request;

- (b) where the information is given with the written authorization of the beneficiary or his legal representative;
 - (c) where the information is lawfully required to be disclosed by an order of the High Court; or
 - (d) where the information is lawfully required to be disclosed pursuant to any other enactment.
- (3) In this section "confidential information" means information concerning the identity of a depositor, settlor or beneficiary of a trust, or concerning the assets, liabilities, transactions or other information in respect of a depositor, settlor or beneficiary of a trust.
- (4) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000 or to imprisonment for 12 months, or to both.

Remedial action

41V. Where the Central Bank is of the opinion that the operations of a foreign office of a licensee under this Part present a threat to the licensee's financial soundness, the Bank may require the licensee to make such changes in the operations of the office as are considered necessary or the Bank may require the licensee to close the office.

Misleading advertising, false statements and obstruction

41W.(1) A director, officer, employee or agent of a licensee, who, with intent to deceive

- (a) makes any false or misleading statement or entry in a book, account, record, report or statement of the licensee, or omits a statement or entry that should be made therein; or
- (b) obstructs the carrying out by an auditor of his proper function under this Part; or

- (c) obstructs the examination of a licensee as required pursuant to this Act,

is guilty of an offence and is liable to the fine or imprisonment set out in subsection (3) hereof.

- (2) A licensee shall in respect of its business furnish the Central Bank with copies of all of its advertisements,

- (a) 6 months after the first issue of its licence under this Act; and
- (b) thereafter at 6-monthly intervals.

- (3) Any licensee which contravenes subsection (1) or (2) is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000 or to imprisonment for 5 years, or to both.

Publication of information

- 41X.(1)** Subject to subsection (2), the Central Bank may publish any information furnished to it under this Act.

- (2) No information concerning the business of a licensee shall be published by the Central Bank that might disclose the individual affairs of the directors or staff of a licensee or its customers without the prior written consent of all persons whose interests might be disclosed by the publication.

Use of bank in names

- 41Y.(1)** Subject to subsection (2), no person other than a licensee may, without the approval of the Central Bank, use the word

- (a) "bank" or any of its derivatives in any language; or
- (b) any other word indicating the carrying on of any class of business to which this Part refers from within Barbados, in the name, description or title under which that person carries on business or intends to carry on business in Barbados, or

make any representation to that effect in any bill-head, letter paper, notice or advertisement.

- (2) Subsection (1) does not apply to such person as the Central Bank may exempt from the provisions of subsection (1).
- (3) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000.”.

Application of Cap. 308 and Cap. 303

17. *Division B of Part V of the Companies Act, Cap. 308 and the Bankruptcy and Insolvency Act, Cap. 303 do not apply to a licensee under this Part.*

Amendment of section 42 of Cap. 324A

18. *Section 42 of the principal Act is amended by deleting the definition of “licensee” and substituting the following:*

“ “licensee” means a company licensed under Part II, III, or IIIA or **IIIB**, as the case may be.”.

Repeal and replacement of section 43

19. *Section 43 of the principal Act is deleted and the following is substituted:*

“Financial statements

43.(1) A licensee, in relation to its operations, shall on a solo basis and also on a consolidated basis if applicable, submit to the Central Bank in the prescribed form,

- (a) not later than 21 days after the end of each month, or such other period as the Central Bank may in any particular case determine, a monthly statement showing the assets and liabilities of the licensee accompanied by a statement showing the amounts of all outstanding unsecured advances or unsecured credit; and
- (b) not later than 21 days after the end of each quarter ending on 31st March, 30th June, 30th September and 31st December respectively, or such other period as the Central Bank may in any particular case determine, returns containing statements of
 - (i) assets and liabilities;
 - (ii) loans and advances; and
 - (iii) earnings and expenses.

(2) The Central Bank may require a licensee to submit within such period and in such manner as the Central Bank determines,

- (a) any financial data required by the Central Bank; and
- (b) such returns in addition to those specified in subsection (1) as the Central Bank requires.

(3) The Central Bank may require a licensee to submit such additional information as it considers necessary for the proper understanding of any statement or return furnished by that licensee under subsection (1) or (2) and such information shall be submitted within such period and in such manner as the Central Bank requires.

- (4) If, in the opinion of the Central Bank, a licensee is imposing charges that are unreasonable, the Central Bank may require the company to disclose the basis for the charges.
- (5) The Central Bank may require a licensee to show separately, amounts of unsecured credit.
- (6) A licensee shall disclose all large exposures to the Central Bank.
- (7) The assets that a Barbados bank which is a licensee holds for its own account shall be shown separately; and its equity interests in subsidiaries shall be separately disclosed.
- (8) The Central Bank may publish in the *Official Gazette* and in a daily newspaper published and circulating in Barbados information submitted on the quarterly returns of each licensee under this section but no information in respect of the affairs of a particular customer of a licensee shall be so published.
- (9) A licensee shall in respect of its business submit to the Central Bank in the prescribed form,
 - (a) not later than 21 days after the end of each 3-month period, or such other period as the Central Bank may in any particular case determine, a quarterly statement of its assets and liabilities; and
 - (b) within such time as the Central Bank may in any particular case determine, such other returns as the Central Bank requires.
- (10) The Central Bank may require a licensee to submit
 - (a) such further information as it considers necessary for the proper understanding of any statement or return furnished by the licensee pursuant to paragraph (a);

- (b) any information it considers necessary in respect of any holding company, financial holding company, subsidiary or affiliate of the licensee;

and the information shall be submitted within such time and in such manner as the Central Bank requires.

(11) The Central Bank may require a licensee to submit

- (a) such further information as it considers necessary for the proper understanding of any statement or return furnished by the licensee pursuant to paragraph (a);

- (b) any information it considers necessary in respect of any holding company, subsidiary or affiliate of the licensee;

and the information shall be submitted within such time and in such manner as the Central Bank requires.

(12) The Central Bank may cause to be prepared and published in the *Official Gazette* consolidated statements aggregating all the figures in the quarterly returns of licensees.

(13) A licensee which contravenes paragraph (9)(a) is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000.”.

Amendment of section 44 of Cap. 324A

20. Section 44(2) of the principal Act is amended by

- (a) *deleting paragraph (a) and substituting the following:*

“(a) the Revenue Commissioner;”; and

- (b) *deleting paragraph (d) and substituting the following:*

“(d) subject to subsection (3), to the appropriate supervisory authority of financial institutions in a country outside Barbados, at the request of that authority, where there is a branch, holding company, financial holding company, affiliate or representative office of the licensee operating in that country;”.

Repeal and replacement of section 45 of Cap. 324A

21. *Section 45 of the principal Act is deleted and the following is substituted:*

“Filing of accounts

45.(1) A licensee shall, on a solo and also on a consolidated basis if applicable, forward to the Central Bank copies of its audited financial statements prepared in accordance with duly recognised accounting standards

- (a) not later than 4 months after the close of its financial year; or
- (b) at such time during a licensee’s financial year as the Central Bank may determine; or
- (c) at such longer period as the Central Bank may allow,

together with the full and correct names of all persons who are directors, for the time being, of the licensee.

- (2) A licensee, except a licensee under Part IIIB, shall
 - (a) publish in the *Official Gazette* and in a daily newspaper published and circulating in Barbados; and
 - (b) publish on its website, have readily accessible to its clients or place in a conspicuous place in each of its offices and branches,

the financial statements referred to in subsection (1).

(3) Where a licensee is a qualified foreign currency earning bank, this section applies only in respect of the business carried on by the licensee in Barbados.

(4) A licensee which contravenes this subsection (3) is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000 and, in addition, to a further fine of \$25 000 for each month during which the offence continues after a conviction is first obtained.”.

Amendment of section 46 of Cap. 324A

22. Section 46 of the principal Act is amended

(a) *by deleting subsection (12) and substituting the following:*

“(12) A former director or a former senior officer shall not be eligible for appointment as an auditor of the licensee within a period of 2 years after the termination of that person’s term of office.”; and

(b) *adding the following new subsection immediately after subsection (12):*

“(12A) No person may be appointed an auditor of a licensee

(a) if he has any proprietary interest in the licensee;

(b) if he is a director, or agent of the licensee or of an affiliate of the licensee; or

(c) if he is an officer or employee of the Central Bank.”.

Amendment of section 48 of Cap. 324A

23. Section 48 of the principal Act is amended by deleting subsection (2) and substituting the following:

“(2) As soon as may be practicable after the conclusion of an examination, the examiner shall submit a report of the examination to the Governor of the Central Bank and to the directors of the licensee and, where applicable, to the Head Office of the licensee.”.

Amendment of section 50 of Cap. 324A

24. *The principal Act is amended by inserting the following subsections immediately after subsection (4):*

“(5) Where the Central Bank is of the opinion that an examination of a licensee indicates that the licensee is carrying on its business in an unlawful manner or is in an unsound financial condition, the Central Bank, after service of notice in writing, may, with the approval of the Minister, appoint a person who in the opinion of the Central Bank has had training and experience in the business of the licensee concerned to advise the licensee on the action to be taken to remedy the situation.

(6) A person appointed under subsection (5) shall be paid by the Central Bank such remuneration as the Central Bank may determine, and the remuneration shall be charged to the licensee concerned.”.

Repeal and replacement of section 52 of Cap. 324A

25. *Section 52 of the principal Act is deleted and the following is substituted:*

“Inspection of holding companies

52.(1) The Central Bank may inspect the books of holding companies, financial holding companies, parent companies or any company that owns the majority of the shares in a Barbados licensee where such companies are located in Barbados, and may request

information from the appropriate authorities outside Barbados where applicable.

(2) The Central Bank may also require a Barbados licensee to provide information on its holding companies and financial holding companies where the Central Bank considers that such information is necessary for determining the financial soundness of the licensee.”.

Repeal and replacement of section 69 of Cap. 324A

26. *Section 69 of the principal Act is deleted and the following is substituted:*

“Appointment of liquidator

69. Where the High Court orders the compulsory winding-up of a licensee,

- (a) the High Court shall, in the case of a licensee which is not permitted to hold insured deposits, appoint as liquidator such person as is nominated by the Central Bank to be responsible to the Court for the winding-up of that licensee;
- (b) which is permitted to hold insured deposits, the Deposit Insurance Corporation shall be the liquidator and shall be responsible to the Court for the winding-up of that licensee.”.

Repeal of section 97 of Cap. 324A

27. *The principal Act is amended by deleting section 97.*

Amendment of section 99 of Cap. 324A

28. *The principal Act is amended in section 99 by inserting the words “mislead or” immediately before the word “confuse”.*

Amendment of section 101 of Cap. 324A

29. *Section 101 of the principal Act is amended by*

- (a) renumbering that section as subsection (1) of that section; and*
- (b) adding the following new subsection as subsection (2):*

“(2) An officer or employee of a licensee who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for 2 years or to both.”.

Amendment of section 104 of Cap. 324A

30. *The principal Act is amended by*

- (a) deleting subsection (2) and substituting the following:*

“(2) A licensee that engages in advertising practices that are likely to mislead concerning

- (a) the relationship of the licensee with the Government of Barbados, the Central Bank or any department or office thereof;*
- (b) the true interest rate paid on deposits or charged on credit;*
- (c) the true returns on the management of investments;*
- (d) the insured or guaranteed status of deposits or of other liabilities or of investments managed by it; or*
- (e) the financial condition of the designated institution,*

is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000 or imprisonment for 5 years, or to both.”; and

(b) *deleting subsection (3).*

Insertion of new sections 114A and 114B into Cap. 324A

31. *The principal Act is amended by inserting the following new sections immediately after section 114:*

“Power to make guidelines

114A. The Central Bank may issue guidelines on any matter that it considers necessary

- (a) to ensure the safety and soundness of licensees;
- (b) respecting the operation of common trust funds;
- (c) respecting the information to be recorded in relation to trust accounts of a licensee;
- (d) approving the manner of using, investing or managing any property or funds outside or within Barbados by a licensee;
- (e) in respect of loans and other assets; and
- (f) generally to provide for the conduct of licensees.

Imposition of penalties

114B.(1) Where pursuant to this Act, a guideline made under this Act or a directive given under this Act, a licensee is required by a specified time

- (a) to take a certain measure or action; or
- (b) to cease a particular activity, behaviour or practice, and the Central Bank is satisfied that the licensee has failed to do so,

the Central Bank may impose on the licensee, a penalty of \$10 000 and in addition, a penalty of \$500 for every day or part of a day that the licensee fails to implement the measure or take the action or fails to terminate the particular activity, behaviour or practice as the case may be.

- (2) The penalty referred to in subsection (1)
 - (a) shall be imposed from the day following the day after which the licensee was directed to implement the measure or take the action or terminate the particular activity, behaviour or practice as the case may be; and
 - (b) shall not be imposed in respect of a period of more than 30 days.
- (3) Notwithstanding subsection (1), where the licensee
 - (a) takes the measure or action; or
 - (b) ceases the particular activity, behaviour or practice,the Central Bank shall discontinue the penalty referred to in subsection (1).
- (4) A penalty shall not be imposed on a licensee under this section unless the licensee is first given an opportunity to be heard and to show cause as to why the action should not be taken.
- (5) The Minister may revoke the licence of a licensee where the licensee
 - (a) fails to take any remedial measure or action imposed by the Central Bank under subsection (1);
 - (b) fails to desist from any activity, behaviour or practice as directed by the Central Bank under subsection (1); or
 - (c) fails to pay a penalty imposed by the Central Bank under subsection (1).

(6) Pecuniary penalties imposed and collected under this section shall be paid into the Consolidated Fund.”.

Amendment of section 115 of Cap. 324A

32. *The principal Act is amended by deleting the word “Minister” appearing in the opening words and substituting the words “Central Bank”.*

Insertion of new section 118 into Cap. 324A

33. *The principal Act is amended by inserting the following new section immediately after section 117:*

“Display of licence

118. A licensee shall display in a conspicuous place at each place where it does business a copy of its licence under this Act.

Notification of actions to the Central Bank

119. Where documents relating to an action arising out of the operations of a licensee have been served on the licensee, the licensee shall notify the Central Bank of such service within 7 days of the service of the documents.

Extending of time

120. Upon the written request of a licensee, the Central Bank may extend the time within which any document or information required from the licensee must be sent to the Central Bank.”.

Continuation of licensee

34. *A company licensed under the International Financial Services Act, Cap. 325 repealed by this Act shall from the 1st day of January 2019 be*

deemed to be licensed under Part IIIB of this Act and the provisions of this Act shall apply to those companies accordingly.

Savings of rights, benefits and obligations

35.(1) *Notwithstanding the repeal effected by section 29, the rights and benefits conferred upon licensees under the International Financial Services Act, Cap. 325 are saved or shall cease as is hereafter provided:*

- (a) a licensee holding a valid licence issued prior to 17th October 2017 shall be entitled to receive its benefits until 30th June 2021;*
- (b) a licensee holding a valid licence issued on or after 17th October 2017 shall cease to be entitled to any benefits after 31st December 2018.*

(2) *Notwithstanding the repeal effected by section 29, any obligation or penalties incurred by a licensee under the International Financial Services Act, Cap. 325 during the period of operation of the Act shall not be affected and on investigation, legal proceeding or remedy in respect thereof may be instituted, continued or enforced and such penalty imposed as if the Act have not been repealed.*

Repeal

36. *The enactment set out in the first column of the Schedule is repealed to the extent set out opposite thereto in the second column thereof.*

Commencement

37. *This Bill shall come into operation on the 1st day of January, 2019.*

SCHEDULE*(Section 29)*

Column 1	Column 2
<i>International Financial Services Act, Cap. 325</i>	The whole Act

Read three times and passed the House of Assembly this
day of _____, 2018.

Speaker

Read three times and passed the Senate this _____ day of
, 2018.

President