

A BILL

entitled

BANKS AND DEPOSIT COMPANIES AMENDMENT ACT 2012

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SCHEDULE 1

SCHEDULE 2

Amendment To The Banking Appeal Tribunal Regulations 2001

WHEREAS it is expedient to enhance the powers of the Bermuda Monetary Authority under the Banks and Deposit Companies Act 1999 to effectively regulate the banking industry in Bermuda and to meet appropriate international standards; to provide for the imposition of civil penalties, the making of prohibition orders and other disciplinary measures including injunctive relief; and to provide for the giving of notices in relation to the exercise of disciplinary measures and for the publication of decisions of the Authority:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

BANKS AND DEPOSIT COMPANIES AMENDMENT ACT 2012

Citation

1 This Act, which amends the Banks and Deposit Companies Act 1999 (the “principal Act”), may be cited as the Banks and Deposit Companies Amendment Act 2012.

Amends section 2

2 Section 2 of the principal Act is amended by inserting in the appropriate alphabetical order the following definitions—

“decision notice” means a notice prepared in accordance with section 49K;

“warning notice” means a notice prepared in accordance with section 49J.”.

Amends section 9

3 Section 9 (1) of the principal Act is amended—

(a) in paragraph (b) by deleting “and” at the end thereof;

(b) in paragraph (c) by deleting the period and substituting “; and”; and

(c) by inserting the following paragraph after paragraph (c)—

“(d) in exercising its powers—

(i) under section 49A to impose a civil penalty;

(ii) under section 49C to censure publicly;

(iii) under section 49E to make a prohibition order; and

(iv) under section 49M to publish information about any matter to which a decision notice relates.”.

Amends section 17

4 Section 17 of the principal Act is amended by—

(a) repealing subsection (5).

(b) in subsection (6) by deleting “(whether or not constituting an offence under subsection (5))”.

Amends section 20

5 Section 20 of the principal Act is amended—

(a) in subsection (1), by deleting in the tailpiece “written notice of its intention to do so” and substituting “a warning notice under section 49J”;

(b) by repealing subsections (2) and (3);

(c) in subsection (4), by deleting the tailpiece and substituting “the Authority shall give that person a copy of the warning notice but the Authority may omit from such copy any matter which does not relate to him.”;

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(d) by inserting the following subsections after subsection (4)—

“(4A) After giving a notice under subsection (1) and taking into account any representations made under section 49J(2), the Authority shall decide—

- (a) whether to proceed with the action proposed in the notice;
- (b) whether to take no further action;
- (c) if the proposed action was to revoke the institution’s licence, to restrict its licence instead; or
- (d) if the proposed action was to restrict the institution’s licence or to vary the restrictions on a licence, to restrict it or to vary the restrictions in a different manner.

(4B) Once the Authority has made a decision under subsection (4A) it shall forthwith provide either a decision notice under section 49K or a notice of discontinuance under section 49L, as the case may be.”;

(e) by repealing subsections (5) to (12) inclusive.

Amends section 30

6 Section 30 of the principal Act is amended—

- (a) in subsection (1) by inserting after the word “institution” the words “or person”;
- (b) in subsection (1)(a) by deleting “or” at the end thereof;
- (c) in subsection (1)(b) by deleting the comma at the end and substituting “: or”;
- (d) after subsection (1)(b) by inserting the following paragraphs—

“(c) to impose a civil penalty under section 49A; or

(d) to publish a statement in respect of it pursuant to section 49C.”;

(e) by inserting the following subsections after subsection (3)—

“(3A) Any person in respect of whom a prohibition order has been made under section 49E, may appeal to the tribunal against the decision.

(3B) Any person in respect of whom a decision notice has been issued refusing a revocation or variation of a prohibition order under section 49G(3) may appeal to the tribunal.”;

(f) by repealing subsection (4) and substituting the following—

“(4) The tribunal may suspend the operation of the decision appealed against pending the determination of an appeal in respect of the decision.”.

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Inserts section 36A

7 The principal Act is amended by inserting the following section after section 36—

“Prudential and other returns

36A (1) The Authority may make Rules prescribing statutory returns that must be made by institutions.

(2) Without prejudice to the generality of subsection (1), Rules may prescribe—

- (a) capital adequacy returns;
- (b) liquidity returns;
- (c) large exposure returns;
- (d) foreign currency returns; and
- (e) annual returns of controllers and officers.

(3) Every institution shall, not later than 28 days after the relevant day, file with the Authority such returns as the Authority may prescribe in Rules made under this section.

(4) Every institution that fails to file a return within the time specified in subsection (3) shall be liable to a civil penalty not exceeding \$5,000 for each week or part of a week that it is in default.

(5) Sections 6, 7 and 8 of the Statutory Instruments Act 1977 shall not apply to Rules made under this section.

(6) In this section “relevant day” means such day as may be specified in Rules made under this section.

(7) The Schedules to the Rules made by the Authority under this section shall be published separately on the website of the Authority: www.bma.bm, and shall be available for inspection at the offices of the Authority.”.

Amends section 42

8 Section 42 of the principal Act is amended—

- (a) in subsection (2) by deleting the words “his investigation” and substituting “the investigation he is appointed to carry out”;
- (b) in subsection (4)(a) by deleting the words “all documents relating to the company concerned” and substituting “such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation”;
- (c) in subsection (4) by repealing paragraph (b) and substituting the following—

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“(b) to attend before the persons so appointed at such time and place as they may require and answer questions relevant to the investigation as such persons may require; and”;

(d) by inserting the following subsection after subsection (6)—

“(6A) Unless the Authority otherwise directs, the institution under investigation shall pay to the Authority all expenses of, and incidental to, the investigation.”;

(e) in subsection (8) by inserting after the word “him” the words “in criminal proceedings”.

Inserts section 42A

9 The principal Act is amended by inserting the following section after section 42—

“Investigation of suspected contraventions

42A (1) The Authority may conduct an investigation if it appears to the Authority that—

- (a) a person may have contravened section 11;
- (b) an institution may have failed to comply with any requirements or contravened any prohibition imposed by or under this Act, Regulations, Rules or Orders made thereunder; or
- (c) an individual may not be a fit and proper person to perform functions in relation to a regulated activity (within the meaning of section 49E(9)).

(2) The power conferred by subsection (1)(b) may be exercised in relation to a company that was a former licensed deposit-taking business but only in relation to—

- (a) business carried on at any time when the company was licensed under this Act; or
- (b) the ownership or control of a company at any time when it was licensed under this Act.”.

Amends section 43

10 Section 43 of the principal Act is amended by—

(a) deleting the section heading and substituting the following—

“Power to require production of documents”;

(b) by repealing subsection (1) and substituting the following—

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“(1) The Authority may by notice in writing require the person who is the subject of an investigation under section 42A (“the person under investigation”) or any person connected with the person under investigations—

- (a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Authority may reasonably require for the purpose of the investigation;
- (b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation;
- (c) to attend at such place and time as may be specified in the notice and answer questions relevant to the investigation as the Authority may require.”

(c) by inserting the following subsection after subsection (1)—

“(1A) The Authority may by notice in writing require every person who is or was a director, controller, senior executive, employee, agent, banker, accountant, auditor or barrister and attorney of a person under investigation—

- (a) to produce to the Authority, within such time and at such place as the Authority may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation which are in his custody or power;
- (b) to attend before the Authority at such time and place as the Authority may require and answer questions relevant to the investigation as the Authority may require; and
- (c) to take such actions as the Authority may direct in connection with the investigation.”;

(d) by inserting the following subsection after subsection (6)—

“(7) For the purposes of this section, a person is connected with the person under investigation if such person is or has at any relevant time been—

- (a) a member of the group of the person under investigation;
- (b) a controller of the person under investigation;
- (c) a partner of a partnership of which the person under investigation is a member.”.

Amends section 44

11 Section 44 of the principal Act is amended—

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- (a) in subsection (1) by deleting the words beginning with “laid by” and ending with “section 43”, and substituting “that the Authority is conducting an investigation under section 42A”;
- (b) by repealing subsection (1)(a) and substituting the following—
 - “(a) that a person has failed to comply with a notice served on him under section 43;”;
- (c) in subsection (2)(a) by deleting the words “the person mentioned in subsection (1)” and substituting “the person referred to in subsection (1) (a).”
- (d) in subsection (4) by repealing paragraph (b) and substituting the following—
 - “(b) until the conclusion of proceedings, if within the period of three months referred to in paragraph (a) proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 42A.”.

Inserts sections 49A to 49M

12 The principal Act is amended by inserting after section 49 the following—

“DISCIPLINARY MEASURES

Power to impose civil penalties for breach of requirements

49A (1) Except as provided in sections 16 and 36A, every person who fails to comply with any requirement or contravenes any prohibition imposed by or under this Act shall be liable to a penalty not exceeding \$500,000, as the Authority considers appropriate, for each such failure or contravention.

(2) For the purposes of subsection (1), “appropriate” means effective, proportionate and dissuasive.

(3) The Authority shall not impose a penalty under subsection (1) where it is satisfied that the person concerned took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

Civil penalties procedures

49B (1) If the Authority proposes to impose a civil penalty, it must give the person concerned a warning notice.

(2) If the Authority decides to impose a civil penalty, it must give the person concerned a decision notice.

Public censure

49C (1) If the Authority considers that an institution has contravened a requirement imposed on it by or under this Act, the Authority may publish a statement to that effect.

(2) After a statement under this section is published, the Authority shall send a copy of it to the institution.

Public censure procedure

49D (1) If the Authority proposes to publish a statement in respect of an institution under section 49C, it must give the institution a warning notice.

(2) If the Authority decides to publish a statement under section 49C (whether or not in the terms proposed), it must give the institution concerned a decision notice.

Prohibition orders

49E (1) Subsection (2) applies if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by a person who is licensed by the Authority under this Act ('a regulated person').

(2) The Authority may make a prohibition order prohibiting the individual from performing a specified function, any function falling within a specified description, or any other function.

(3) A prohibition order may relate to—

- (a) a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities;
- (b) regulated persons generally, or any person within a specified class of regulated persons.

(4) In exercising its discretion to make a prohibition order under subsection (2), the Authority must have regard (among other things) to such factors, including assessment criteria as the Authority may establish in a statement of principles.

(5) An institution must ensure that no function performed in relation to the carrying on of a regulated activity, is performed by an individual who is prohibited from performing that function by a prohibition order.

(6) The Authority may, on the application of the individual named in a prohibition order, vary or revoke the prohibition order.

(7) The Authority must publish a prohibition order that is in effect, and every variation of such order, in such manner as it considers appropriate to bring the order to the attention of the public.

(8) Any person who fails to comply with the terms of a prohibition order commits an offence and is liable—

(a) on summary conviction to a fine of \$50,000 or to imprisonment for two years or to both;

(b) on conviction on indictment to a fine of \$200,000 or to imprisonment for four years or to both.

(9) In this section—

“regulated activity” means any activity that is carried on by way of business requiring licensing by the Authority under any provision of this Act;

“regulated person” has the meaning given in subsection (1);

“specified” means specified in the prohibition order.

Prohibition orders: procedures

49F (1) If the Authority proposes to make a prohibition order it must give the individual concerned a warning notice.

(2) If the Authority decides to make a prohibition order it must give the individual concerned a decision notice.

Applications relating to prohibition orders: procedures

49G (1) This section applies to an application for the variation or revocation of a prohibition order.

(2) If the Authority decides to grant the application, it must give the applicant written notice of its decision.

(3) If the Authority decides to refuse the application, it must give the applicant a decision notice.

Determination of applications for variation etc.

49H (1) The Authority may grant an application made under section 49G if it is satisfied that the applicant is a fit and proper person to perform the function to which the application relates.

(2) In deciding that question, the Authority may have regard (among other things) to whether the applicant—

(a) has obtained a qualification;

(b) has undergone, or is undergoing, training; or

(c) possesses a level of competence,

required in relation to persons performing functions of the kind to which the application relates.

Injunctions

Injunctions

- 49I (1) If, on the application of the Authority, the Court is satisfied—
- (a) that there is a reasonable likelihood that any person will contravene a relevant requirement; or
 - (b) that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may make an order restraining the contravention.

- (2) If, on the application of the Authority, the Court is satisfied—
- (a) that any person has contravened a relevant requirement; and
 - (b) that there are steps which could be taken for remedying the contravention,

the Court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

- (3) If, on the application of the Authority, the Court is satisfied that any person may have—
- (a) contravened a relevant requirement; or
 - (b) been knowingly concerned in the contravention of such a requirement,

the Court may make an order restraining such person from disposing of, or otherwise dealing with, any of his assets which it is satisfied the person is reasonably likely to dispose of or otherwise deal with.

(4) In subsection (2), references to remedying a contravention include references to mitigating its effect.

(5) "Relevant requirement" in relation to an application by the Authority, means a requirement which is imposed by or under this Act.

Notices

Warning notices

- 49J (1) A warning notice must—
- (a) state the action which the Authority proposes to take;
 - (b) be in writing; and
 - (c) give reasons for the proposed action.

(2) The warning notice must specify a reasonable period (which may not be less than 14 days) within which the person to whom it is given may make representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to give a decision notice.

(3) The Authority may extend the period specified in the notice.

(4) A warning notice given under section 20 proposing action within subsection (1)(a) or (1)(b) of that section must specify the proposed restriction or, as the case maybe, the proposed variation.

(5) A warning notice about a proposal to publish a statement given under section 49D must set out the terms of the statement.

(6) A warning notice given under section 49F(1) must set out the terms of the prohibition.

Decision notices

49K (1) A decision notice must—

- (a) be in writing;
- (b) give reasons for the Authority's decision to take the action to which the notice relates;
- (c) give its decision; and
- (d) give an indication of the right to appeal the decision to the appeal tribunal under section 30.

(2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 49J was given; and if no decision notice under subsection (1) is given within that period, the Authority shall be treated as having at the end of that period given a notice of discontinuance under section 49L.

(3) A decision notice under section 20(4B) imposing a restriction or variation shall set out the terms of the restriction or variation.

(4) A decision notice about the imposition of a civil penalty under section 49A must state the date of payment.

(5) A decision notice about public censure under section 49C must—

- (a) set out the terms of the statement;
- (b) give details of the manner in which, and the date on which, the statement will be published.

(6) A decision notice about a prohibition order made under section 49F must—

- (a) name the individual to whom the prohibition order applies;
- (b) set out the terms of the order; and

(c) be given to the individual named in the order.

(7) A decision notice shall state the day on which it is to take effect.

(8) The Authority may, before it takes the action to which a decision notice (“the original notice”) relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.

(9) The Authority may give a further decision notice as a result of subsection (8) only if the person to whom the original notice was given consents.

(10) If the person to whom a decision notice is given under subsection (1) had the right to refer the matter to which the original decision notice related to the tribunal, he has that right as respects the decision notice given under subsection (8).

Conclusion of action

Notices of discontinuance

49L (1) Subject to section 49K(2), if the Authority decides not to take the action proposed in a warning notice it must give a notice of discontinuance to the person to whom the warning notice was given.

(2) A notice of discontinuance must identify the action which is being discontinued.

Publication

Publication

49M (1) Subject to sections 20, 49C and 49E, the Authority may publish such information about a matter to which a decision notice relates as it considers appropriate.

(2) The Authority must not publish a decision under subsection (1)—

- (a) before notifying the person concerned; and
- (b) pending an appeal under section 30.”.

Inserts section 55A

13 The principal Act is amended by inserting the following section after section 55—

“False documents or information

55A (1) Any person who, for any purposes of this Act—

- (a) issues a document, or supplies information, which is false or misleading in a material respect; or
- (b) signs a document which is false or misleading in a material respect; or

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- (c) takes part in the preparation or issue of a document, or the supplying of information, which is false in a material respect, commits an offence.
- (2) A person who commits an offence under subsection (1) is liable—
 - (a) on summary conviction to a fine of \$50,000 or to imprisonment for two years or to both;
 - (b) on conviction on indictment to a fine of \$200,000 or to imprisonment for four years or to both.
- (3) It shall be a defence for a person charged with an offence under subsection (1) to prove—
 - (a) if an individual, that he had no knowledge of the falsity or misleading character of the document or information, and took every reasonable precaution to ensure its accuracy; and
 - (b) if not an individual, that every person acting on his behalf had no such knowledge, and took every such reasonable precaution, as aforesaid.”.

Inserts section 56A

14 The principal Act is amended by inserting the following section after section 56—

“Civil debt and civil penalties

56A (1) When a person is convicted of an offence under this Act, such person shall not also be liable to a civil penalty imposed by or under section 49A in relation to the same matter.

(2) A civil penalty levied pursuant to this Act may be recovered by the Authority as a civil debt.”.

Consequential amendments

15 Schedules 1 and 2 (which make consequential amendments) have effect.

Commencement

16 This Act shall come into operation on such day as the Minister may appoint by notice published in the Gazette and the Minister may appoint different days for different provisions.

SCHEDULE 1

(section 15)

- 1 The following provisions of the principal Act are repealed—
 - (a) section 16(4);
 - (b) section 35(3);
 - (c) section 36(3), (4) and (5);
 - (d) section 37;
 - (e) section 38(9) and (10);
 - (f) section 47(4);
 - (g) section 50(2); and
 - (h) section 63(4).

- 2 The Second Schedule to the principal Act (Minimum Criteria for Licensing) is amended—
 - (a) in paragraph 1(1) by deleting the words “hold the particular position which he holds or is to hold” and substituting the words “perform functions in relation to any activity carried on by the registered person”; and
 - (b) by inserting after paragraph 1 the following—

“CORPORATE GOVERNANCE

1A (1) The institution shall implement corporate governance policies and processes as the Authority considers appropriate given the nature, size, complexity and risk profile of the institution.

(2) Without prejudice to subparagraph (1) the business of an institution shall be—

 - (a) effectively directed by at least two individuals; and
 - (b) under the oversight of such number of non-executive directors appointed as the Authority considers appropriate given the nature, size, complexity and risk profile of the institution.”.
 - (c) in paragraph 4 by inserting after subparagraph (9) the following—

“ (10) In determining whether an institution is conducting its business in a prudent manner, the Authority shall take into account any failure by the institution to comply with the provisions of—

 - (a) this Act;
 - (b) any other law, including provisions of the law pertaining to anti-money laundering and anti-

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financing of terrorism as provided in the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008; and

- (c) international sanctions in force in Bermuda.”.

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SCHEDULE 2

(section 15)

AMENDMENT TO THE BANKING APPEAL TRIBUNAL REGULATIONS 2001

Amends regulation 3

1 Regulation 3 of the Banking Appeal Tribunal Regulations 2001 (the “principal Regulations”) is amended—

- (a) in paragraph (a) by deleting the words “serves notice in writing on the appellant of its decision” and substituting “gives a decision notice to the appellant”;
- (b) in paragraph (c) by deleting the words “serves notice in writing on the appellant of its decision.” and substituting “gives a decision notice to the appellant.”.

Amends Schedule

2 (1) Paragraph 1 of the Schedule to the principal Regulations is amended—

- (a) in subparagraph (a) by deleting the words “a notice served under section 20(1) or 20(4)” and substituting “the warning notice given under section 49J”;
- (b) in subparagraph (b) by deleting “20 (5)” and substituting “49J (2)”;
- (c) in subparagraph (c) by deleting the words “a decision notice served under section 20 (7)” and substituting “the decision notice given under section 49K (2)”;
- (d) by deleting subparagraph (d).

(2) Paragraph (2)(a) of the Schedule to the principal Regulations is amended by deleting “or 20(4)”.

(3) The principal Regulations are amended by inserting after paragraph 4 the following paragraphs—

“5 In the case of an appeal against a decision of the Authority to impose a civil penalty—

- (a) a copy of the warning notice given under section 49B(1) of the Act;
- (b) a copy of the decision notice given under section 49B(2) of the Act; and
- (c) a copy of any written representations made in accordance with section 49J(2) thereof.

6 In the case of an appeal against a decision of the Authority to publish a statement in respect of an institution—

- (a) a copy of the warning notice given under section 49D(1) of the Act;
- (b) a copy of the decision notice given under section 49D(2) of the Act; and
- (c) a copy of any written representations made in accordance with section 49J(2) thereof.

7 In the case of an appeal against a decision of the Authority to make a prohibition order—

- (a) a copy of the warning notice given under section 49F(1) of the Act;
- (b) a copy of the decision notice given under section 49F(2) of the Act; and
- (c) a copy of any written representations made in accordance with section 49J(2) thereof.

8 In the case of an appeal against a decision of the Authority to refuse to revoke or vary a prohibition order a copy of the decision notice given under section 49G(3) thereof.”.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Banks and Deposit Companies Act 1999 (“the principal Act”) to enhance the powers of the Bermuda Monetary Authority to effectively regulate institutions licensed as banks and deposit companies in Bermuda.

Clause 1 provides a citation for the Bill.

Clause 2 amends section 2 of the principal Act to insert additional definitions relating to the terms “decision notice” and “warning notice”.

Clause 3 amends section 9 of the principal Act to widen the scope of matters to be covered by the statement of principles. Under this amendment the Authority is required to issue a statement of principles in accordance with how it proposes to act in relation to the exercise of its powers to impose civil penalties, censure publicly, make prohibition orders, and publish decisions.

Clause 4 amends section 17 to provide for consequential amendments relating to the introduction of civil penalties for breaches and obligations that, under current provisions, result in criminal penalties.

Clause 5 amends section 20 of the principal Act to make consequential amendments required in light of the new provisions on warning notices set out in the new section 49J.

Clause 6 amends section 30 of the principal Act to revise the grounds of appeal for the appeals made to the appeals tribunal so as to allow an appeal against a civil penalty imposed under the new section 49A, against publication of statements under the new section 49C on public censure, against the making of prohibition orders under the new section 49E and against a decision refusing to revoke or vary a prohibition order under section 49G.

Clause 7 amends the principal Act by inserting a new section 36A to provide powers for the Authority to prescribe in Rules, returns relating to prudential matters and other required matters. Under this new section, returns are required to be filed within 28 days of the relevant day. The relevant day shall be specified by the Authority in the Rules. Failure to file returns as required will attract a default fine of \$5,000 for every week or part of a week that an institution is in default.

Clause 8 amends section 42 of the principal Act to provide greater clarity as to the documents to be produced to a person appointed to carry out an investigation on behalf of the Authority. The amendment further provides for the recovery of costs of an investigation from the institution affected.

Clause 9 amends the principal Act by inserting a new section 42A. The new section seeks to widen the power of the Authority relating to investigations beyond the current scope of investigating non-licensed deposit-taking businesses. Under this section, investigations included are for breaches of any requirements imposed by or under the Act or Regulations etc. and for the fitness and propriety of individuals who perform functions in relation to an activity regulated under the Act. Furthermore, the power to investigate is to extend to

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investigating former licensed deposit-taking businesses in relation to business carried on at a time when they were licensed, and to investigations in relation to the ownership and control of former licensed deposit-taking businesses at a time when they were licensed.

Clause 10 amends section 43 of the principal Act to make consequential amendments in light of the new provisions on investigations under the new section 42A. Furthermore, the clause enlarges the powers of the Authority that apply in relation to persons connected with persons under investigation.

Clause 11 amends section 44 of the principal Act to also make consequential amendments in light of the new provisions on investigations under the new section 42A.

Clause 12 amends the principal Act by inserting new sections 49A to 49M, which provide for the process the Authority must follow when exercising the powers to impose civil penalties, publishing statements of public censure or making prohibition orders. Under the new Part, the Authority is empowered to impose civil penalties for a failure to comply with any requirement, or contravention of any prohibition, imposed by or under this Act. The maximum amount that can be imposed for any breach is \$500,000. It should be noted that this section is not to apply to a breach of a provision of the Act that otherwise attracts a specified civil penalty such as that for late payment of fees and late filing of returns. In these cases, the penalty specified in the principal Act for late payment of fees under section 16 and for late filing of returns under section 36A would apply. In accordance with the procedure to be followed for imposing civil penalties, the Authority must give a warning notice first, followed by a decision notice as provided in the new sections 49J and 49K. The new section 49C provides for a new disciplinary measure where the person concerned would be publicly censured but without any other measures taken against them. Under the new section 49E, certain officers are banned from performing specified functions relating to a regulated activity under the principal Act. This provision will enable the Authority to make a number of prohibition orders, depending on the circumstances of each particular case and after an assessment of the qualities of the individual concerned. The new section 49I allows for the issue of three types of injunction orders by the Supreme Court on the application of the Authority. The first is an order restraining a person from contravening any requirement imposed by or under the Bill; the second is an order requiring persons to take steps to remedy a contravention of such a requirement; and the third is an order restraining a person from disposing of or otherwise dealing with any of his assets. Finally, sections 49J to 49M set out the initial steps to be taken by the Authority in any disciplinary measures it seeks to impose under the principal Act. The provisions require the Authority to give due process to any person it has power to impose disciplinary measures on beginning with the warning notice.

Clause 13 amends the principal Act by inserting a new section 55A, which makes it an offence to issue documents or provide information that is false or misleading in a material respect.

Clause 14 amends the principal Act by inserting a new section 56A, which provides a mechanism for the recovery of civil penalties imposed under the Act. The Authority is enabled to claim the amount owing by way of civil proceedings in court. The new section also directs that where a person is convicted of a criminal charge, no civil penalty can be imposed relative to the same matter.

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Clause 15 provides for consequential amendments to the principal Act and subsidiary legislation relating to the introduction of civil penalties for breaches and obligations that, under current provisions, result in criminal penalties.

Clause 16 provides for commencement of the provisions of the Bill.