

**SEYCHELLES' COMMERCIAL LEGISLATION**

**VOLUME III**

**FINANCIAL INSTITUTIONS ACT, 1984  
AS AMENDED IN 1995**

**INSURANCE ACT, 1994  
AS AMENDED IN 1995**

**CENTRAL BANK OF SEYCHELLES ACT, 1982  
AS AMENDED IN 1986**

**EDITION 1996**

**Ministry of Finance and Communications**

**SEYCHELLES' COMMERCIAL LEGISLATION**

**VOLUME III**

**FINANCIAL INSTITUTIONS ACT, 1984\*  
AS AMENDED IN 1995**

**CHAPTER 79**

**EDITION 1995**

**Ministry of Finance and Communications**

## CHAPTER 79

## FINANCIAL INSTITUTIONS ACT

Act 14 of 1994.  
Act 7 of 1986.  
Act .. of 1995.

[1st January, 1985]

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**PART - PRELIMINARY**

Short title. **1.** This Act may be cited as the Financial Institutions (Amendment) Act, 1995.

Interpretation **2.** In this Act, unless the context otherwise requires-

"abandoned property" has the meaning given in section 46;

"accommodation" means any loan or overdraft or advance or any commitment to grant any loan or overdraft or advance, including a guarantee or a commitment to accept any other contingent liability, and includes opening and confirming letters of credit;

"assigned capital", in relation to a foreign financial institution, means unimpaired capital assigned to it by its head office;

"automated teller machine" means a terminal device, whether installed by a financial institution or other person, which is linked directly or indirectly to a computer system used by a financial institution and, which provides facilities to the customers of the institution;

"bank" means any financial institution the operations of which include the acceptance of deposits subject to transfer by cheque;

"banking business" means the business of accepting deposits of money from the public or members thereof withdrawable or payable upon demand or after a fixed period or after notice, or any similar operation through the frequent sales or placements of bonds, certificates, notes or other securities and the employments of those funds either in whole or in part for loans or investments by lending or any other means for the account and at the risk of the person doing such business, and any other activity recognized by the Central Bank as customary banking practice which a bank or other financial institution may additionally be authorized to do;

"banking licence" means a banking-licence granted under section 5;

"capital funds" means the paid-up or assigned capital of an institution plus the reserve fund referred to in section 21;

"Central Bank" means the Central Bank of Seychelles established by section 3 of the Central Bank of Seychelles Act;

"close relation" means spouse or dependant relative;

"concern" means a company or firm;

"director" has the meaning given in section 2(1) of the Companies Act, and in relation to a foreign financial institution includes the principal authorized agent designated under section 6(2) of this Act, and "board of directors" and "board" shall be construed accordingly;

"domestic banking business" means banking business conducted in or outside Seychelles.

"financial institution" means-

- (a) any person doing banking business; or
- (b) a person declared to be a financial institution under section 58(3);

and, for the purposes of this Act, all branches, agencies and offices of a financial institution in Seychelles are deemed to be one financial institution;

"foreign financial institution" means a financial institution organized under the laws of a country other than Seychelles;

"local financial institution" means a financial institution organized under the law of Seychelles;

"Minister" means the Minister for the time being responsible for finance;

"net profits" means profits before providing for taxation and management charges;

"non-domestic banking business" means banking business conducted outside Seychelles with persons resident outside Seychelles;

"place of business" means any branch, agency or office of a financial institution in Seychelles which is open to the public and includes a mobile office;

"rupees" means rupees in Seychelles currency;

"sell" includes -

- (a) to sell by auction;
- (b) to offer or attempt to sell;
- (c) to expose, display or advertise for sale;
- (d) to sell or hire under a hire-purchase or instalment sale agreement; or
- (e) to exchange or dispose of goods for any valuable consideration;

and the expressions "to purchase" and "to buy" shall be construed accordingly;

"substantial interest" means-

- (a) in relation to a company, the holding of a beneficial interest by an individual or his close relation, whether singly or taken together, in the shares of the company, of which the amount paid up exceeds R.1,000,000 or 10 percent of the paid-up capital of the company, whichever is less, or the existence of a guarantee or indemnity or guarantees or indemnities, whether singly or taken together, representing not less than R.1,000,000 or 10 percent of the paid-up capital of the company, whichever is less, given by an individual or his close relation on behalf of the company;

- (b) in relation to a firm, the beneficial interest held in the firm by an individual or his close relation, whether singly or taken together, which represents more than 10 percent of the total capital subscribed by all the partners of the firm, or the existence of a guarantee or indemnity or guarantees or indemnities, whether singly or taken together, representing not less than 10 percent of that capital, given by an individual or his close relation on behalf of the firm;

"unsecured"-

- (a) in relation to advances or credit facilities, means advances or credit facilities granted without security;
- (b) in relation to advances and credit facilities against security, means any part of those advances or credit facilities which at any given time exceeds the market value of the assets comprising the security given, or which exceeds the valuation approved by the Central Bank at any time when it considers that no market value exists for those assets.

## PART II - BANKING LICENCES

**Banking licence 3.**(1) No person in Seychelles shall advertise for or solicit deposits or conduct any domestic banking business or non-domestic banking business unless the person holds a licence granted under this Act.

(2) The licence granted under this Act shall specify the operations which the holder of the licence is authorised to undertake.

(3) The Central Bank may grant a licence to a person to conduct both domestic banking business and non-domestic business where the Central Bank in consultation with the Minister responsible for Finance is satisfied that the person has made arrangements-

- (i) for the keeping of accounts of each such banking business separately; or
- (ii) for the conduct of each such banking business through separate branches, agencies or offices.

(4) Subject to prior written approval by the Central Bank, a financial institution conducting non-domestic banking business under this Act may be administered by another financial institution.



(5) Any person who is the holder of a banking licence on the commencement of this section may, during the validity of that licence, conduct domestic banking business or other operations authorised under the licence.";

Application for licence. 4.(1) An application for a banking licence, which, in the case of a company banking licence. incorporated outside Seychelles, must be submitted by its head office, shall be made in writing to the Central Bank in such manner as the Central Bank may specify and shall include-

(a) an authenticated copy of the instrument under which the applicant company is formed;

(b) a statement of the address of its head office, and the name and address of every member of the board, and of its principal officer;

(c) copies of the latest three annual balance sheets and profits and loss accounts of the company;

(d) full particulars of the business and objectives of the applicant;

(e) the location of the principal and other places in or outside Seychelles where it proposes to conduct business, and in the case of a mobile office, the area to be served;

(f) in the case of an application by a company incorporated outside Seychelles, in addition, a sworn undertaking of its head office through its principal officer, supported by an appropriate resolution of its board of directors, that it will, on demand of the Central Bank, make available, in the currency and at such place as may be specified by the Central Bank, funds necessary to cover all obligations and liabilities incurred in the conduct of banking business authorised under the banking licence;

(g) such other information as the Central Bank may require.

(2) The application and every document submitted in accordance with subsection (1) shall be signed by the directors of the applicant company, or by a principal officer of the company duly authorized so to do.

(3) Any person who knowingly or recklessly furnished any information which is false or misleading in any material particular in connection with an application under this section is guilty of an offence and liable to a fine of R.100,000.

(4) For the purpose of subsection (1)(e) an automated teller machine by itself shall not constitute a place of business.

Investigation of 5.(1) In considering an application for a banking licence, and without validity of prejudice to any information required under section 4, the Central Bank shall documents, etc. conduct such investigation as it may deem necessary to ascertain-

- (a) the validity of the documents submitted under section 4(1);
- (b) the financial status and history of applicant;
- (c) the character and experience of its management;
- (d) the adequacy of its capital structure;
- (e) its ability to cover all obligations and liabilities incurred in the conduct of banking business authorised under the banking licence;
- (f) the convenience and needs of the community it intends to serve;
- (g) its proposed operations; and
- (h) the earning prospects afforded by the area primarily to be served.

(2) Within 90 days after the receipt of an application, or, whether further information has been required, after the receipt of that information, the Central Bank shall, subject to subsection (4),-

- Cap.40.
- (a) grant a banking licence; or
  - (b) inform the applicant that it has refused to grant a banking licence, giving the reasons for that refusal.

(3) Notwithstanding subsection (2), if the Minister certifies to the Central Bank that the granting of a banking licence would not be in the public interest, no other reason for refusal need be given to the applicant.

(4) No person other than-

- (a) a company incorporate under the Companies Act, or
- (b) an overseas company registered under section 310 of that Act,

shall be granted a banking licence under this Act.

(5) Where a banking licence is granted under this Act the Central Bank shall publish in the Gazette and in a local newspaper a notice to that effect specifying the name of the financial institution so licensed.

Terms and conditions of licence. **6.**(1) In granting a banking licence, which shall be in writing, the Central Bank may specify the terms and conditions which shall be complied with by banking the institution.

(2) In the case of a foreign financial institution, without prejudice to the generality of subsection (1), the Central Bank shall require as a condition for the commencement of operations that the institution shall file with it a written certificate of designation, which may be changed from time to time by the filing a new certificate of designation, specifying the name and address of its principal authorized agent, being the officer, agent, or other person in Seychelles responsible for carrying out the functions of the institution and on whom any process may be served.

(3) A financial institution holding a bank licence shall not engage in any business other than the business specified in that licence.

Display of banking licence. **7.** A financial institution holding a banking licence shall display a copy of that licence conspicuously in a public part of each place of business in Seychelles and shall keep that copy so displayed.

Licensee to comply with rules, directions etc. Cap. 26. **8.**(1) The operation of a financial institution are subject to statutory instruments made under this Act and to any direction, determination, notice or other requirement that may be made or issued by the Central Bank from time to time under or in accordance with this Act, the Central Bank of Seychelles Act, or any other written law.

Cap. 40 (2) Without prejudice to the Companies Act, no local financial institution shall, without the written consent of the Central Bank, alter the instrument under which it is formed.

(3) The Central Bank shall not consent to any alteration which conflicts with this Act.

(4) Without prejudice to section 312 or any other relevant provision of the Companies Act, every foreign financial institution shall notify the Central Bank of any alteration in the instrument under which it is formed within 60 days of the alteration.

License fee. **9.**(1) Every financial institution shall pay to the Central Bank such annual fee for its banking licence as may be prescribed.

(2) The Minister may by regulations prescribe different annual fees for different classes of financial institutions, which shall apply uniformly to financial institutions within each class.

(3) Where the holder of a banking licence fails to pay the annual licence fee prescribed under subsection (1) for any year subsequent to the first year of the grant of the licence, on or before the beginning of the year for which the licence fee is due, the licence shall cease to be valid at the beginning of the year for which the fee is due.

Approval for opening branches etc. **10.**(1) The written approval of the Central Bank is required-

- (a) for a financial institution to open or close a branch, agency or office in any part of Seychelles, or to change the location of any existing place of business in Seychelles;
- (b) for a local financial institution to open a branch, agency or office outside Seychelles.

(2) An approval under subsection (1) may be given subject to such conditions as the Central Bank may determine and as are specified in the approval or are prescribed.

Restriction on use of banking words. **11.**(1) No person other than a financial institution shall, without the prior approval in writing of the Central Bank-

- 2/7/1986.
- (a) use the words "bank", "financial institution", "savings", "savings and loan" or "trust" or any of their derivatives in any language, or any other word indicating or likely to indicate the transaction of banking business, in the name, description or title under which that person is doing business in Seychelles; or
  - (b) make any representation to the effect that he carries on banking business in any billhead, letter paper, notice or advertisement.

(2) Nothing in subsection (1) prevents the use of the words there specified, or any of their derivatives in any language, when it is for the sole purpose of organizing a company for the purpose of applying for a banking licence under this Act.

(3) No person shall be granted or shall continue to hold a banking licence under a name which so closely resembles the name of an existing financial institution as would be likely, in the opinion of the Central Bank, to mislead the public.

(4) Except with the written consent of the Central Bank, no financial institution shall use, or refer to itself by, a name other than that under which it is licensed under this Act.

(5) Where the Central Bank consents to any change of name under subsection (4) the Central Bank shall publish in the Gazette and in a local newspaper a notice to that effect specifying such name.

Revocation of banking licence. **12.**(1) The Central Bank may revoke or vary the terms and conditions of a banking licence if the licensee-

- (a) fails to commence operations within a period of 6 months following the grant of the licence, unless that period has been extended by written agreement of the Central Bank; or
- (b) fails to comply with the terms and conditions of the licence or any corrective measures required by the Central Bank in accordance with section 40 (Central Bank's power over unsafe practices); or
- (c) is insolvent or is likely to become unable to meet the demands of its depositors or if its continuance in business is likely to involve loss to its depositors or creditors; or
- (d) is in breach of any provisions of this Act or of regulations, rules, orders or directions which are applicable to the licence or the licensee; or
- (e) ceases to do banking business authorised under the banking licence.

(2) The Central Bank may, and at the request of the licensee shall, give reasons for its decision under subsection (1).

(3) Subject to subsection (5), revocation or variation under subsection (1) takes effect 30 days after the date on which the Central Bank gives notice of it to the licensee.

(4) The licensee may, within 15 days after receipt of notice under subsection (3), submit to the Central Bank reasons why, in the opinion of the licensee, the licence should not be revoked or the terms and conditions of the licence should not be varied.

(5) 30 days after giving notice under subsection (3), the Central Bank shall-

- (a) confirm the revocation or the variation with or without modification; or

(b) withdraw the revocation or the variation unconditionally.

(6) Any final action under subsection (5) shall be published by the Central Bank in the Gazette and in at least one local newspaper.

Power of  
Central Bank  
to prohibit  
operations of  
licensee.

**13.**(1) Where the Central Bank has given notice of revocation under section 12(3) it may give a direction to the licensee-

- (a) prohibiting it from dealing with or disposing of its assets in any manner specified in the direction;
- (b) prohibiting it from entering into any transaction or class of transactions specified in the direction;
- (c) prohibiting it from advertising for so soliciting deposits;
- (d) requiring it to take certain steps or pursue a particular course of action,

and the licensee shall comply with that direction notwithstanding the notice of revocation.

(2) A licensee who contravenes a direction given under subsection (1) is guilty of an offence and is liable to a fine of R.100,000.

(3) Notwithstanding anything in any other law, no action or proceeding may be instituted in any court in respect of loss or damage actually incurred, or likely to be or alleged to be incurred by reason of the application of section 12(1) or of subsection (1) of this section.

Appeals

**14.**(1) Where the Central Bank takes a decision-

- (a) to refuse to grant a banking licence under section 5;
- (b) to refuse to grant an approval for the opening or closure of a branch, agency or office of a financial institution under section 10;
- (c) under section 16, to revoke or vary the terms or conditions of an approval granted under section 10;
- (d) to confirm a revocation of, or variation of the terms or conditions of a banking licence under section 12(5),

the aggrieved party may appeal against the decision to the Minister within 15 days from the date on which the aggrieved party receives notification of the decision of the Central Bank.

(2) The Minister shall afford to the aggrieved party an opportunity of submitting to him a written statement of its case and shall make his decision as soon as is practicable after considering the case.

(3) Subject to subsection (4), if an aggrieved party is not satisfied with the decision of the Minister under this section concerning the revocation of a banking licence, he may appeal, on a point of law, to the Supreme Court within the time and in accordance with the procedures applicable to that Court.

(4) An appeal to the court under this section may be made only in the case of a decision involving the revocation of a banking licence, and may relate only to questions of law: in any other case the decision of the Minister under subsection (2) is final.

Suspension of business on revocation of licence. **15.(1)** Where revocation of a banking licence is made final under section 14, the Central Bank shall-

- (a) direct the financial institution immediately to suspend business authorised under the banking licence;
- (b) take charge of all its books, records and assets; and
- (c) take such measures as may be necessary to prevent the continuance of the business of that institution.

(2) Where revocation of a banking licence has been made final in respect of a local financial institution, the Central Bank shall immediately take appropriate steps for the winding up of that institution in accordance with Schedule 2.

(3) Where revocation of a banking licence has been made final in respect of a foreign financial institution, without prejudice to Schedule 5, the Central Bank shall direct the head office of that institution immediately to cover all obligations and liabilities incurred in the conduct of the business of the institution under the banking licence in accordance with the undertaking of the head office given under section 4(1)(f).

(4) The Central Bank may, in substitution for the procedures laid down in subsections (1), (2) and (3), take such other action as it considers fit, including arranging for the amalgamation of the financial institution with any other financial institution which is agreeable to such amalgamation.

Surrender of non-domestic banking licence **15A(1)** Subject to this section, a financial institution conducting non-domestic banking business under this Act may, with the prior written approval of the Central Bank, surrender to the Central Bank its licence to conduct non-domestic banking business.

(2) The Central Bank shall grant its approval to an application for the surrender by a financial institution of a licence under subsection (1) where it is satisfied that the financial institution has made adequate provision in respect of all its liabilities in relation to its non-domestic banking business.

(3) In granting its approval under subsection (2), Central Bank shall appoint a date on which the surrender shall take effect.

(4) Where approval has been granted to a financial institution under subsection (2), the financial institution shall, not later than 30 days before the date appointed under subsection (3), publish in a local newspaper and an international financial newspaper approved by the Central Bank a notice of the proposed surrender of the licence and specifying the date on which the surrender shall take effect.

(5) A surrender of a licence under this section shall have effect as a revocation of a licence under this Act.

(6) The Central Bank shall, as soon as is practicable, publish a notice of every surrender of a licence under this section but any delay in publishing, or failure to publish, the notice shall not affect the validity of the surrender or its effect.

Revocation and variation of approval for branch business **16.(1)** The Central Bank may, for exceptional reasons, revoke or vary the terms or conditions of an approval given under section 10, including ordering the closure of a branch, agency or office of a financial institution.

(2) Any action under subsection (1) shall be communicated by the Central Bank to that financial institution, which shall carry out all the obligations and meet all the liabilities of the branch, agency or office.

(3) The Central Bank may, and at the request of the financial institution shall, give reasons for its decision under subsection (1).

(4) Where an order of closure has been made under subsection (1), the Central Bank shall take all necessary steps to ensure that-

- (a) all persons who have deposited monies in that branch, agency or office are given the opportunity to withdraw those monies quickly; and



- (b) such measures are taken as will safeguard the interests of those depositors.

Order for investigation of doing banking business without a valid banking licence, it may apply to the court for an order to examine the books, accounts and records of that person to ascertain whether that is the case.

Business unlawful without banking licence **18.**(1) A person who-

- (a) does banking business without a valid banking licence; or
- (b) refuses to make available for examination books, accounts or records in terms of an order under section 17,

is guilty of an offence, and, without prejudice to any other written law, is liable to a fine of R.100,000;

and if the offence is continued after conviction, is guilty of a further offence and is liable to a further fine of R.5000 for every day or part of a day during which the offence is so continued.

(2) A person holding funds which he has obtained by doing banking business without a valid banking licence shall repay those funds in accordance with the directions of the Central Bank.

(3) A person who fails to repay and funds as required under subsection (2) is guilty of an offence and is liable to a fine of R.100,000;

and if the offence is continued after conviction, is guilty of a further offence and is liable to a further fine of R.5,000 for every day or part of a day during which the offence is so continued.

### PART III - CAPITAL REQUIREMENTS, RESERVE FUND AND MAINTENANCE OF LIQUID ASSETS

Compliance financial requirements. **19.** Notwithstanding any other written law, every financial institution holding with a banking licence under Part II shall comply with the requirements of this Part.

Minimum required capital, as the case may be, of not less than such an amount as may, in the consultation with the Central Bank, be prescribed by regulations.

**20.**(1) Every financial institution, being a bank, conducting domestic banking business shall maintain in Seychelles unimpaired paid up capital or assigned capital

(2) Every financial institution, being a bank, conducting non-domestic banking business shall maintain in Seychelles unimpaired assets of such kind as the Central Bank may authorised and of not less than such amount as may, in consultation with the Central Bank, be prescribed by regulations.

(3) Every financial institution declared under section 58(3) shall maintain in Seychelles unimpaired paid up capital or assigned capital, as the case may be, of not less than such amount as may, in consultation with the Central Bank, be prescribed by regulations.

(4) The Central Bank may require every financial institution to maintain capital funds in Seychelles in proportion to its total assets or to every category of assets at such ratio as may from time to time, in consultation with the Central Bank, be prescribed by regulations.

(5) A financial institution shall not reduce its paid up capital or its assigned capital, as the case may be, without prior written approval of the Central Bank.

(6) Where the capital funds of a financial institution have become deficient in terms of subsection (4), the Central Bank may grant the institution such period of time as, in the circumstances, it considers reasonable to enable the institution to make good the deficiency.

(7) Notwithstanding subsection (4), the Central Bank may authorize a financial institution to maintain, for such period as the Central Bank may determine, its capital funds at the rate which was in existence prior to the coming into force of subsection (4);

Reserve Fund. **21.**(1) Every financial institution shall maintain a reserve fund and shall, out of the net profits of each year, before any dividend is declared or any profits are transferred to the head office or elsewhere, transfer to that reserve fund a sum equivalent to not less than 10 percent of those profits until the amount of the reserve fund is equal to the paid-up or assigned capital, as the case may be.

(2) The Central Bank shall from time to time determine the method of computing the amount and form of the reserve fund.

(3) The reserve fund shall neither be reduced nor impaired, except that the Minister may, by regulations, specify circumstances in which it may be reduced.

Liquid assets. **22.**(1) Every financial institution shall maintain liquid assets of an amount which shall not, as a daily average each month, be less than such percentage of the total of its liabilities as may from time to time be prescribed.

(2) The Central Bank may, by notice in writing, require of any financial institution such returns as the Central Bank considers necessary for the purposes of ensuring compliance with subsection (1).

(3) Any financial institution which contravenes subsection (1) shall, within such time as may be determined by the Central Bank, pay to the Central Bank a charge at any annual rate determined by the Central Bank not exceeding twice the rate which the Central Bank considers to be the highest effective rate of interest charged by that institution to any of its customers during the period of the deficiency.

(4) A charge under subsection (3) shall be imposed for each day on which subsection (1) is contravened.

(5) An institution which fails to pay the charge within the time determined by the Central Bank, or which fails to make any return required under subsection (2), is guilty of an offence, and is liable to a fine of R.10,000 in addition to payment of any amount of the charge then outstanding.

**Capitalised**     **23.** Until all its capitalised expenses, including preliminary expenses, and expenses. other items of expenditure not represented by tangible assets, have been completely written off-

- (a) no local financial institution shall pay any dividend on its shares; and
- (b) no foreign financial institution shall transfer abroad any profit earned in Seychelles.

**Exemption.**     **24.** The Central Bank may at its discretion exempt temporarily any financial institution or any class of financial institution from all or any of the provisions of this Part.

#### PART IV - ACCOUNTS, AUDIT, INFORMATION AND INSPECTION

**Annual balance** **25.** At the expiration of each calendar year-sheet

- (a) every local financial institution in respect of all business transacted by it in or outside Seychelles; and
- (b) every foreign financial institution in respect of all business transacted by or through its offices or branches in Seychelles;

shall prepare, with reference to that year, a balance sheet as of the last workingday of that year and a profit and loss account in respect of that year.

Form and contents of balance sheet. **26.**(1) The balance sheet of every institution shall give a true and fair view of the state of affairs of that institution as at the end of the calendar year to which the balance sheet relates.

(2) The Central Bank may give directions as to the matters to be shown-

- (a) in the balance sheet;
- (b) by way of a note to the balance sheet;
- (c) in a statement or report to be annexed to the balance sheet.

Form and contents of profit and loss account. **27.**(1) The profit and loss account of every institution shall give a true and fair view of the relevant profit and loss of the institution for the calendar year to which the account relates.

(2) The Central Bank may give directions as to the matters to be shown-

- (a) in the profit and loss account;
- (b) by way of a note to that account;
- (c) in a statement or report to be annexed to that account.

Audit. **28.**(1) Every financial institution shall appoint annually an auditor who shall be a suitably qualified person satisfactory to the Central Bank and whose duties shall be-

- (a) in the case of a local financial institution, to make a report to its shareholders; or
- (b) in the case of a foreign financial institution, to make a report to its head office,

on the annual balance sheet and accounts.

(2) A person shall not be qualified for appointment as auditor of a financial institution unless he is a member of a body of accountants (whether established in or outside Seychelles) for the time being recognized for the purposes of this section by the Central Bank.

(3) If a financial institution fails to appoint an auditor satisfactory to the Central Bank, the Central Bank shall have the power to appoint such an auditor.

(4) The remuneration of the auditor, whether appointed by the institution or by the Central Bank, shall be paid by the financial institution concerned and in the case of an auditor appointed by the Central Bank in terms of subsection (3) or (7) shall be of such amount as the Central Bank may determine.

(5) In his report, which shall be completed not more than 3 months after the end of the calendar year, the auditor shall state-

- (a) whether in his opinion the balance sheet and profit and loss account are full and fair and properly drawn up;
- (b) whether they exhibit a true and correct statement of the institution's affairs;
- (c) whether fiduciary duties are being administered in accordance with the law; and
- (d) if the auditor has called for explanation or information from the officers or agents of the institution, whether that explanation or information is satisfactory.

(6) The report of the auditor-

- (a) in the case of a local financial institution, shall be read, together with the report of the board of directors of the institution, at the annual meeting of shareholders;
- (b) in the case of a foreign financial institution, shall be transmitted to the head office,

and a copy of the report shall be sent to the Central Bank.

(7) Where the Central Bank is not satisfied with the report, it may require the appointment, within a specified time, of another auditor, who shall make a new report.

Publication and display of balance sheet etc. 2/7/1986.

**29.**(1) Every local financial institution in respect of all of its business and every foreign financial institution in respect of-

- (a) its business transaction by or through its offices or branches in Seychelles; and
- (b) its total business throughout the world,

shall transmit to the Central Bank not more than 5 months after the end of the calendar year-

- (i) its balance sheet as at the end of that calendar year; and
- (ii) its profit and loss account for that calendar year.

(2) Every financial institution shall publish in the Gazette within 5 months after the end of the calendar year the balance sheet required to be submitted under subsection (1):

Provided that a foreign financial institution is not required so to publish the balance sheet in respect of its total business throughout the world.

(3) Every financial institution shall exhibit throughout the following year, in a public part of each of its places of business, copies of the balance sheets required to be submitted under subsection (1).

Records and  
periodic state-  
ments

**30.**(1) Every financial institution shall maintain in Seychelles such records as are necessary to exhibit, clearly and correctly, the state of its business affairs and to explain its transactions and financial position so as to enable the Central Bank to determine whether the institution is complying with this Act.

(2) Every financial institution shall send to the Central Bank in such form as the Central Bank may determine -

- (a) not later than 14 days after the last day of each month, a statement showing its assets and liabilities at the close of business on the last business day of the month; and
- (b) not later than 21 days after the last day of each calendar quarter, an analysis of its deposit liabilities and an analysis of its loans, advances and discounts at the close of business of the day of that quarter; and
- (c) such other statements or information as the Central Bank may require.

(3) Any financial institution which -

- (a) contravenes subsection (1);
- (b) fails, refuses or unreasonably delays to supply any statement or information under subsection (2); or

- (c) in complying with subsection (2) -
  - (i) willfully makes a statement or gives information which it knows to be false; or
  - (ii) recklessly makes a statement or gives information which is false in a material particular,

is guilty of an offence and is liable to a fine of R.100,000.

Inspection  
of financial  
institution.  
Cap. 26.

**31.**(1) In addition to the powers of the Central Bank under section 36 (Inspection of banks and other financial institutions) of the Central Bank of Seychelles Act, the Central Bank may, if it considers that an inspection of a financial institution is necessary or desirable to ascertain whether that institution is complying with this Act, cause an inspection of that institution to be made by an officer of the Central Bank, or by any other person appointed by the Central Bank for the purpose.

(2) The Central Bank and any person authorized under this section to inspect a financial institution shall be subject to section 12(Secrecy) of the Central Bank of Seychelles Act in respect of information acquire by it or him under this section and may-

- (a) require any director, manager, officer, employee or agent of a financial institution to furnish such information as it or he may consider necessary for the purpose of the inspection; or
- (b) require any such director, manager, officer, employer or agent to produce for inspection any books, records or other documents in his possession containing or likely to contain any such information;

(3) Any person who -

- (a) fails, refuses or unreasonably delays to comply with any requirement of the Central Bank or an authorised person made under this section; or
- (b) in complying with any such requirement -
  - (i) willfully furnishes any information or produces any book, record or other document which he knows to be false; or
  - (ii) recklessly furnishes any information or produces any book, record or other document which is false in a material particular,

is guilty of an offence and is liable to imprisonment for 6 months and to a fine of R.10,000.

PART V - CONTROL OVER MANAGEMENT OF  
FINANCIAL INSTITUTIONS

Persons  
qualified to  
be directors.

**32.**(1) No person shall be appointed or elected as a director, manager, or other officer concerned with the management of a financial institution if-

- (a) he has been adjudged to be bankrupt, has suspended payment, or has entered into a composition with his creditors; or
- (b) he has been convicted in a court of law of a felony or any offence involving fraud or dishonesty.

(2) A director, manager, or other officer concerned with the management of a financial institution shall cease to hold office if-

- (a) he becomes subject to any disqualification mentioned in subsection (1); or
- (b) he has becomes permanently incapable of performing his duties; or
- (c) he has been convicted of any offence a conviction for which is in the opinion of the Central Bank inconsistent with his continuing to hold such an office.

(3) No person who has been a director of, or who has directly or indirectly been concerned with the management of, a financial institution which has been wound up by the court or the licence of which has been revoked shall, without the express approval of the Central Bank, act as a director or be directly or indirectly concerned with the management of any financial institution.

(4) Any person who contravenes or fails to comply with this section is guilty of an offence and is liable to imprisonment for 1 year and to a fine of R.10,000.

Directors to  
declare personal  
interest.

**33.**(1) Every director of a local financial institution who is directly or indirectly interested in any accommodation from that institution shall as soon as possible declare the nature of his interest to the board of directors of the institution and shall cause that declaration to be circulated immediately to all members of the board.

(2) For the purpose of subsection (1) a declaration by a director to the effect that he is to be regarded as interested in any accommodation, which may, after the date of the notice, be extended by that institution is deemed to be a sufficient declaration of interest in relation to any accommodation so extended if-



- (a) it specifies the nature and extent of his interest; and
- (b) his interest is not different in nature from, or greater in extent than, the nature and extent so specified in the declaration at the time the accommodation is extended.

(3) Where a declaration is made under subsection (1) the director concerned shall cause it to be brought up and read at the next meeting of the board of directors after it is made and shall cause the declaration to be recorded in the minutes of the meeting at which it was brought up and read.

(4) Where a director of a local financial institution holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as a director, he shall, in accordance with subsection (5), make a full declaration at a meeting of the board of directors of the institution of the fact, nature, character, and extent of the conflict or potential conflict.

(5) A declaration under subsection (4) shall be made at the first meeting of the board of directors held-

- (a) after he becomes a director of the institution; or
- (b) if already a director, after the conflict or potential conflict has become apparent,

and shall be recorded in the minutes of that meeting.

(6) Any director who contravenes subsection (1) or (4) is guilty of an offence and is liable to imprisonment for 1 year and to a fine of R.10,000.

Offences by directors, institution-officers etc. **34.** Any director, manager, officer, employee or agent of a financial

- (a) who with intent to deceive-
  - (i) makes or causes to be made any false or misleading statement or entry;
  - (ii) omits or causes to be omitted any statement or entry that should be made; or
  - (iii) alters, abstracts, conceals or destroys any statement or entry,

in any book, record, account, document, report or statement of the institution; or

- (a) who obstructs or endeavor to obstruct-
  - (i) the proper performance by any auditor of his duties in accordance with this Act; or
  - (ii) an inspection of the institution by any officer of, or other person appointed by, the Central Bank,

is guilty of an offence and is liable to imprisonment for 1 year and to a fine of R.10,000.

**Ban on receipt of gifts by officers.** **35.** Any director, manager, officer, employee or agent of a financial institution who asks for or receives, consents or agrees to receive, any gift, commission, emolument, service, gratuity, money, property or thing of value, for his own personal benefit or advantage or that of any of his close relations, for permitting or procuring or endeavoring to permit or procure for any person any accommodation from the institution, is guilty of an offence and is liable to imprisonment for 1 year and to a fine of R.10,000.

**Duty of officers to secure compliance with Act.** **36.(1)** Any director, manager, agent or other officer concerned in the management of a financial institution who-

- (a) fails to take all reasonable steps to secure compliance by the institution with this Act; or
- (b) fails to take all reasonable steps to ensure the accuracy of any statement submitted under this Act,

is guilty of an offence and is liable to imprisonment for 1 year and to a fine of R.10,000.

(2) In any proceedings against a person under subsection (1) it shall be a defence to prove that he had reasonable grounds to believe that another person was charged with the duty of securing compliance with this Act or with the duty of ensuring that the statements submitted were accurate.

**Ban on receipt of deposits while insolvent** **37.(1)** No financial institution shall receive any deposit while it is insolvent.

(2) No director, manager, officer, employee or agent of a financial institution who knows, or in the proper performance of his duty should know, that the financial institution is insolvent shall receive or authorize the acceptance of any deposit while the institution is insolvent.

(3) Any person who contravenes this section is guilty of an offence and is liable to a fine of R.10,000, and in the case of a contravention of subsection (2), to such fine and imprisonment for 1 year.

Disclosure of  
information  
restricted.

**38.**(1) No person who has acquired knowledge in his capacity as-

- (a) director, manager, officer, employee or agent of a financial institution; or
- (b) its auditor, reorganising agent, liquidator or supervising agent,

shall disclose to any person or governmental authority the identity, assets, liabilities, transactions or other information in respect of a depositor except-

- (i) with the written authorization of the depositor or other beneficiary, or of his heirs or his legal representatives; or
- (ii) for the purpose of the performance of his duties within the scope of his employment or appointment in compliance with this Act; or
- (iii) when lawfully required to make disclosure by any court of competent jurisdiction in Seychelles; or
- (iv) to the Central Bank;
- (v) to a police officer when authorised under the Evidence (Bankers' Books) Act;
- (vi) notwithstanding anything in the Business Tax Act or the Social Security Act, to the Commissioner of Taxes and the Director of Social Security when authorised by a judge on proof on oath to the satisfaction of the judge that the information is required for any investigation under the Business Tax Act or the Social Security Act, as the case may be.

(2) Nothing in subsection (1) prevents a financial institution from providing to a person on a legitimate business request a general credit rating.

(3) Subject to any express requirement of this Act, every director, manager, officer, employee or agent of a financial institution shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the institution and of every client of the institution that may come to his knowledge in the performance of his duties.

(4) Every director, manager, officer, employee or agent of a financial institution shall, before entering on his duties, sign a declaration pledging himself to observe strict secrecy in respect of the matters specified in subsection (3) and not to reveal those matters except as otherwise permitted or required under subsection (1).

(5) Any person who contravenes this section is guilty of an offence and is liable to imprisonment for 1 year and to a fine of R.10,000.

Information relating to domestic financial institution conducting banking business under this Act as secret and confidential.

**38A(1)** The Central Bank and every officer or employee of the Central Bank shall deal with all documents, records of bank accounts, statements and other non-domestic information in the possession or under the control of the Central Bank, its banking officers or employees and relating to the non-domestic banking business of business financial institution conducting banking business under this Act as secret and confidential.

(2) Except where ordered by the Supreme Court under subsection (3), the Central Bank, its officers and employees shall not be required to produce or disclose to any court, tribunal, committee of inquiry or other authority in Seychelles or elsewhere any information required to be dealt with as secret and confidential under subsection (1).

(3) The Supreme Court shall not make an order for the production or disclosure of any information referred to in subsection (1) except on the application of the Attorney General and on proof to the satisfaction of the Court that the information is bona fide required for the purposes of any inquiry or trial into or relating to the trafficking of narcotics and dangerous drugs, arms trafficking or money laundering.

(4) This section shall be without prejudice to -

- (a) the obligation of Seychelles under any international treaty, convention, agreement or the Mutual Assistance in Criminal Matters Act, 1995
- (b) the obligations of the Central Bank under any agreement with a Central Bank or any other Monetary Authority of a foreign country.

Publication of information by **39.** The Central Bank may publish in whole or in part at such time as it may determine any information or data furnished under this Act not being

Central Bank. information referred to in section 38A, except that no information or data shall be published which might disclose the individual affairs of a financial institution or of a person whose interests are protected under section 38 unless the consent of every such person has been obtained in writing prior to that publication.

Central Bank's **40.**(1) Where the Central Bank is of the opinion that a financial institution -powers over unsafe practices..

(a) is following unsafe or unsound practices in the conduct of its business such as are likely to jeopardize its obligations to its depositors or is likely to be unable to meet its obligations; or

Cap.26. (b) has contravened this Act or the Central Bank of Seychelles Act; or

(c) has contravened any term or condition of its banking licence,

the Central Bank -

(i) may issue an order to the financial institution to stop any such practice or contravention; and

(ii) may further order the financial institution to take such action as may be necessary to correct the conditions resulting from that practice or contravention.

(2) Before the expiry of 30 days after the issue of an order under subsection (1), the institution may appeal to the Minister, who shall give his decision within 15 days after the appeal, and the Minister's decision shall be final.

(3) An order under subsection (1) becomes effective 30 days after it is issued and remains effective unless and to the extent that the Central Bank informs the financial institution that it is not so effective, and the Central Bank may so inform the institution either before or after the effective date of the order.

Power of Central Bank to **41.**(1) Without prejudice to the generality of the exercise of the powers vested in the Central Bank under section 8(1) (Licensee to comply with rules, give directions. directions etc), the Central Bank may give directions to all financial institutions or to any class of financial institutions relating to -

(a) any specified class or classes of advances which may not be made;

(b) the margins to be maintained in respect of secured advances;

- (c) the maximum amount of accommodation which, having regard to the paid-up or assigned capital, reserves and deposits of a financial institution and other relevant considerations, may be made by specified classes of financial institutions to any one company, firm, association of persons or individuals, or in the aggregate to an individual, his close relations and any company or firm in which he has a substantial interest;
- (d) the maximum number of shares which may be held in a local financial institution by a company, firm, or individual, his close relations and any company or firm in which he has a substantial interest.

(2) The maximum amount of accommodation referred to under subsection (1) (c) shall not exceed 10 percent of the paid-up or assigned capital plus reserves and deposits of the relevant financial institution as at the end of the last preceding calendar year:

Provided that this subsection does not apply to-

- (a) a transaction with, or guaranteed by, the Government or a foreign government;
- (b) a transaction with a public body;
- (c) a transaction between financial institutions;
- (d) the purchase of telegraphic transfers, or accommodation granted against telegraphic transfers;
- (e) the purchase of bills of exchange or documents of title to goods where the holder of those bills or documents is entitled to payment outside Seychelles for exports from Seychelles, or an accommodation granted against those bills or documents;
- (f) any other transaction for which the Central Bank has given prior to approval.

Ban on accommodation security of-  
against financial  
institution's own  
shares etc. **42.(1)** No financial institution shall extend an accommodation against the

- (a) its own shares; or
- (b) shares of companies which have substantial interest in it; or

- (c) shares of companies in which the companies specified in paragraph (b) have a substantial interest; or
- (d) shares of companies in which any of its directors has a substantial interest.

(2) If any accommodation has been granted by a financial institution before the commencement of this Act against the security of shares specified in subsection (1), other securities approved by the Central Bank shall be obtained within 1 year from the commencement of this Act.

(3) If other securities are not obtained in terms of subsection (2), any amount due to the financial institution on account of that accommodation, together with interest, if any, shall be recovered by the financial institution within 18 months from the commencement of this Act.

(4) Without prejudice to section 33 (Directors to declare personal interest), no financial institution shall extend an accommodation -

- (a) to any of its directors;
- (b) to a close relation of any of its directors; or
- (c) to any concern in which any of its directors has substantial interest,

unless that accommodation is adequately secured and is sanctioned at a meeting of the board of directors of the financial institution with not less than two-thirds of the total number of directors, other than the director concerned, voting in favour.

(5) No accommodation or any part of an accommodation extended to -

- (a) a director,
- (b) a close relation of the director; or
- (c) a concern in which the director has a substantial interest,

shall be written-off without the prior approval of the Central Bank.

(6) Any write-off of an accommodation which contravenes subsection (5) is void.

Prohibited operations.

**43.(1)** Notwithstanding any other written law or document or any contract, no financial institution shall directly or indirectly -

- (a) deal in the buying or selling or bartering of goods, except in connection with the realization of security given to or held by it; or
- (b) engage in any trade; or
- (c) buy, sell or barter goods for others except in connection with bills of exchange received for collection or negotiation.

(2) No financial institution shall own, to an aggregate value exceeding 25 percent of the sum of the paid-up or assigned capital and reserves of that institution, the share capital of any company, firm or other undertaking except such shareholding as the financial institution may acquire in the course of the satisfaction of debts due to it.

(3) Subsection (2) does not apply to any shareholding approved in writing by the Central Bank in a subsidiary company, firm, or other undertaking formed by a financial institution for the execution of nominee, executor, fiduciary or trustee functions or other functions incidental to banking business.

(4) To the extent that a shareholding acquired by a financial institution in the course of the satisfaction of debts due to it exceeds the maximum specified in subsection (2), the institution shall dispose of that excess at the earliest suitable opportunity.

Approval for  
transfer of  
assets.

**44.** Without the prior approval of the Central Bank, no financial institution shall-

- (a) sell, transfer, assign or dispose of any of its immovable assets below the market value of the assets; or
- (b) increase the valuation of the assets as recorded in the books of the institution above the market value of the assets.

Transactions and  
dealings of a  
non-domestic  
banking  
business

**44A.**(1) In the conduct of its non-domestic banking business under this Act, a financial institution shall not transact any business, or deal, in rupees.

(2) For the purposes of subsection (1), a financial institution conducting non-domestic banking business shall not be treated as transacting or dealing in rupees by reason only that-

- (a) it makes or maintains accounts in rupees, with a financial institution, other than itself, conducting domestic banking business, for the discharge of its liabilities in Seychelles;



- (b) it makes or maintains professional contact with counsel and attorneys, accountants, bookkeepers, trust companies, management companies, investment advisers or other similar persons carrying on business within Seychelles;
- (c) it holds a lease of property for use as an office from which to communicate with members or where books and records of the financial institutions are prepared or maintained;
- (d) in holds shares, debt obligations or other securities in a company incorporated or registered under the International Business Companies Act 1994 or under the Companies Act;
- Act 24 of 1994
- Cap 40. (e) it holds bonds, treasury bills and other securities issued by the Government of Seychelles or the Central Bank.

(3) A financial institution conducting non-domestic banking business under this Act shall not, in the conduct of its non-domestic banking business, open an account for a person whose identity is not known to the financial institution.

Temporary exemption 45. The Central Bank may, at the discretion, temporarily exempt all financial institutions or any class of financial institutions from all or any of the provisions of this Part.

#### PART VA - NUMBERED ACCOUNTS

Numbered accounts 45A.(1) In this Part "numbered account" means an account that is identifiable by a numbered or code word or by such other means as the Central Bank may determine

(2) A financial institution exclusively conducting non-banking business under this Act may authorise a person to open a numbered account with the institution.

(3) Facilities offered to the holder of a numbered account shall extend to current accounts, deposit accounts, securities deposit accounts and safes but shall not extend to credit facilities.

Disclosure of information of numbered accounts restricted 45B(1) A financial institution shall ensure that the identity of the holder of a numbered account is disclosed to only such officers of the institution as the institution may determine.

(2) A financial institution, any of its officers referred to in subsection (1) or any other person who, by reason of any functions or duties discharged or performed in

relation to the financial institution, has acquired any knowledge pertaining to a numbered account shall not disclose to any other person or government authority the identity, assets, liabilities, transactions or other information of the holder of the numbered account except-

- (a) with the written authorisation of the holder or the beneficiary, heirs or the legal representatives of the holder;
- (b) where the holder is adjudged to be bankrupt;
- (c) in proceedings before a court between the financial institution and the holder in relation to a banking transaction;
- (d) on an order of the Supreme Court made for the purpose of any inquiry or trial into or relating to the trafficking of narcotics and dangerous drugs, arms trafficking or money laundering on application by the Attorney General on proof to the satisfaction of the Court that the information relating to the identity, assets liabilities and transactions of the holder is bona fide so required;
- (e) to the Central Bank.

(3) A financial institution or any other person who contravenes subsection (2) is guilty of an offence and is liable on conviction to a fine or R100,000 and to imprisonment for 3 years.

#### PART VI - ABANDONED PROPERTY

Abandoned **46.**(1) Any unclaimed funds or property held by a financial institution for property. the account or on behalf of any depositor, creditor, or other person are presumed to be abandoned property if for 10 years the depositor, creditor or other person has not evidenced an interest in the funds or property by recorded transaction or written correspondence with the financial institution or otherwise.

(2) Funds or property referred to in-

- (a) paragraphs 5(2)(c), 21(3) or 22(2) of Schedule 2 (Winding up of local financial institution); or
- (b) paragraph 7(3) or 8(2) of Schedule 5 (Closure of foreign financial institution),

are also presumed to be abandoned property.

Publication and notice of particulars. **47.** A financial institution shall publish in at least one local newspaper the name of the owner and particulars of abandoned property, and shall dispatch by registered post a notice to the owner at his last known address containing particulars of the property.

Reports of institution holding abandoned property shall make a report to the Central Bank on the amount and nature of that property in such form as the Central Bank may determine. **48.**(1) Not less than 30 days after complying with section 47 a financial abandoned

(2) Any funds included in a report under this section shall, if the Central Bank so directs, be transferred, notwithstanding any other law, by the institution to a special account with the Central Bank and may be used by the Central Bank for such purposes as it may determine after consultation with the Minister.

(3) Other property (not falling under subsection (2) included in a report under this section shall be referred by the Central Bank to the Minister for such action as he may direct.

Right to claim. **49.** Any owner who, to the satisfaction of the Central Bank, furnishes proof of his ownership of abandoned property dealt with in accordance with sections 47 and 48, is, subject to any terms, conditions or restrictions imposed in respect of that abandoned property by or under any written law, entitled to the repayment of the funds by the Central Bank, or to the return of other property or the proceeds from the sale of that other property, as the case may be.

Failure to report or deliver. **50.** A financial institution which willfully contravene sections 47 and 48 is guilty of an offence and is liable to a fine or R.10,000.

#### PART VII - MISCELLANEOUS

Bank holidays. **51.**(1) With the approval of the Minister the Central Bank may, by notice published in the *Gazette* and in at least one local newspaper, declare any day to be a bank holiday.

(2) Subject to subsection (3), no financial institution shall transact any business with the public on any public holiday or a bank holiday.

Cap. 190. (3) Notwithstanding subsection (2) or section 2 of the Public Holidays Act, a financial institution may, with the approval of the Central Bank, carry out banking business on a public holiday or a bank holiday.

Cap. 190. (4) A bank holiday declared under this section is not a public holiday unless the date so declared is also a public holiday by virtue of the Public Holidays Act, and,

except for subsection (3), nothing in this section affects the provisions of that Act relating to public holidays.

Application of **52.** Except where expressly stated in this Act, nothing in this Act shall affect Companies Act. the operation of the Companies Act, in respect of the incorporation, regulation and winding up of any financial institution to which that Act and this Act apply.  
Cap. 40.

Amalgamation, **53.**(1) Schedule 1 applies with respect to the amalgamation and transfer of winding up, assets or liabilities of a financial institution.  
closure etc.

Cap. 40 (2) Schedule 2, Parts I and II apply with respect to the winding up of a local financial institution in place of the provisions of the Companies Act, specified in Part III of the Schedule.

(3) Schedule 3 applies with respect to the seizure by the Central Bank of a financial institution.

Cap. 40. (4) Schedule 4, Part I applies with respect to the reorganization of a local financial institution in place of sections 196 to 198 (compromises, arrangements, reconstructions and amalgamations) of the Companies Act, and Part II of the Schedule applies with respect to the reorganization of a foreign financial institution.

Cap. 40. (5) Schedule 5 applies with respect to the closure of a foreign financial institution in place of sections 318 (Winding up of overseas companies), 319(2) (investigations) and 320 (orders to cease carrying on business) of the Companies Act.

(6) If there is any inconsistency between any provision of Schedules 1 to 5 and the operation of any other law of Seychelles, that provision of Schedules 1 to 5 prevails to the extent of the inconsistency.

Indemnity for **54.** Neither the Central Bank nor any member of its Board of Directors nor Central Bank any officer, employee or agent of the Central Bank shall be subject to any etc. action, claim or demand by or liability to any person in respect of anything done or omitted to be done in good faith under, or in execution or intended execution or in connection with the execution of, any power or duty conferred on the Central Bank by or under this Act.

No review by **55.** No acts, directors, orders, determinations or decisions of the Minister or court. the Central Bank under this Act shall be subject to review in any court except in so far as specifically permitted by or under this Act.

- Regulations. S.I. 18/86. **56.**(1) The Minister may make regulations for the better carrying out of the objects and purposes of this Act including-
- (a) prescribing any matter which is to be or may be prescribed under this Act; and
  - (b) prescribing fees or charges-
    - (i) for applications, objection, appeals or certificates; or
    - (ii) for or in connection with services given under this Act.
- (2) The Minister after consultation with the Central Bank may make regulations for and with respect to non-domestic banking business.
- (3) The Minister after consultation with the Central Bank may by regulations exempt, subject to section 24; -
- (a) any financial institution exclusively conducting non-domestic banking business under this Act; and
  - (b) where a financial institution is conducting both domestic banking business and non-domestic banking business under this Act, that financial institution in relation to its non-domestic banking business,
- from the provisions of this Act which are considered as inappropriate or counterproductive to the conduct of non-domestic banking business.

- Rules of court. **57.**(1) The Chief Justice may make rules of court for the better carrying of proceedings in court under this Act, including-
- (a) prescribing the fees and costs payable in any proceedings before a court;
  - (b) providing generally for matters of practice and procedure and incidental matters arising in connection with any proceedings.

(2) Subject to any rules of court made under subsection (1), the forms to be used and the practice and procedure to be followed in proceedings in court under this Act shall be as near as practicable to those in ordinary civil cases before the court.

- Non-application of Act. **58.**(1) Except where otherwise expressly stated in this or any other written law, the provisions of this Act shall not apply to-

- Cap. 50.
- (a) a corporative established under the Co-operatives Act;
  - (b) a body corporate established directly by an Act or Decree of Seychelles.
  - (c) a company incorporated under the Companies Act, or an overseas company registered under section 310 of that Act, registered to carry on insurance business under section 9 of the Insurance Act, 1994.

(2) Notwithstanding subsection (1), if the President, after consultation with the Central Bank, is satisfied that prevailing conditions justify such action he may, by order published in the *Gazette*, declare that all or any of the provisions of this Act shall, from the date specified in the order, apply to all or any of the institutions set forth in subsection (1) or to any class or classes of those institutions.

(3) Subject to subsections (1) and (2), the President, after consultation with the Central Bank, may by order published in the *Gazette*, declare any person to be a financial institution for the purposes of this Act.

Compounding of offences **59.**(1) Where a financial institution or any other person agrees in writing to a contravention of this Act which is an offence punishable on conviction only by a fine, the Central Bank may compound the offence by accepting a sum of money not exceeding the maximum fine specified for the offence.

(2) Where an offence is compounded under subsection (1), no proceedings shall be instituted in relation to that offence against the financial institution or the person referred to in subsection (1).

Non-application of certain laws **60.**(1) The laws specified in Schedule 6 shall not apply to a financial institution exclusively conducting non-domestic banking business under the Act and to financial institution in relation to its non-domestic banking business where it conducts both domestic banking business and non-domestic banking business under the Act.

(2) Subsection (1) shall, in relation to a financial institution referred to in that subsection, continue in force for a period of 20 years from the date of the licence granted to that financial institution under section 5.

(3) Notwithstanding subsection (1), a financial institution referred to in that subsection may, within a period of 3 months, or such extended period as may be allowed by the Commissioner of Taxes from the commencement of a year of assessment elect in the form approved by the commissioner of Taxes, for the levy of business tax under the Business Tax Act on the taxable income of the non-domestic

banking business of the financial institution for that year of assessment at a rate to be agreed upon between the financial institution and the Commissioner of Taxes.

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Section 53(1)

SCHEDULE 1

**AMALGAMATION AND TRANSFER**

*Legal financial institution*

1.(1) No local financial institution shall, without the prior approval of the Central Bank-

- (a) amalgamate with any other financial institution, whether in Seychelles or elsewhere; or
- (b) transfer to any other financial institution, whether in Seychelles or elsewhere, the whole or any part of its assets or liabilities, whether in Seychelles or elsewhere.

(2) An application for approval of an amalgamation or transfer referred to in subparagraph (1) must be made to the Central Bank in writing and must include-

- (a) a statement of the nature of the amalgamation or transfer; and
- (b) a copy of the proposed agreement, if any, under which the amalgamation or transfer is to be effected.

(3) If the Central Bank is satisfied that the proposed amalgamation or transfer will not be detrimental to the public interest it may, with the consent of the Minister, approve the amalgamation or transfer.

*Foreign financial institution*

2. If a foreign financial institution-

- (a) amalgamates with any other financial institution, whether in Seychelles or elsewhere; or
- (b) transfer to any other financial institution, whether in Seychelles or elsewhere, the whole or any part of its assets or liabilities, whether in Seychelles or elsewhere,

and that amalgamation or transfer will have a material effect on the operation of that foreign financial institution in Seychelles, it shall within 1 month of the amalgamation or transfer notify the Central Bank in writing and shall submit to the Central Bank-

- (i) a statement of the nature of the amalgamation or transfer; and
- (ii) a copy of the agreement, if any, by which the amalgamation or transfer was effected.

*Effect of amalgamation or transfer*

3.(1) This paragraph applies-

- (a) on a transaction referred to in paragraph 1(1) coming into effect; or
- (b) with respect to the assets and liabilities in Seychelles of a foreign financial institution, on a transaction referred to in paragraph 2 coming into effect.

(2) All the assets and liabilities of the amalgamating financial institutions or, in the case of a transfer of assets or liabilities, those assets and liabilities of the financial institution by which the transfer is effected, shall vest in and become binding on the amalgamated financial institution or, as the case may be, the financial institution taking over those assets or liabilities.

(3) The amalgamated financial institution or, in the case of a transfer of assets or liabilities, the financial institution taking over those assets or liabilities, shall have the same rights and be subject to the same obligations as were, immediately before the amalgamation or transfer, possessed by or binding on the amalgamating financial institutions or, as the case may be, the financial institution by which the transfer has been effected.

(4) All agreements, appointments, transactions and documents made by, with or in favour of any of the amalgamating financial institutions, or as the case may be, the financial institution by which the transfer has been effected, and in force immediately prior to the amalgamation or transfer, shall remain of full force and effect and shall be construed for all purposes as if they had been made by, with or in favour of the amalgamated financial institution or, as the case may be, the financial institution taking over the assets and liabilities in question.

(5) Any mortgage, bond, pledge, guarantee or other instrument to secure future advances, facilities or services by any of the amalgamating financial institutions, or, as the case may be, the financial institution transferring those assets or liabilities, which was in force immediately prior to the amalgamation or transfer, shall remain of full force and effect and shall be construed as a mortgage, bond, pledge, guarantee



or instrument given to or in favour of the amalgamated financial institution or, as the case may be, the financial institution taking over those assets or liabilities as security for future advances, facilities or services by that institution.

(6) The Registrar of Companies, the Land Registrar, the Registrar of Deeds and every officer having responsible for the registration of any title or any property belonging to, or any mortgage, bond or other rights in favour of, or any appointment of or by or in which has been issued any licence to or in favour of any financial institution which has amalgamated with any other financial institution or any financial institution which has transferred any of its assets or liabilities to any other financial institution shall-

- (a) on being satisfied that -
  - (i) in the case of the local financial institution, the Central Bank has, in terms of paragraph 1, approved of the amalgamation or transfer, or
  - (ii) in the case of a foreign financial institution, the Central Bank has been notified in terms of paragraph 2,

and that the amalgamation or transfer has been duly effected; and

- (b) on the production by the financial institution to him of any relevant deed, bond, certificate, letter of appointment, licence or other document,

make such endorsements thereon and effect such alteration thereto as may be necessary to record the transfer of it and of any rights under it to the amalgamated institution, or, as the case may be, the financial institution which has taken over those assets or liabilities, and no transfer fees, stamp duty, registration fees, transcription fees, inscription fees, licence fees, or other charges shall be payable in respect of the transfer or any endorsement or alteration so made to give effect to the transfer.

(7) This paragraph does not affect the rights of any creditor of a financial institution which has amalgamated with or transferred any assets or liabilities to any other financial institution, except to the extent provided in this paragraph.

Section 53(2)

## SCHEDULE 2

### WINDING UP OF LOCAL FINANCIAL INSTITUTION

#### PART I

## VOLUNTARY WINDING UP

### *Authorization*

1.(1) No local financial institution shall be voluntarily wound up except with the prior written authorization of the Central Bank.

(2) Authorization under sub-paragraph (1) shall be granted only if it appears to the Central Bank that-

- (a) the institution is solvent and has sufficient liquid assets to repay its depositors and other creditors without delay; and
- (b) the winding up has been approved at a general meeting of the institution called expressly for the purpose by the affirmative vote of the holders of not less than three quarters of the issued shares entitled to vote:

Provided that if the winding up is to be effected in whole or in part through the sale of any of the assets of the institution to, or the assumption of any of its deposit liabilities by, another financial institution, the Central Bank may, if it considers that the institution is in imminent danger of insolvency, waive the requirement in sub-paragraph (b) for approval at a general meeting.

(3) The voluntary winding up is deemed to commence on authorization by the Central Bank under this paragraph.

(4) Any person who contravenes this paragraph is guilty of an offence and is liable to a fine of R.100,000.

Operations of local financial institution to cease

2.(1) When it has received the authorization of the Central Bank under paragraph 1 the local financial institution shall-

- (a) immediately cease to do business, except for business necessary to effect an orderly winding up;
- (b) repay its depositors and other creditors;
- (c) return all funds and other property held by it to the persons entitled to possession of such funds and property; and
- (d) wind up all operations undertaken prior to the receipt of the authorization.

Cap. 40. (2) Notwithstanding anything to the contrary in its memorandum or articles, the institution shall continue to be a body corporate under the Companies Act, until it is dissolved under paragraph 5(4).

*Notice of winding up*

3.(1) A notice of voluntary winding up, giving such information as the Central Bank may require, shall be-

- (a) published by the local financial institution in the *Gazette* and in a local newspaper;
- (b) given by the institution to the Registrar of Companies within 14 days of the authorization under paragraph 1; and
- (c) sent within 30 days of the authorization under paragraph 1 by the institution by registered post to all depositors, beneficial owners, other creditors, safe deposit box lessees, owners of funds or property held by the institution as a fiduciary or on hire, loan, deposit or pledge and to all shareholders.

(2) The Central Bank may exempt the institution from sending notice under subparagraph (1)(c) to any specified person if it is satisfied that -

- (a) it is impracticable to do so; and
- (b) the person has otherwise had adequate notice.

(3) A copy of the notice under this paragraph shall be kept displayed in a conspicuous place in the public part of each place of business of the institution and shall be given such other publicity as the Central Bank may direct.

*Rights of depositors etc.*

4.(1) Authorization for winding up under paragraph 1 shall not prejudice-

- (a) the rights of a depositor, beneficiary owner or other creditor to payment in full of his claim; or
- (b) the right of any person to the return of funds or other property held by the institution.

(2) All lawful claims shall be paid promptly and all funds and other property held by the institution shall be returned to the persons entitled to possession within such maximum period as the Central Bank may determine.

*Discharge of obligations of institution*

5.(1) Subject to sub-paragraphs (2) and (3), where the Central Bank is satisfied that a local financial institution has discharged all the obligations referred to in paragraph 4(2)-

- (a) the banking licence of the institution shall be revoked; and
- (b) the remainder of its assets shall be distributed by the institution among the shareholders in proportion to the nominal values of their respective shares.

(2) No distribution under sub-paragraph (1) shall be made before-

- (a) all claims of depositors, beneficial owners and other creditors have been paid, or, in the case of a disputed claim, before the institution has turned over to the Central Bank sufficient funds to meet any liability that may be judicially determined.
- (b) any funds payable to a depositor, beneficial owner or any other creditor who has not claimed them have been turned over to the Central Bank; and
- (c) any other funds and property held by the institution which cannot be returned to the persons entitled to possession in accordance with this paragraph have been dealt with in accordance with section 48 (Reports of abandoned property.)

(3) All costs, charges and expenses properly incurred in the winding up are payable out of the assets of the institution in priority to a distribution under sub-paragraph (1)(b).

(4) The Central Bank shall inform the Registrar of Companies of the revocation of the banking licence of the institution under sub-paragraph (1) and the Registrar shall

- (a) strike the name of the institution off the register of companies; and
- (b) publish notice of the striking off in the *Gazette*,

and on the date of publication in the *Gazette* of that notice the institution shall be dissolved.

(5) Without prejudice to the generality of section 52 (application of Companies Act), the provisions of the Companies Act, other than those specified in Part III of

this Schedule, shall apply to a financial institution struck off under sub-paragraph (4) as they apply to a company struck off under section 305 of that Act and the liability, if any, of every director, officer, member, shareholder and contributory of the company shall continue and may be enforced as if the company had not been dissolved.

(6) When the remainder of the assets of the local financial institution have been distributed in accordance with sub-paragraph (1)(b), its books and papers shall be disposed of in such way as the Central Bank directs.

(7) A local financial institution which contravenes this paragraph is guilty of an offence and is liable to a fine of R.100,000.

*Revocation of banking licence if assets insufficient*

6.(1) Where a local financial institution is being wound up voluntarily under this Schedule, and, in the opinion of the Central Bank-

- (a) the assets of the institution will not be sufficient for the full discharge of its obligations; or
- (b) completion of the winding up is unduly delayed,

the Central Bank shall revoke the banking licence of the institution and appoint a liquidator for the compulsory winding up of the institution in terms of Part II of this Schedule.

*Effective date of revocation*

7. Sections 12(2) to (5) (taking effect of revocation) and 14 (Appeals against revocation) do not apply to a revocation under paragraph 5 or 6.

PART II

**COMPULSORY WINDING UP**

*Start of compulsory winding up*

8.(1) The date of the start of compulsory winding up of a local financial institution is the date on which the revocation of its banking licence -

- (a) becomes final in terms of section 12(5); or
- (b) is ordered under paragraph 6 of this Schedule, paragraph 5(1) (b) of Schedule 3 or paragraph 8 of Schedule 4.

(2) When the compulsory winding up of a local financial institution starts it shall immediately suspend all business and the liquidator appointed under paragraph 9 shall take charge of all books, records and assets of the institution and shall direct the winding up in accordance with this Part of this Schedule.

(3) The liquidator shall without delay make an inventory of the assets of the institution and shall give to the Central Bank a copy of that inventory, which shall be available at the office of the Central Bank for examination by any interested person at such times as the Central Bank directs.

#### *Appointment of liquidator*

**9.**(1) At the start of the compulsory winding up of a local financial institution the Central Bank shall appoint a person who, in the opinion of the Central Bank, is suitably qualified to be liquidator of the institution.

(2) The liquidator shall give effect to any direction to him from the Central Bank which is not inconsistent with this Act.

Cap. 40. (3) In this Part of this Schedule (except in the reference in paragraph 11 to the liquidator in a winding up by the Court under sections 222(1) and (2) of the Companies Act) "liquidator" means a liquidator appointed under this paragraph.

#### *Notice of liquidator*

**10.** A notice of compulsory winding up, giving such information as the Central Bank may require, shall be -

- (a) published by the liquidator in the Gazette and in a local newspaper; and
- (b) given by the liquidator to the Registrar of Companies within 14 days of the start of the compulsory winding up.

#### *Powers of liquidator*

**11.** The liquidator shall have the full and exclusive power of management and control of the institution for the purpose of the winding up, including without prejudice to this generality, the power-

- (a) to wind up its operations;

- (b) wholly or partially to suspend, limit or stop the payment of its obligations;
- (c) to employ any necessary staff;
- (d) to execute any instrument in the name of the institution;
- (e) to initiate, defend and conduct in the name of the institution any action or any proceedings to which the institution may be party,

and shall have the power of the liquidator in a winding up by the Court under section 222(1) and (2) of the Companies Act, and in the application of those provisions to a winding up under this Part of this Schedule, for the reference to the sanction either of the court or of the committee of inspection there shall be substituted a reference to the sanction of the Central Bank.

*Operation of contracts, liens etc.*

Cap. 33.

**12.** Notwithstanding the Civil Code or any other law to the contrary, under compulsory winding up proceedings, any period, whether statutory, contractual or otherwise, on the expiration of which a claim or right of the institution would expire or be extinguished within 6 months of the start of compulsory winding up shall be extended so that it expires or is extinguished on the date of 6 months after the start of compulsory winding up.

*Power to terminate contracts*

**13.(1)** Within 6 months from the start of compulsory winding up the liquidator may, notwithstanding the relevant contract, but subject to any other relevant law, terminate-

- (i) any employment contract;
- (ii) any contract for services to which the institution was a party;
- (iii) any objection of the institution as a lessee.

(2) A lessor who receives 90 days notice that the liquidator is exercising discretionary powers under sub-paragraph (1) to terminate the lease has no claim for rent (other than rent accrued on the date of termination of the lease) nor for damages by reason of that termination.

*Termination of fiduciary functions*

**14.** As soon as possible after the start of compulsory winding up, the liquidator shall take the necessary steps-

- (a) to terminate all fiduciary functions performed by the institution and all functions performed by the institution on behalf of other persons;
- (b) to deliver any assets or property held by the institution as a fiduciary or on behalf of any person to another person as fiduciary or to the person entitled to possession of the assets or property, as may be appropriate; and
- (c) to settle the fiduciary accounts of the institution.

*Statements of claim*

**15.(1)** As soon as possible after the start of compulsory winding up the liquidator shall send by registered post to all depositors, beneficial owners, other creditors, safe deposit box lessees, and owners of funds or property held by the institution as a fiduciary or on hire, loan, deposit or pledge, a statement setting out the nature and amount in respect of which their claim against the institution is shown on the institution's books.

(2) Any person referred to in sub-paragraph (1) who does not receive a statement under that sub-paragraph may lodge a claim or objection with the liquidator within 90 days of the start of compulsory winding up.

(3) A statement under sub-paragraph (1) shall state that any objection concerning the nature or amount of the claim must be filed with the liquidator before a specified date not later than 60 days after the date of the statement and shall ask safe deposit box lessees and owners of property held by the institution on hire, loan, deposit or pledge to withdraw their property.

(4) The Central Bank may, before the commencement of the 60-day period, exempt the liquidator from sending statements under sub-paragraph (1) to any specified person if it is satisfied that -

- (a) it is impracticable to do so; and
- (b) the person is not likely to dispute the nature or amount for which his claim is shown on the institution's books.

*Rejection of claims and determination of amounts owing*

**16.(1)** Within 3 months after the date specified under paragraph 15(3), or within such longer period as may be determined by the Central Bank, the liquidator shall-

- (a) reject any claim or any objection filed under paragraph 15(3) if he doubts its validity;



- (b) determine the amount, if any, owing to each known depositor or other creditor and the priority class of his claim under paragraph 17;
- (c) notify each person-
  - (i) whose claim has not been allowed in full;
  - (ii) whose claim or objection has been rejected; or
  - (iii) whose claim may not be paid in full.

(2) Any person aggrieved by a notice under sub-paragraph (1)(c) may, within 21 days of such notification, appeal against the decision of the liquidator to the Supreme Court, who may uphold, vary or reverse the liquidator's decision.

*Preferential payment*

**17.(1)** In a compulsory winding up under this Part of this Schedule there shall be paid, in priority to all other debts or claims against the institution and in the following order,-

- (a) all necessary and reasonable expenses incurred by the liquidator in the application of this Part of this Schedule;
- (b) all wages or salary (whether or not earned wholly or in part by way of commission) of any officer or employee in respect of services rendered to the institution during the four months immediately

preceding the date on which the banking licence was revoked, being a sum which, in the case of any one claimant does not exceed R.2,000;

- (c) all tax on income and other taxes assessed on the company up to the 31st day of December in the year immediately preceding that in which the banking licence was revoked, but not exceeding in the whole one year's assessment, the year for which priority is claimed being selected by the Controller of Taxes;
- (d) any funds deposited with the institution with interest accrued thereon, not exceeding in respect of any one account R.10,000;
- (e) all other claims lodged timeously;
- (f) other deposits with interest accrued thereon;

(g) any fees and assessment due to the Central Bank.

(2) If the amount available for any class is insufficient to provide payment in full, the amount shall be distributed rateably among the members of the class.

(3) After payment of all claims specified in sub-paragraph (1) the liquidator may pay any remaining claims not lodged within the specified time.

*Schedule of proposed steps and timetable*

**18.**(1) Within 3 months after the date specified under paragraph 15(2), or within such longer period as may be determined by the Central Bank, the liquidator shall-

- (a) prepare a schedule of the steps proposed to be taken and the timetable proposed to be followed to complete the winding up under this Part of this Schedule; and
- (b) publish once in the *Gazette*, and once a week for 3 consecutive weeks in a local newspaper, a notice of the date and place where the schedule and timetable will be available for inspection, and the date, not earlier than 30 days from the date of the third publication in the local newspaper, on which the liquidator will lodge the schedule and timetable with the Supreme Court for approval.

(2) Within 21 days after the schedule and timetable have been lodged with the Supreme Court under sub-paragraph (1), any depositor, other creditor, shareholder, or other interested party may file an objection to any step or time proposed.

(3) If an objection is sustained by the Supreme Court, it shall direct that an appropriate modification of the schedule and timetable shall be made.

*Payment of claims*

**19.**(1) Where the schedule and timetable have been approved by the Supreme Court the liquidator may, from time to time, make partial distribution to the holders of the claims which are undisputed or which have been allowed by Court, on condition that a proper reserve is established for the payment of disputed claims.

(2) As soon as possible after all objections have been decided on, the liquidator shall make the final distribution.

*Disposal of assets*

**20.** Any assets remaining after all claims have been paid under paragraph 19 shall be distributed among the shareholders in proportion to the nominal values of their respective shares.

*Safe deposit boxes and unclaimed property*

**21.(1)** Any safe deposit boxes the contents of which have not been withdrawn before the date specified under paragraph 15(3) shall be opened in the manner determined by the liquidator.

(2) The contents of safe deposit boxes opened under sub-paragraph (1), or any unclaimed property held by the institution on hire, loan, deposit or pledge, shall-

- (a) if they are monies, be transferred on the direction of the Central Bank to a special account with the Central Bank;
- (b) if they are not monies, be referred on the direction of the Central Bank to the Minister for such action as he shall determine.

(3) Any items dealt with under sub-paragraph (2) shall be presumed to be abandoned property, and shall be dealt with in accordance with Part VI (Abandoned Property) of this Act if within 10 years of the original date of deposit the owner has not evidenced an interest in the items.

*Unclaimed funds*

**22.(1)** Unclaimed funds remaining after the final distribution under paragraphs 19 and 20 or which are not subject to other provisions of this Act shall, on the direction of the Central Bank, be transferred to a special account with the Central Bank and may be used by the Central Bank for such purposes as may be determined by the Central Bank after consultation with the Minister.

(2) If within 10 years of the date of the final distribution under paragraphs 19 and 20, as the case may be, the owner has not evidenced an interest in funds transferred under sub-paragraph (1) they shall be presumed to be abandoned property and shall be dealt with in accordance with Part VI (Abandoned Property) of this Act.

*Audit*

**23.(1)** When all assets have been distributed in accordance with this Part of this Schedule, the liquidator shall, after approval by the Central Bank, submit to the Supreme Court for its approval an audited statement of account of his dealings with the assets of the financial institution together with an auditor's report.

(2) The auditor shall be a person who in the opinion of the Central Bank is suitably qualified to discharge the duties of auditor, and his remuneration shall be paid by the liquidator.

(3) A person shall not be qualified for appointment as auditor of the liquidator's statement unless he is a member of a body of accountants (whether established in or outside Seychelles) for the time being recognised for the purposes of this paragraph by the Central Bank.

(4) In his report the auditor shall state-

- (a) whether in his opinion the liquidator's statement of accounts is full and fair and properly drawn up;
- (b) whether the statement exhibits a true and correct statement of the dealings of the liquidator with the assets of the institution; and
- (c) where the auditor has called for explanation or information from the liquidator, whether that explanation or information is satisfactory.

(5) The approval of that statement of account and report by the Court relieves the liquidator and the Central Bank of any liability in connection with the winding up.

(6) The liquidator shall inform the Registrar of Companies of the approval of that statement of account and report by the Court and the Registrar shall -

- (a) strike the name of the institution off the register of companies; and
- (b) publish notice of the striking off in the *Gazette*,

and on the date of publication in the *Gazette* of that notice the institution shall be dissolved.

Cap. 40.

(7) Without prejudice to the generality of section 52 (application of Companies Act), the provisions of the Companies Act, other than those specified in Part III of this Schedule shall apply to a financial institution struck off under sub-paragraph (6) as they apply to a company struck off under section 305 of that Act, and the liability, if any, of every director, officer, member, shareholder and contributory of the company shall continue and may be enforced as if the company had not been dissolved.

### PART III

#### **PROVISIONS OF THE COMPANIES ACT 1972 WHICH DO NOT APPLY**

Cap. 40. In the table below, the first column indicates the section number of the provision of the Companies Act, the second column indicates the general subject matter of the provision and the third column indicates whether the provision does not apply in relation to the voluntary winding up or compulsory winding up of a financial institution or to both.

<i>Section</i>	<i>Subject Matter</i>	<i>Mode</i>
202	Modes of winding up	Compulsory
205 - 206	Cases in which company may be wound up by the Court	Compulsory
207 - 208	Petition for winding up and its effect	Compulsory
209	Commencement of winding up	Compulsory
211	Provisional liquidator	Compulsory
213	Registration of winding up order	Compulsory
214 - 216	Official Receiver	Compulsory
217 - 223	Liquidators	Compulsory
226 - 228	Audit of accounts of and supervision and release of liquidators	Compulsory
229 - 231	Committees of inspection	Compulsory
232	Meetings of shareholders and creditors	Compulsory
233	Stay of winding up	Compulsory
234	Settlement of list of contributories etc.	Compulsory
236	Examination of directors, officers, etc.	Compulsory
237(2) - (5)	Power of court to make calls	Compulsory
238	Miscellaneous powers of court	Compulsory
239	Order of payment into a bank	Compulsory
240	Special Manager	Compulsory
241	Public examination of directors etc.	Compulsory
244	Delegation of court's power of liquidator	Compulsory
245	Dissolution of company	Compulsory
247 - 250	Resolutions for and commencement of voluntary winding up	Voluntary
251	Effect of voluntary winding up	Voluntary

<i>Section</i>	<i>Subject Matter</i>	<i>Mode</i>
253 - 259	Members voluntary winding up	Voluntary
260 - 267	Creditors voluntary winding up	Voluntary
268	Provisions for every voluntary winding up	Voluntary
269(1)	Costs of winding up	Voluntary
270 - 272	Liquidators	Voluntary
273(1) and (2)	Powers of court in winding up by court	Voluntary
274	Order for company in voluntary	

	liquidation to be wound up by court	Voluntary
275	General meetings of company in voluntary liquidation	Voluntary
277	Application of bankruptcy rules	Voluntary
278	Preferential payment	Voluntary
281	Disclaimer by liquidator	Voluntary
293	Disqualification of both corporate from appointment as liquidator	Both
294	Order against liquidator to make good default	Both
296	Exemption from stamp duty	Both
298(1)	Disposal of books and papers of company	Both
299	Returns by liquidator to Registrar	Both
300	Unclaimed assets	Both
304	Avoidance of dissolution	Both
305	Power of Registrar to strike name of defunct company off register	Both

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## SCHEDULE 3

Section 53(3)

**SEIZURE BY THE CENTRAL BANK***Central Bank taking possession*

1.(1) The Central Bank may, with the approval of the Minister, take possession of any financial institution-

- (a) whose minimum required capital in terms of section 20 is impaired or whose condition is otherwise unsound;
- (b) whose business is, in the opinion of the Central Bank, being conducted in an unlawful or imprudent manner;
- (c) where the continuation of its activities is, in the opinion of the Central Bank, detrimental to the interests of its depositors;
- (d) which refuses to submit itself to or otherwise obstructs any inspection by the Central Bank under section 31 of this Act or section 36 of the Central Bank of Seychelles Act;

- Cap. 26. (e) whose banking licence has been revoked under section 12(1), notwithstanding section 12(2) to (5) or any appeal or right to appeal under section 14.

(2) When taking possession of an institution under sub-paragraph (1), the Central Bank shall post on the premises of the institution a notice announcing its action under this Schedule, and the time when its possession is deemed to take effect, which shall not be earlier than the posting of the notice.

(3) Copies of a notice posted under sub-paragraph (2) shall be-

- (a) given by the Central Bank to the Supreme Court and to the Registrar of Companies; and
- (b) published immediately in the Gazette and in a local newspaper; and
- (c) in the case of a foreign financial institution, sent by the Central Bank to the head office of the institution.

#### *Consequences of seizure*

2. Notwithstanding the Civil Code or any other rule of law to the contrary, where the Central Bank takes possession of a financial institution under this Schedule-

- (a) any period, whether statutory, contractual or otherwise, on the expiration of which a claim or right of the institution would expire or be extinguished on or after the seizure, shall be extended so that it does not expire or is not extinguished while possession by the Central Bank under this Schedule continues;
- (b) any attachment or lien on the property or assets of the institution in Seychelles (except a lien existing 6 months prior to the seizure of the institution under this Schedule) shall cease to have effect;
- (c) no attachment or lien (except a lien created by the Central Bank in the application of this Schedule), shall attach to any property or assets of the institution in Seychelles so long as possession by the Central Bank under this Schedule continues; and
- (d) any transfer of any assets in Seychelles of the institution made within 6 months prior to the seizure of the institution shall be null and void unless the institution satisfied the Central Bank that the transfer was not made with the intent to effect a preference.

#### *Management by Central Bank*

3.(1) Where the Central Bank takes possession of a financial institution under this Schedule, subject to sub-paragraph (2), there is vested in the Central Bank the full and exclusive power of management and control of the affairs of the institution, including, without prejudice to this generality, the power-

- (a) to continue or discontinue its operations as a financial institution (notwithstanding that its banking licence has been revoked);
- (b) wholly or partially to suspend, limit or stop the payment of its obligations;
- (c) to employ any necessary staff;
- (d) to execute any instrument in the name of the institution;
- (e) to initiate, defend and conduct in its own name any action or any proceedings to which the institution may be party;
- (f) to reorganize, wind up or close down the institution in accordance with this Act.

(2) In the case of foreign financial institution the power vested in the Central Bank under sub-paragraph (1) applies to-

- (a) the operation of the institution in and with respect to Seychelles; and
- (d) the assets and liabilities whether in or outside Seychelles of the institution pertaining to any branch of the institution in Seychelles.

(3) As soon as possible after taking possession of a financial institution the Central Bank shall make an inventory of the assets of the institution and shall transmit a copy of that inventory to the Supreme Court.

(4) The Copy of the inventory transmitted to the Court under paragraph (3) shall be available for examination by any interested person at such place and such time as the Court directs.

#### *Appeal*

4. The financial institution may, within 21 days of the Central Bank taking possession under this Schedule, apply to the Supreme Court to have the seizure lifted.



*Further action by Central Bank*

5.(1) Within a maximum period of 30 days from taking possession under this Schedule, the Central Bank shall -

- (a) start the reorganization of the financial institution under Schedule 4 (in which case the seizure under this Schedule remains effective until terminated under paragraph 7 of Schedule 4); or
- (b) revoke the banking licence of the financial institution and -
  - (i) in the case of a local financial institution, start the compulsory winding up of that institution under Schedule 2; or
  - (ii) in the case of a foreign financial institution, close that institution under paragraph 2(2) of Schedule 5; or
- (c) terminate the seizure and return full management, control and possession to the institution.

(2) Where the Central Bank terminates a seizure under sub-paragraph (1) (c) -

- (a) it may take action under section 40 (Central Bank's powers over unsafe practices);
- (b) it shall immediately give notice of the termination-
  - (i) to the Supreme Court and the Registrar of Companies;
  - (ii) in the Gazette and in a local newspaper; and
  - (iii) in the case of a foreign financial institution, to its head office.

(3) Sections 12(2) to (5) (taking effect of revocation) and 14 (Appeals against revocation) do not apply to the revocation of a banking licence under sub-paragraph (1)(b).

## PART I

**REORGANIZATION OF LOCAL FINANCIAL INSTITUTION***Appointment of reorganizing agent*

2.(1) Where under paragraph 5(1)(a) of Schedule 3 of the Central Bank decides to reorganize a local financial institution, it shall appoint one of its officers or a suitably qualified person as reorganizing agent to direct the reorganization in accordance with this Schedule.

(2) The reorganizing agent shall act under the supervision of the Central Bank and shall give effect to any direction given to him by the Central Bank which is not inconsistent with this Act.

(3) In this Schedule, and in section 38, "reorganizing agent" means a reorganizing agent appointed under this paragraph.

*Reorganization plan*

2.(1) The reorganizing agent shall, as soon as possible, and taking into account the interests of persons concerned with the institution, draw up a reorganization plan for the local financial institution.

(2) The reorganization plan shall-

- (a) be equitable to all depositors, beneficial owners, other creditors, safe deposit box lessees, owners of funds or property held by the institution as a fiduciary or on hire, loan, deposit or pledge and shareholders of the institution;
- (b) provide for an amalgamation with or transfer to another financial institution under Schedule 1, or for bringing in new funds, so as to establish adequate ratios between-
  - (i) capital and deposits; and
  - (ii) liquid assets and deposits;
- (c) provide for the removal of any director, manager, officer, employee or agent of the institution who in the opinion of the Central Bank

was responsible for or contributed to the circumstances which led to the seizure of the institution under Schedule 3; and

- (d) be approved by the Central Bank before copies are sent out under paragraph 3.

*Notice of plan*

**3.**(1) The reorganizing agent shall send to all depositors, beneficial owners, other creditors, safe deposit box lessees, owners of property held by the institution as a fiduciary or on hire, loan, deposit or pledge and shareholders of the institution a copy of the reorganization plan with notice that-

- (a) if, within 30 days of the date on which it is sent, the plan is not objected to in writing by persons holding one-third or more of the aggregate amount of deposits and other liabilities of the institution (as determined by the Central Bank), the reorganizing agent will proceed with the reorganization in accordance with this Schedule; and
- (b) those persons may submit written objections to the plan to the reorganizing agent within 30 days of the date on which it is sent.

(2) The reorganizing agent shall publish in the Gazette and in a local newspaper a notice that the reorganization plan is available for examination by any interested person at such place and at such times as are specified in the notice.

(3) The Central Bank may, before the commencement of the 30-day period, exempt the reorganizing agent from sending copies of the reorganization plan to any person specified by the Central Bank if it is satisfied that -

- (a) it is impracticable to do so; and
- (b) such person has otherwise had adequate notice.

*Objections to and modifications of reorganization plan*

**4.** The reorganizing agent shall consider all objections to the reorganization plan under paragraph 3(1)(b), and may, in his discretion-

- (a) modify the plan on account of one or more of the objections, and where he does so the procedure provided for in this paragraph and paragraph 3 shall apply to such modification as it applies to the reorganization plan;

- (b) proceed with the original plan as if no objection had been made; or
- (c) if on account of the objections he considers that reorganization of the institution will not be possible, request the Central Bank to revoke the banking licence of the institution and start its compulsory winding up in terms of paragraph 8:

Provided that paragraph (b) shall not apply if persons holding; in aggregate, one third or more of the deposits and other liabilities of the institution (as determined by the Central Bank) have objected to the reorganization plan under paragraph 3(1)(b).

#### *Approval of the Supreme Court*

5.(1) Where the reorganizing agent decides to proceed with the reorganization plan either in its original form or with modifications, he shall, with the approval of the Central Bank submit the reorganization plan for the approval of the Supreme Court.

(2) Before submitting the plan for approval, the reorganizing agent may, with the approval of the Central Bank and without requiring to comply with the procedures under paragraphs 3 and 4, amend or modify the plan so as-

- (a) to remove any unfairness to any class of depositors, beneficial owners, or other creditors or interested parties or shareholders;
- (b) to make its execution more workable or practicable; or
- (c) to correct any error or ambiguity.

(3) The Supreme Court may-

- (a) approve the reorganization plan subject to such modifications or alterations as it may determine; or
- (b) reject the reorganization plan either with or without making a direction to the Central Bank in terms of paragraph 8(1)(d) to revoke the banking licence of the institution and start its compulsory winding up.

#### *Execution of reorganization*

6.(1) The reorganizing agent shall carry on the reorganization plan as soon as it has been approved by the Supreme Court and, for this purpose, the reorganizing agent has all the necessary and incidental powers in respect of and in relation to the institution, notwithstanding the powers vested in the Central Bank under paragraph 3(1) of Schedule 3.

(2) When the reorganization of the institution has been completed to the satisfaction of the reorganizing agent he shall so inform the Central Bank.

*Completion of reorganization*

- 7.(1) (a) Where the reorganizing agent informs the Central Bank under paragraph 6(2) that the reorganization of the institution has been completed to his satisfaction; or
- (b) if at any stage of proceedings under this Schedule the Central Bank is of the opinion that it is no longer necessary to proceed with the reorganization,

the Central Bank shall terminate the seizure effected under Schedule 3 and return full management, control and possession to the local financial institution.

(2) Paragraph 5(2) (Further action by Central Bank) of Schedule 3 applies to termination of a seizure under this paragraph.

*Revocation of banking licence*

8.(1) Notwithstanding paragraphs 5(2), 6 and 7 if at any stage of the procedure under this Schedule-

- (a) the reorganizing agent so requests under paragraph 4(c); or
- (b) the reorganizing agent is of the opinion that-
- (i) the assets of the institution will not be sufficient for the full discharge of all its obligations; or
- (ii) completion of the reorganization is unduly delayed; or
- (iii) it is impracticable to proceed with the reorganization of the institution of the institution; or
- (c) the Central Bank is of the opinion that it is impracticable to proceed with the reorganization of the institution; or
- (d) the Central Bank is directed to do so by the Supreme Court,

the Central Bank shall revoke the banking licence of the institution and appoint a liquidator for the compulsory winding up of the institution in terms of Part II of Schedule 2.

(2) Sections 12(2) to (5) (taking effect of revocation) and 14 (Appeals against revocation) do not apply to a revocation under this paragraph.

## PART II

### REORGANIZATION OF FOREIGN FINANCIAL INSTITUTION

9.(1) The Central Bank may order the reorganization of a foreign financial institution by its head office under the supervision of the Central Bank and subject to such terms and conditions as the conditions as the Central Bank may determine.

(2) Any reorganization under this paragraph is conditional on the full protection of the interests in Seychelles of all depositors, beneficial owners, other creditors, safe deposit box lessees, and persons otherwise entitled to funds or property held by the institution in Seychelles as a fiduciary or on hire, loan deposit or pledge.

## SCHEDULE 5

## Section 53(5)

### CLOSURE OF FOREIGN FINANCIAL INSTITUTION

#### *Approval of closure*

1.(1) No foreign financial institution shall close down its business in Seychelles except with the written approval of the Central Bank, which may be given subject to such terms and conditions as the Central Bank may specify; and if approval is granted, the affairs of the institution shall be wound up in accordance with this Schedule.

(2) A foreign financial institution which contravenes subparagraph (1) is guilty of an offence and is liable to a fine R.100,000.

#### *Compulsory closure*

2.(1) Where a revocation of the banking licence of a foreign financial institution has been made final under section 12, the business of that institution in and with respect to Seychelles shall be closed down and its affairs wound up in accordance with this Schedule.

(2) If-

- (a) liquidation or winding up proceedings in respect of a foreign financial institution are instituted in the country where the head office is located; or
- (b) the Central Bank so decides under paragraph 5(1)(b) of Schedule 3 (Seizure),

the Central Bank shall order the business of that institution in and with respect to Seychelles to be closed down and its affairs wound up in accordance with this Schedule.

*Notice of closure*

**3.** A notice of closure, given such information as the Central Bank may require, shall be-

- (a) published by the foreign financial institution in the Gazette and in a local newspaper; and
- (b) given by the institution to the Registrar of Companies.

*Appointment of supervising agent*

**4.(1)** The Central Bank shall appoint a qualified person as supervising agent of the closure of the business of that institution in and with respect to Seychelles.

(2) The supervising agent shall oversee the winding up of the institution under this Schedule and shall-

- (a) take all measures necessary to ensure that no assets owned by the institution are removed from Seychelles until all obligations and liabilities incurred by the institution in the conduct of banking business in Seychelles have been covered in accordance with its undertaking under section 4(1)(f); and
- (b) report to the Central Bank-

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- (i) any contravention by the institution, or by any director, manager, officer, employee or agent of the institution of this Act, or the Central Bank of Seychelles Act;
- (ii) any action or proposed action by the institution which in his opinion may be to the detriment of depositors with or creditors of the institution in Seychelles.

(3) The supervising agent shall give effect to any direction to him by the Central Bank which is not inconsistent with this Act.

(4) In this Schedule and in section 38, "supervising agent" means a supervising agent appointed under this paragraph.

*Effect of closure*

5. Where the business of a foreign financial institution in and with respect to Seychelles is closed down under this Schedule the institution shall -

- (a) cease to do business in and with respect of Seychelles (except such business as is necessary to effect an orderly closure)-
  - (i) in the case of a closure under paragraph 1, on such date as the Central Bank may determine; or
  - (ii) in the case of a closure under paragraph 2, immediately;
- (b) repay its depositors in Seychelles and other creditors in respect of its operations in Seychelles;
- (c) return all funds and other property held by it in Seychelles to the person entitled to possession of it; and
- (d) wind up all business and operations in and with respect to Seychelles undertaken prior to the closure.

*Ban on removal of assets*

6.(1) No person shall-

- (a) remove; or
- (b) assist in removing; or
- (c) make or take part in any arrangements for removing,

from Seychelles any assets owned or held by a foreign financial institution until all obligations and liabilities incurred by the institution in the conduct of banking business in Seychelles have been-

- (i) fulfilled or met; or



- (ii) covered in accordance with the undertaking of the institution under section 4(1)(f).

(2) A person who contravenes sub-paragraph (1) is guilty of an offence and is liable to imprisonment for 1 year and to a fine of R.100,000.

(3) Notwithstanding sub-paragraph (2), if the supervising agent is of the opinion that any assets owned or held by a foreign financial institution are likely to be removed from Seychelles in contravention of sub-paragraph (1), he may apply to the Supreme Court for an order prohibiting that removal and authorizing such other action to stop that removal as the Court may determine.

#### *Safe deposit boxes and unclaimed property*

7.(1) Any safe deposit boxes, the contents of which have not been withdrawn before such date as may be specified in the notice under paragraph 3, shall be opened in the manner determined by the supervising agent.

(2) The contents of safe deposit boxes opened under sub-paragraph (1) or any unclaimed property held by the institution as a fiduciary of or on hire, loan, deposit or pledge, shall-

- (a) if they are monies, be transferred on the direction of the Central Bank to a special account with the Central Bank;
- (b) if they are not monies be referred, on the direction of the Central Bank, to the Minister for such action as he shall determine.

(3) Any items dealt with under sub-paragraph (2) shall be presumed to be abandoned property, and shall be dealt with in accordance with Part VI (Abandoned Property) of this Act if within 10 years of the original date of deposit the owner has not evidenced an interest in the items.

#### *Unclaimed funds*

8.(1) Unclaimed funds which are not subject to other provisions under this Act shall, on the direction of the Central Bank, be transferred to a special account with the Central Bank and may be used by the Central Bank for such purposes as may be determined by the Central Bank after consultation with the Minister.

(2) If, within 10 years of the date of the publication of the notice of closure under paragraph 3, the owner has not evidenced an interest in funds transferred under sub-paragraph (1), they shall be presumed to be abandoned property and shall be dealt with in accordance with Part VI (Abandoned Property) of this Act.

#### *Final revocation of licence*

9.(1) Where, in a closure under paragraph 1 or 2 (2), the Central Bank is of the opinion that the foreign financial institution has complied fully with this Schedule, the banking licence of the institution shall be revoked.

(2) Section 12(2) to (5) (taking effect of revocation) and 14 (Appeals against revocation) do not apply to a revocation under this paragraph.

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#### SCHEDULE 6

Business Tax Act	(Cap 20)
Exchange Control Act	(Cap 76)
Stamp Duty Act	(Cap 226)
Trades Tax Act	(Cap 240)

Repeal of Cap. 12      **3.** The Banking (Special Provisions) Act is hereby repealed.

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