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**CHAPTER 212****BANKING**

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### CHAPTER 212

### BANKING

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*Acts Nos. 15 of 1983, 4 of 1985, 27 of 1985*

## AN ACT TO PROVIDE FOR THE REGULATION OF THE BUSINESS OF BANKING AND FOR PURPOSES CONNECTED THEREWITH

[1 January 1984]

### PART I—PRELIMINARY

#### *Short title*

1. This Act may be cited as the Banking Act.

#### *Interpretation*

- 2.—(1) In this Act, unless the context otherwise requires—  
“appointed day” means 1 January 1984;  
“bank” means any financial institution whose operations include the acceptance of deposits of money withdrawable or transferable by cheque or other means of payment transfer;

“banking business” means—

- (a) 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 placement of bonds, certificates, notes or other securities, and the use of such funds, either in whole or in part, for loans or investments for the account and at the risk of the person doing such business; and
- (b) any other activity recognized by the Reserve Bank as customary banking practice which a licensed financial institution engaging in the activities described in paragraph (a) may additionally be authorized to do by the Reserve Bank;

“company” means—

- (a) a body corporate established under any written law relating to the formation and registration of companies;
- (b) a statutory corporation; and
- (c) a body corporate which is established, whether under a law relating to the formation and registration of companies or by any other method of incorporation, outside Fiji;

*(Amended by Act 27 of 1985.)*

“credit institution” means any financial institution other than a bank;

“director” includes an individual occupying the position of director or alternate director of a company, by whatever name he may be called, and includes a member of a local board of a company whose head office is situated outside Fiji;

“financial institution” means any company doing banking business: Provided, that for the purposes of this Act, unless the context otherwise requires, all offices and branches of a financial institution in Fiji shall be deemed to be one financial institution;

“licensed” means licensed under this Act to conduct banking business;

“manager” includes any person for the time being in charge of the principal or regional office in Fiji of any bank;

“officer” includes a director, manager or secretary;

“Reserve Bank” means the Reserve Bank of Fiji established under the Reserve Bank of Fiji Act; *(Cap. 210.)*

“scheduled bank” means a bank listed in the Schedule;

“statutory corporation” means a body corporate established under any written law, other than a law relating to the formation and registration of companies.

(2) For the purpose of this Act, a person shall be deemed to be conducting banking business if, by advertisement, he solicits money deposits or offers to sell or place bonds, certificates, notes or other securities and uses or intends to use the funds so acquired, either in whole or in part, for advances, investments or in any other operation either authorized by law or by customary banking practice for the account and at the risk of the person placing such advertisement.

(3) Notwithstanding subsection (1), it is hereby declared that, for the purposes of this Act, the Fiji Sugar Corporation Limited shall be deemed to be a statutory corporation.

## PART II—LICENSING OF FINANCIAL INSTITUTIONS

### *Restriction on carrying on banking business without a licence*

3.—(1) No banking business shall, save as hereinafter provided, be carried on in Fiji except by a company which is a licensed financial institution.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding \$500 for each day during which the offence continues.

### *Application for licence*

4.—(1) Every company carrying on banking business in Fiji on the appointed day shall, before the expiry of 3 months from that day, apply in writing to the Reserve Bank for a licence under this section:

Provided that nothing in this section shall be deemed to prohibit the carrying on of business by any such company between the appointed day and the issue or otherwise of a licence under this subsection.

(2) Any company desirous of commencing banking business in Fiji after the appointed day shall apply to the Reserve Bank for the issue of a licence under this section.

(3) An application for a licence under this section, which, in the case of a company incorporated outside Fiji, is to be submitted by its head office, shall be made, in writing, to the Reserve Bank in such manner as the Reserve 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 3 annual balance sheets and profit and loss accounts of the company;
- (d) full particulars of the business and objectives of the applicant;
- (e) the location of the principal and any other place in Fiji where it proposes to do 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 Fiji, in addition, a sworn undertaking of its head office through a duly authorized officer supported by an appropriate resolution of its board of directors that it will, on demand of the Reserve Bank, provide, in the currency specified by the Reserve Bank, funds necessary to cover all obligations and liabilities incurred in the conduct of banking business in Fiji;
- (g) such other information as the Reserve Bank may call for.

(4) The application and every document submitted in accordance with subsection (3) shall be signed by the directors of the applicant company, or by any principal legally authorised so to do.

(5) The Reserve Bank may waive all or any of the provisions of subsection (3) in the case of a scheduled bank.

(6) Any person who knowingly or recklessly furnishes any information which is false or misleading in any material particular in connection with an application under this section shall be guilty of an offence and liable to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$1,000 or to both.

*Investigation of application for licence*

5.—(1) In considering an application for a licence, the Reserve Bank shall conduct such investigation as may be deemed necessary to ascertain the validity of the documents submitted under subsection (3) of section 4, the financial status and history of the applicant, the character and experience of its management, officers, and employees, the adequacy of its capital structure, its ability to cover all obligations and liabilities set forth in paragraph (f) of subsection (3) of section 4, the convenience and needs of the community it intends to serve, its proposed operations, and the earning prospects afforded by the area primarily to be served.

(2) Within 90 days after the receipt of an application, or where further information has been required, after the receipt of such information, the Reserve Bank may, at its discretion and subject to subsection (4), with or without conditions, grant a licence or inform the applicant that it has refused to grant a licence and shall furnish the grounds upon which such refusal is based.

(3) Notwithstanding subsection (2), in the event of Reserve Bank is of the opinion that the granting of a licence under this Act would not be in the public interest, it may refuse to issue it.

(4) No person other than a company shall be granted a licence under this Act.

(5) Any scheduled bank issued with a licence under subsection (1) of section 4 shall comply with the provisions of this Act within a period of 6 months from the appointed day.

*Licence to be in writing*

6.—(1) In granting a licence, which licence shall be in writing, the Reserve Bank may specify the terms and conditions which shall be complied with by the financial institution. In the case of a foreign financial institution, without limiting the generality of the foregoing, the Reserve Bank shall require as a condition for the commencement of operations that there be filed with it a written certificate of designation, which may be changed from time to time thereafter by the filing of a new certificate of designation, specifying the name and address of the officer, agent, or other person in Fiji upon whom any process may be served.

(2) A financial institution shall not engage in any business other than the business specified in the licence.

(3) Every director and every manager of a licenced financial institution which contravenes subsection (2) shall be guilty of an offence.

*Display of licence*

7.—(1) A copy of the licence granted under this Act shall be displayed and kept displayed conspicuously in a public part of all places of business of the financial institution in Fiji.

(2) Every director and every manager of a licensed financial institution which contravenes this section shall be guilty of an offence.

*Financial institutions subject to regulations, rules, etc.*

8. The operations of a financial institution shall be subject to any regulations, rules, orders or directions that may be made or issued from time to time, in accordance with the provisions of this Act, of the Reserve Bank of Fiji Act, or any other written law.

(Cap. 210.)

*Fee payable by a licensed financial institution*

9.—(1) Every company to which a licence is issued under this Act shall pay to the Government an annual licence fee of such amount as may be prescribed.

(2) The fee payable under this section shall be paid upon the grant of the licence and thereafter upon the anniversary of the date of grant thereof.

*2 or more financial institutions under the same ownership*

10. Where 2 or more financial institutions are under the same ownership, the Reserve Bank may, for any of the purposes of this Act, deem them to be a single financial institution in relation to their operations in Fiji.

*Persons debarred from management*

11.—(1) Any person who—

(a) has been a director of, or directly or indirectly concerned in the management of, a financial institution which has had its licence revoked in accordance with section 13 or has been wound up by a court; or

(b) has been sentenced by a court in any country to a term of imprisonment for an offence involving dishonesty; or

(c) is or becomes bankrupt or enters a scheme of arrangement or composition with his creditors,

shall not, without the written authorization of the Minister, act or continue to act as a director, manager, secretary or other employee of any financial institution.

(2) Any person who contravenes this section shall be guilty of an offence and liable to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$5,000 or to both.

*Restriction on use of title "bank"*

12.—(1) Except with the permission of the Minister, no person other than a bank shall use the word "bank" or any of its derivatives in any language in the description or title under which that person is carrying on business in Fiji; or make any such representation in any billhead, letter, paper, notice, advertisement or in any other manner whatsoever:

Provided that nothing in this subsection shall apply to an association of banks or bank employees, formed for the protection of their common interests.

(2) Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding \$500 for each day during which the offence continues.

*Revocation of licence*

13.—(1) The Reserve Bank may revoke a licence issued under this Act—

(a) for failure by the licensed financial institution concerned to comply with any directive issued by the Reserve Bank under this or any other Act; or

(b) if, in the opinion of the Reserve Bank, the licensed financial institution concerned has ceased to carry on banking business; or

(c) if the licensed financial institution concerned goes into liquidation, is wound up or is otherwise dissolved; or

(d) in the circumstances specified in section 24.

(2) Before revoking a licence under subsection (1), the Reserve Bank shall give the financial institution concerned notice, in writing, of its intention to do so, specifying therein the grounds upon which it proposes to revoke the licence and

shall afford that institution an opportunity of submitting to it a written statement of any objections it may have to the revocation and thereafter the Reserve Bank shall inform the institution of its decision in the matter.

(3) Any licensed financial institution whose licence is revoked under this section may appeal, within 21 days of the notification of the revocation, to the Supreme Court, which may confirm, vary or reverse the decision of the Reserve Bank.

*Alterations, reconstructions, arrangements and agreements*

14.—(1) When any alteration is made in the memorandum or articles of association of a licensed financial institution or in any other instrument where under that institution was incorporated, the institution shall forthwith give the Reserve Bank full particulars, in writing, of such alteration, verified by a statutory declaration made by a director of the institution.

(2) A licensed financial institution shall not, without the prior approval of the Reserve Bank—

- (a) make any arrangement or enter into any agreement for the sale or disposal of its business by amalgamation or otherwise;
- (b) make any reconstruction of its capital;
- (c) make any arrangement or enter into any agreement for the purchase or acquisition of the business of any other financial institution.

(3) If the Reserve Bank considers that—

- (a) any alteration referred to in subsection (1) alters the constitution of any licensed financial institution in a manner detrimental to its depositors; or
- (b) any transaction referred to in subsection (2) has been put into effect by any licensed financial institution without the Reserve Bank's approval,

it may exercise such of the powers conferred upon it by subsection (2) of section 24 as may appear to it to be necessary to protect the interests of the depositors of the financial institution.

*Doing business without a valid licence*

15.—(1) Whenever the Reserve Bank has reason to believe that any person is doing banking business without a valid licence granted under this Act, it may call for and examine the books, accounts and records of such person for purposes of ascertaining whether such is the case.

(2) Any person refusing to make available for examination such books, accounts and records, having been duly requested to do so by the Reserve Bank under subsection (1), shall be guilty of an offence and shall be liable to a fine not exceeding \$2,000.

(3) A person holding funds which he has obtained by doing banking business without being in possession of a valid licence granted under this Act shall repay such funds in accordance with the directions of the Reserve Bank.

(4) Nothing in subsection (3) shall relieve any person from liability to criminal proceedings arising out of any contravention of the provisions of this Act.

### PART III—CAPITAL AND RESERVES

*Minimum capital of a financial institution*

16.—(1) A licence shall not be granted to—

- (a) a credit institution whose head office is situated in Fiji, unless the

- aggregate of its capital issued and paid up in cash and outstanding and its unimpaired reserves is not less than \$250,000;
- (b) a credit institution whose head office is situated outside Fiji, unless the aggregate of its capital issued and paid up in cash and outstanding and its unimpaired reserves is not less than \$1,000,000 and there is held in Fiji a capital of at least \$250,000.
- (2) A licence shall not be granted to a bank, unless—
- (a) in the case of a bank incorporated in Fiji, the aggregate of its capital issued and paid up in cash and outstanding and its unimpaired reserves is not less than \$1,000,000;
- (b) in the case of a bank incorporated outside Fiji, the aggregate of its capital issued and paid up in cash and outstanding and its unimpaired reserves is not less than \$10,000,000 and there is held in Fiji in respect of its business in Fiji a capital of at least \$1,000,000.
- (3) The computation and form of the capital required to be held under subsections (1) and (2) shall be determined by the Reserve Bank, after consultation with the credit institution or bank concerned.

*Maintenance of reserve fund*

17.—(1) Subject to subsection (2), every licensed financial institution shall maintain a reserve fund and shall, out of its net profits of each year and before any dividend is declared, transfer to that fund a sum equal to not less than 25 per cent of such profits whenever the amount of the reserve fund is less than the issued paid up capital of such institution.

(2) Subsection (1) shall not apply to any licensed financial institution with respect to which it is proved to the satisfaction of the Reserve Bank that the aggregate reserves of such institution are adequate in respect of its business.

PART IV—RESTRICTIONS ON BUSINESS

*Restriction of dividends*

18. No licensed financial institution incorporated in Fiji shall pay any dividend on its shares or make any other transfer from profits and no licensed financial institution incorporated outside Fiji shall remit any profits outside Fiji until all its capitalized expenditure including preliminary expenses, organisation expenses, share selling commission, brokerage and amounts of losses incurred (not represented by tangible assets), has been completely written off.

*Restriction on advances, credit facilities and guarantees*

- 19.—(1) A licensed financial institution shall not, in Fiji—
- (a) make to any person, firm, corporation or company, or to any group of companies or of persons which group is under the control or influence of one and the same person, any advance or credit facility, or give any financial guarantee or incur any other liability on behalf of that person, firm, corporation, company, or group so that the total value of the advances, credit facilities, financial guarantees and other liabilities in respect of that person, firm, corporation, company or group is at any time more than 25 per cent of the sum of the issued capital and published reserves of the licensed financial institution:
- Provided that this paragraph shall not apply to transactions between banks or between the branches of a bank, or to the purchase



- of telegraphic transfers, or to 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 Fiji for exports from Fiji, or to advances made against those transfers, bills or documents;
- (b) make any advances or credit facility against the security of its own shares;
- (c) make or permit to be outstanding unsecured advances or unsecured credit facilities of an aggregate amount in excess of \$3,000 or of 1 per cent of the sum of the paid up capital and published reserves of the licensed financial institution, whichever is the greater, or give any financial guarantees in excess of that amount without security, or incur any other liability in excess of that amount without security—
- (i) to or on behalf of any one of its directors, whether the advances, facilities, guarantees or other liabilities are obtained by or on account of the director jointly or severally;
- (ii) to or on behalf of any firm, partnership or private company in which it, or any 1 or more of its directors is interested as director, partner, manager or agent, or to or on behalf of any individual, firm, partnership or private company of whom or of which any one or more of its directors is a guarantor.
- For the purpose of this sub-paragraph, a private company shall have the meaning ascribed to it by the Companies Act, and a director shall include a wife, husband, father, mother, son or daughter of a director; (Cap. 247.)
- (d) make or permit to be outstanding to its officers and employees unsecured advances or unsecured credit facilities which, in aggregate amount for any 1 officer or employee, exceed 1 year's emolument of the officer or employee.
- (2) In paragraphs (c) and (d) of subsection (1), the expression "unsecured advances or unsecured credit facilities" means advances or credit facilities made without security, or, in respect of any advance or credit facility made with security, any part thereof which at any time exceeds the market value or in the case of non-marketed securities a valuation by the Reserve Bank of the assets constituting that security.
- (3) Any financial institution in contravention of paragraph (a) of subsection (1) on the appointed day shall have 18 months from such date within which to rectify such contravention.

*Prohibited activities*

- 20.—(1) A licensed financial institution shall not, in Fiji—
- (a) engage, whether on its own account or on a commission basis, in the wholesale or retail trade, including the import or export, trade, or otherwise have a direct interest in any commercial, agricultural, industrial or other undertaking, except as permitted under paragraph (b) and except insofar as may be necessary with respect to such interest as a financial institution may acquire in the course of the satisfaction of debts due to it; but all such interests shall be disposed of at the earliest suitable opportunity;
- (b) acquire or hold to an aggregate value exceeding 25 per cent of the sum of the paid up capital and published reserves of that financial

institution, any part of the share capital of any financial, commercial, agricultural, industrial or other undertaking except such shareholding as a financial institution may acquire in the course of the satisfaction of debts due to it; but any such shareholding shall, however, be disposed of at the earliest suitable opportunity:

Provided that this paragraph shall not apply to—

- (i) any shareholding, approved in writing by the Reserve Bank, in a subsidiary financial institution or in a subsidiary company formed by a financial institution for the execution of nominee, executor or trustee functions or other functions incidental to banking business; and
  - (ii) the acquisition and disposal of shares as a trustee or nominee or the purchase and sale of shares upon the order and for the account of a customer;
- (c) purchase, acquire or lease real property, except as may be necessary for the purpose of conducting its business or housing its staff or providing amenities for its staff, having regard to any reasonable requirements for future expansion of its business or staff; but, in the event of any debt due to a financial institution which is secured upon any real or other property of the debtor becoming endangered, the financial institution may acquire such property; but any such property shall be resold at the earliest suitable opportunity.
- (2) Except with the consent, in writing, of the Reserve Bank—
- (a) no financial institution shall open a new branch in Fiji; and
  - (b) no financial institution incorporated in Fiji shall open a new branch, agency or office in any place outside Fiji.
- (3) Any financial institution which, prior to the appointed day, entered into any transaction inconsistent with the provisions of paragraphs (a), (b) or (c) of subsection (1) shall, within 6 months after the appointed day, submit a statement of those transactions to the Minister and to the Reserve Bank and shall, within 1 year from the appointed day or within such further time, which shall not exceed 18 months from the appointed day, as the Minister may determine, liquidate the said transactions and, if such action as is required under this subsection is not taken within the time specified or determined, every director and every manager of the financial institution shall be guilty of an offence and liable to a fine not exceeding \$500 for every day during which the offence continues.

*Investment of savings deposits*

21.—(1) Every financial institution shall, at intervals of not more than 12 months, inform the Reserve Bank of its policy in relation to the investment of savings deposits in medium and long-term loans.

(2) For the purposes of this section, "savings deposits" includes any term deposit in excess of 6 months.

## PART V—RETURNS AND ACCOUNTS

*Returns to be submitted to Reserve Bank*

22.—(1) Subject to subsection (3), every licensed financial institution shall, in

relation to its operations in Fiji, submit to the Reserve Bank the under mentioned statements in such form as the Reserve Bank may approve—

(a) in the case of a bank—

(i) not later than 10 working days after the last Wednesday of the month to which it relates, a monthly statement of assets and liabilities accompanied by a statement showing the amounts of all outstanding unsecured advances or unsecured credit facilities referred to in paragraphs (c) and (d) of subsection (1) of section 19 as at the close of business on the last Wednesday of that month;

(ii) not later than 10 working days after the last Wednesday of the quarter to which it relates, a quarterly return providing an analysis of customers' liabilities to the bank in respect of loans and advances, and detailing other assets of the bank at the close of business on the last Wednesday of that quarter;

(b) in the case of a credit institution, not later than 10 working days after the last Wednesday of the month to which it relates, a statement of the assets and liabilities of its offices and branches in Fiji at the close of business on the last Wednesday of the month:

Provided that, where a Wednesday is a public holiday, statements shall be as at the preceding working day;

(c) in the case of all financial institutions—

(i) a balance sheet as at the close of the financial year of the institution concerned;

(ii) a statement of profit and loss in respect of each year ending on that date; and

(iii) a statement of income and expenditure in respect of each year ending on that date, to be submitted within 3 months of the close of that financial year.

(2) Subject to subsection (3), the Reserve Bank may require a licensed financial institution to submit such further information as the Reserve Bank may deem necessary for the proper understanding of any statement or return furnished by that institution under subsection (1), and such information shall be submitted within such period and in such manner as the Reserve Bank may require.

(3) No statement, return or information shall be required under subsection (1) or (2) in respect of the affairs of any particular customer of a licensed financial institution other than to establish compliance of a licensed financial institution with the terms of paragraph (c) and (d) of subsection (1) of section 19.

(4) The period within which any statement or return is required to be submitted under this section may be extended by the Reserve Bank, where the Reserve Bank considers that there are circumstances justifying an extension.

(5) Any statement or return submitted by a licensed financial institution under paragraphs (a), (b) and (c) of subsection (1) and any information submitted by such institution under subsection (2) shall be regarded as secret, save that the Reserve Bank may—

(a) publish consolidated statements aggregating the figures in the statements or returns furnished under paragraphs (a) and (b) of subsection (1);

(b) in the case of a branch or branches of a licensed financial institution which is incorporated outside Fiji, communicate such statement or

- return or information in confidence to the supervisory authority of the country in which the head office of that licensed financial institution is established; and
- (c) publish individual statements of assets and liabilities of banks and credit institutions furnished under paragraphs (a) and (b) of subsection (1), as at the last Wednesday in June each year.

*Publication of balance sheet*

23.—(1) Not later than 4 months after the close of each financial year of each licensed financial institution, or such longer period as the Reserve Bank may permit, the financial institution shall publish, in the Gazette and in a daily newspaper published and circulating in Fiji, and exhibit thereafter in a conspicuous position in each of its offices and branches in Fiji, copies of its audited balance sheet and profit and loss account and the full and correct names of the directors of the financial institution. Copies of the same financial statements shall be forwarded to the Reserve Bank.

(2) Every director and every manager of a licensed financial institution which contravenes this section shall be guilty of an offence and liable to a fine not exceeding \$500.

## PART VI—CONTROL OVER BANKS

*Powers of Reserve Bank*

24.—(1) Where—

- (a) a licensed financial institution informs the Reserve Bank—
- (i) that it considers that it is likely to become unable to meet its obligations; or
  - (ii) that it is insolvent or about to suspend payment;
- (b) a licensed financial institution becomes unable to meet its obligations or suspends payment;
- (c) after investigation is made under section 25, the Reserve Bank is of the opinion that a licensed financial institution—
- (i) is carrying on its business in a manner detrimental to the interests of its depositors or of its creditors;
  - (ii) is insolvent or is likely to become unable to meet its obligations or is about to suspend payment;
  - (iii) has contravened or failed to comply with any of the provisions of this Act; or
  - (iv) has contravened or failed to comply with any condition attached to its licence; or
- (d) the Reserve Bank considers it in the public interest to do so, the Reserve Bank may exercise such 1 or more of the powers specified in subsection (2) as may, from time to time, appear to it to be necessary.
- (2) The powers specified in subsection (1) are as follows:—
- (a) to require the financial institution forthwith to take any action or to do any act or thing whatsoever in relation to its business as the Reserve Bank may consider necessary;
  - (b) to appoint a person to advise the financial institution in the proper conduct of its business, and to fix the remuneration to be paid by the financial institution to such person;

- (c) to assume control of, or to appoint some other person to assume control of, the business of the financial institution and to fix the remuneration to be paid by the financial institution to any person so appointed;
- (d) to present a petition to the Supreme Court for the winding up of the financial institution by the Court;
- (e) to revoke the financial institution's licence.

*Investigation of licensed financial institutions*

25.—(1) Without prejudice to section 24, the Reserve Bank may, from time to time, investigate, with or without prior notice to the licensed financial institution concerned, the books, accounts and transactions of any licensed financial institution.

(2) Without prejudice to section 24, the Reserve Bank shall investigate the books, accounts and transactions of a licensed financial institution—

(a) if it has reason to believe that the financial institution—

- (i) is carrying on its business in a manner detrimental to the interests of its depositors or of its creditors;
- (ii) is insolvent or is likely to become unable to meet its obligations or is about to suspend payment;
- (iii) has contravened or failed to comply with, or may contravene or fail to comply with, any of the provisions of this Act;
- (iv) has contravened or failed to comply with, or may contravene or fail to comply with, any condition attached to its licence;

(b) if shareholders of the financial institution (holding not less than one-third of the total number of issued shares of the institution) or depositors (holding not less than one-half of the gross amount of the total deposit liabilities in Fiji of the institution) apply to the Reserve Bank to institute an investigation and submit to the Reserve Bank such evidence as it may consider necessary to justify an investigation and furnish such security for the payment of the costs of the investigation as it may require; or

(c) if a licensed financial institution suspends payment or informs the Reserve Bank of its intention to do so.

(3) After the conclusion of the investigation, the Reserve Bank shall forward a copy of its report to the head office of the licensed financial institution concerned.

(4) Where an investigation is carried out pursuant to subsection (2), the Reserve Bank may direct that all expenses incurred by or incidental to such investigation shall be defrayed—

(a) by the licensed financial institution investigated;

(b) if the investigation was made pursuant to an application therefor submitted under paragraph (b) of that subsection, either wholly by the applicants or partly by the applicants and partly by the licensed financial institution in such proportions as may appear to the Reserve Bank to be just.

*General powers of Reserve Bank*

26.—(1) The Reserve Bank shall exercise general supervision and control over the carrying out of the provisions of this Act.

(2) The Reserve Bank may authorize any person to assist it in the exercise of its functions under this Act, either generally or in any particular case.

*Control of licensed financial institutions by Reserve Bank*

**27.—(1)** Where the Reserve Bank or some other person appointed by the Reserve Bank has assumed control of the business of a licensed financial institution pursuant to paragraph (c) of subsection (2) of section 24, the Reserve Bank or that person shall, subject to subsection (2) of this section, remain in control of and continue to carry on the business of that financial institution in the name of and on behalf of the financial institution until—

(a) the deposits of the financial institution have been repaid or, the Reserve Bank is satisfied that suitable provision has been made for their repayment;

(b) it is no longer necessary, in the opinion of the Reserve Bank, for the Reserve Bank or such other person to remain in control of the business of the financial institution.

(2) Where the Reserve Bank or some other person appointed by the Reserve Bank has assumed control of the business of a licensed financial institution pursuant to paragraph (c) of subsection (2) of section 24, the Supreme Court may, upon the application of that financial institution, if the Court is satisfied that it is no longer necessary for the protection of the depositors of that financial institution that the Reserve Bank or such other person should remain in control of that financial institution, order that the Reserve Bank or such other person shall cease to control the business of that financial institution as from a date specified in the order.

(3) Where the control of the business of any licensed financial institution has been assumed by the Reserve Bank or some other person appointed by the Reserve Bank by virtue of any of the provisions of section 24, or has been relinquished pursuant to any of the provisions of this section, the Reserve Bank shall cause to be published in the Gazette a notification of the fact of the assumption or cessation of such control, as the case may be.

*Production of books, etc.*

**28.—(1)** Subject to subsection (2), for the purpose of an investigation under section 25, a licensed financial institution shall afford the person carrying out the investigation access to its books, accounts and documents and such information and facilities as may be required to conduct the investigation, and shall produce to the person conducting the investigation such books, accounts, documents and other information he may require.

(2) So far as is consistent with the conduct of the investigation, such books, accounts and documents shall not be required to be produced at such times and such places as shall interfere with the proper conduct of the daily business of the financial institution.

(3) Every officer of a licensed financial institution which fails to comply with this section shall be guilty of an offence.

*Indemnity*

**29.** No director or officer of the Reserve Bank and no person appointed or authorized by the Reserve Bank under section 24 or 26 exercising any power or performing any duty under this Part shall incur any liability as a result of anything done in good faith in the exercise of such power or the performance of such duty.

## PART VII—AUDIT

*Approved auditor*

30.—(1) Every licensed financial institution shall appoint annually an approved auditor whose duties shall be to make to the shareholders of that institution a report upon the annual balance sheet and accounts and, in every such report, the auditor shall state whether, in his opinion, the balance sheet is full and fair and properly drawn up, whether it exhibits a true and correct statement of the financial institutions' affairs, and, in any case in which the auditor has called for explanation or information from the officers or agents of the financial institution, whether this is satisfactory.

(2) The report of an approved auditor under subsection (1) shall be tabled together with the report of the directors of the financial institution at the annual meeting of shareholders and copies of that report shall be sent to the Reserve Bank and, if any default is made in complying with the requirements of this subsection, every director and every manager of the financial institution concerned shall be guilty of an offence and liable to a fine not exceeding \$500.

(3) If a licensed financial institution fails to appoint an approved auditor under subsection (1), or, at any time, fails to fill a vacancy for such auditor, the Reserve Bank may appoint an approved auditor and shall fix the remuneration to be paid by that institution to that auditor.

(4) For the purpose of this section, an approved auditor is an auditor who holds a certificate of public practice issued by the Fiji Institute of Accountants.

(5) No person having an interest in any financial institution otherwise than as depositor, and no director, officer or agent of any financial institution shall be eligible for appointment as an approved auditor for that institution; and any person appointed as auditor to any financial institution who subsequently acquires such interest or becomes a director, officer or agent of that institution shall cease to be auditor thereof.

(6) Where, in the case of a licensed financial institution incorporated outside Fiji, the Reserve Bank is satisfied that a report upon the annual balance sheet and accounts of that institution has been made by an auditor in accordance with the law of the country in which that institution is incorporated, and a copy of the report together with the report of the directors of the institution is sent to the Reserve Bank, it may exempt the financial institution from any of the provisions of this section.

*Retention of cheques, etc., for 7 years*

31.—(1) All cheques and bank drafts in the possessions of the licensed financial institution on which they are drawn and all bills of exchange or promissory notes in the possession of a licensed financial institution and made payable at that institution shall be retained by that institution until the expiration of the period of 7 years from the date thereof in the case of documents payable on demand or from the due date thereof in the case of all other documents.

(2) This section shall apply to cheques, drafts, bills and notes received by a financial institution either before or after the appointed day.

(3) No document to which this section refers shall be destroyed under the implied authority thereof at any time after a demand for the delivery of the document has been made to the financial institution by the person entitled thereto.

(4) It shall be sufficient compliance with the duty to retain imposed by subsection (1) if a copy of the document has been made by the financial institution

on microfilm, microfiche, tape, disc, or electronic or photographic storage media, and is retained by the financial institution for the same period as that document is required to be retained pursuant to subsection (1).

(5) Notwithstanding subsection (4), no document shall be destroyed under the implied authority thereof at any time within 2 years after the date thereof in the case of documents payable on demand or from the due date thereof in the case of all other documents.

(6) Notwithstanding the provisions of any other written law, a copy of a document made pursuant to this section shall be admissible in evidence in any legal proceedings to the same extent as the document of which it is a copy would have been admissible.

## PART VIII—MISCELLANEOUS

### *Unclaimed moneys*

32.—(1) Every licensed financial institution shall, within 60 days after the end of each financial year, publish in the Gazette and in a daily newspaper published and circulating in Fiji a statement showing all accounts payable by the financial institution in Fiji in respect of which during a period of 10 years, or any longer period as the case may be, no transaction has taken place and no statement of account has been requested or acknowledged by the creditor.

(2) Every statement published under subsection (1) shall require the person to whom the account is payable, or his legal personal representative, as the case may be, to submit a claim to the financial institution within 3 months from the date of publication in the Gazette.

(3) When any of the sums included in the statement published under subsection (1) remains unclaimed for a period of 3 months after publication of the statement in the Gazette, such sums, after deduction of the costs of publication, shall be paid to the Reserve Bank and shall be credited to the general revenue of the Government and paid into the Consolidated Fund.

(4) Subject to subsection (5), a licensed financial institution is, upon payment to the Reserve Bank of any sums due under this section, discharged from further liability in respect of that amount.

(5) Where unclaimed moneys have been paid to the Reserve Bank under this section and the Minister is satisfied that, but for subsection (4), a person would be paid those unclaimed moneys by the licensed financial institution (or, if that financial institution is no longer carrying on banking business, by a licensed financial institution to which the business of the first mentioned financial institution has been sold or disposed of), those unclaimed moneys shall be paid to that financial institution and the financial institution shall thereupon pay those moneys to that person.

### *Application to National Bank of Fiji*

33. Notwithstanding anything to the contrary contained in the National Bank of Fiji Act, the provisions of this Act apply to the National Bank of Fiji and that Bank is deemed to be licensed under section 4 of this Act: (Cap. 213.)

Provided that—

- (a) that Bank may, in the national interest and with the approval of the Minister, exceed the limit on advances, credit facilities, financial guarantees and other liabilities provided for in terms of paragraph (a) of subsection (1) of section 19 of this Act; and



- (b) section 30 of this Act shall not apply to that Bank, and in the event of any contradiction or inconsistency between this Act and Part VI of the National Bank of Fiji Act the provisions of that Part shall prevail.  
(Amended by Act 4 of 1985.)

*Application to Fiji Development Bank*

34. The Minister may, after consultation with the Fiji Development Bank, by order, apply any section or subsection of this Act to that Bank, if he is satisfied, upon a finding by the Reserve Bank, that it is engaging as a substantial part of its business in the acceptance of deposits of money from the public.

*Non-application to unit trusts, etc.*

35.—(1) Subject to the provisions of subsection (2), this Act shall not apply to—

(a) a unit trust within the meaning of the Unit Trusts Act; (Cap. 228.)

(b) a credit union within the meaning of the Credit Unions Act;

(Cap. 251.)

(c) a co-operative society within the meaning of the Co-operative Societies Act.

(Cap. 250.)

(2) Notwithstanding the provisions of subsection (1), the Minister may, by order, apply any section or subsection of this Act to a credit union or a co-operative society, if he is satisfied, upon a finding by the Reserve Bank, that a credit union or co-operative society is accepting deposits or granting loans in excess of \$2,000,000.

*Disclosure of acquired knowledge*

36.—(1) No person who has acquired knowledge in his capacity as director, manager, officer, employee or agent of any licensed financial institution, or when exercising any function or performing any duty under section 24 or 26, shall disclose to any person any information in respect to a customer of that financial institution except—

(a) with the written authorization of the customer or of his legal personal representative; or

(b) for the purpose of the performance of his duties under this Act; or

(c) in the course of any prosecution for an offence; or

(d) in the course of any winding up of the financial institution by the Supreme Court; or

(e) when lawfully required to do so under the provisions of any written law.

(2) Nothing in subsection (1) shall prevent a licensed financial institution from providing to a person, upon a legitimate business request, a general credit rating, a copy of which shall be provided to the subject of the credit rating upon request.

(3) Except in the performance of his duties under 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 any clients of such institution that may come to his knowledge in the performance of his duties, and he shall, before entering upon his duties, sign a declaration pledging himself to observe strict secrecy in respect of such matters and not to reveal such matters except as otherwise permitted under subsection (1).

(4) Any person who contravenes subsection (1) or subsection (3) shall be guilty of an offence and liable to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$2,000 or to both.

*General penalty*

37. Any person convicted of an offence under this Act for which no special penalty is provided shall be liable to a fine not exceeding \$200.

*Defence where director, manager or officer prosecuted*

38. Any person who is prosecuted in respect of any offence under section 6, 7, 23, 28 or 30 shall have a good defence, if he proves that the offence was committed without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence as he ought to have exercised having regard to his position in the licensed financial institution in respect of which the offence was committed.

*Consent of Director of Public Prosecutions*

39. No prosecution for any offence under this Act shall be instituted without the consent in writing of the Director of Public Prosecutions.

*Winding-up of licensed financial institutions*

40. Notwithstanding the provisions of any other written law, a licensed financial institution may not be wound up voluntarily without the prior written authority of the Reserve Bank.

*Operation of Companies Act*

41. A licensed financial institution shall be subject to the provisions of the Companies Act, as well as to the provisions of this Act, save that, where there is any conflict or inconsistency between the provisions of this Act and the provisions of the Companies Act, the provisions of this Act shall prevail. (Cap. 247.)

*Regulations*

42. The Reserve Bank may, with the approval of the Minister, make regulations—

- (a) prescribing any matter or thing which may be or is required by this Act to be prescribed;
- (b) generally for the purpose of giving effect to the provisions of this Act.

*Repeal*

43. The Banking Act (Cap. 182 of the 1967 Revised Edition of the Laws) is repealed.

SCHEDULE  
(Section 4)

1. (a) Australia and New Zealand Banking Group Limited.  
(b) Australia and New Zealand Savings Bank Limited.
2. Bank of Baroda.
3. (a) Westpac Banking Corporation.  
(b) Westpac Savings Bank Limited.
4. Bank of New Zealand.
5. Barclays Bank International Limited.

*Controlled by Ministry of Finance*

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CHAPTER 212

BANKING

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SECTION 9—BANKING (LICENCE FEES) REGULATIONS

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TABLE OF PROVISIONS

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REGULATION

1. Short title
  2. Amount of annual licence fee
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*Legal Notice No. 113 of 1983*

*Short title*

1. These Regulations may be cited as the Banking (Licence Fees) Regulations.

*Amount of annual licence fee*

2. The prescribed amount for the purposes of subsection (1) of section 9 of the Act is \$5,000.

*Controlled by Ministry of Finance*