

## **BANKING ORDINANCE, 2003**

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**ST HELENA****A BILL  
FOR  
AN ORDINANCE  
to regulate the business of banking**

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Enacted by the Governor of St Helena and its Dependencies with the advice and consent of the Legislative Council of St Helena.

**Short title and commencement**

1. The Ordinance may be cited as the Banking Ordinance, 2003 and shall come into force on such day as the Governor may appoint by notice in the *Gazette*.

**Interpretation**

2. (1) In this Ordinance, unless the context otherwise requires -

“bank” or “credit institution” means any person carrying on the business of banking;

“Banking Directive” means a Directive issued by a Competent Authority;

“Banking Supervisor” means a person appointed by the Governor to be the Banking Supervisor for the purposes of this Ordinance;

“body corporate” means a body of persons having a legal personality distinct from that of its members;

“branch” means premises of a bank, other than its head office, from which the business of banking is undertaken;

“business of banking” means –

- (a) the business of a person who as set out in subsection (2) of this section accepts deposits or holds himself out as accepting deposits of money from the public for the purpose of employing such money in whole or in part by lending to others or otherwise investing for the account and at the risk of the person accepting such money; or

(b) any business defined by the Governor as constituting the business of banking by an order published in the Gazette;

“company” means a limited liability company constituted in St Helena in compliance with any law which may from time to time be in force, or a company constituted outside St Helena under the laws of any country provided that such company, if not constituted in St Helena, has reregistered in St Helena and has complied with the provisions of any law which may from time to time be in force in St Helena relating thereto;

“Competent Authority” means the body referred to in subsection (2) of section 3 of this Ordinance;

“connected persons” means persons defined as such in a Large Exposures Directive;

“control” is the power to determine the financial and operating policies of a body corporate;

“controller” is a person who, alone or together with others, exercises control in relation to a body corporate;

“Court” means a court in St Helena;

“credit facility” means the lending of a sum of money by way of an advance, overdraft or loan or any other line of credit including discounting of bills of exchange and promissory notes, guarantees, indemnities, acceptances and bills of exchange endorsed 'pour aval';

“criminal activity” means a crime specified in Article 3 (1) (a) of the Vienna Convention and any other criminal activity designated as such by any law for the time being in force in St.Helena;

“deposit” means a sum of money paid-in on terms under which it will be repaid, with or without interest or a premium and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it;

“director” includes an individual occupying the position of director of a company, by whatever name he may be called, empowered to carry out substantially the same functions in relation to the direction of the company as those carried out by a director and in respect of a company registered or incorporated outside St Helena includes a member of a local board or agent or representative of that company;

“equity share” means a nominal share in a company when the shareholding entitles the shareholder to a right to vote, to profits available to shareholders for distribution and to assets available for distribution on a winding up of the company, and “equity shareholding” shall be construed accordingly;

“Governor” means the Governor of St Helena and its dependencies;

- “holding company” has the same meaning as is assigned to the term by the UK Companies Act 1985;
- “Large Exposures Directive” means a Directive as may be issued by the Competent Authority to regulate large exposures;
- “licence”, in relation to the business of banking, means a licence granted under this Ordinance;
- “manager” means a person who is placed in charge of the business or part of the business of a company or otherwise who has a substantial supervisory role with the power to make policy and executive decisions on behalf of the company;
- “officer”, in relation to a company, includes a director, partner, manager or company secretary or any person effectively acting in such capacity whether formally appointed or not;
- “Own Funds Directive” means such Directive as may be issued by a Competent Authority to regulate “own funds”;
- “parent company” has the same meaning as is assigned to the term by the UK Companies Act 1985;
- “person” includes a person or body of persons whether a body corporate or not;
- “Property” means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interests in such assets;
- “qualifying shareholding” means a direct or indirect equity shareholding of at least 10 per cent of the equity shares of a company; provided that where the rights held as to the percentage of votes, to profits available for distribution and to rights to assets available for distribution on a winding up in respect of such equity shares are not identical, the highest percentage figure shall be deemed to be the percentage of equity shares held, and “qualifying shareholder” shall be construed accordingly;
- “reconstruction” has the same meaning as is assigned to the term by the UK Companies Act 1985;
- “representative office” means, in relation to a body corporate, unincorporated body or association formed in accordance with or existing under the laws of a foreign country, premises in St Helena from which the business of banking is promoted or assisted in any way, and in relation to a body corporate, unincorporated body or association formed in accordance with and existing under the laws of St Helena, premises outside St Helena from which the business of banking is promoted or assisted in any way;
- “significant shareholding” means a direct or indirect equity shareholding of at least 5 per cent but not more than 10 per cent of the equity shares of a company; provided that where the rights held as to the

percentage of votes, to profits available for distribution and to rights to assets available for distribution of a winding up in respect of such equity shares are not identical, the highest percentage figure shall be deemed to be the percentage of equity shares held, and “significant shareholder” shall be construed accordingly;

“subsidiary” has the same meaning as is assigned to the term “subsidiary undertaking” by the UK Companies Act, 1985.

(2) A person shall be deemed to be accepting deposits of money if, whether as principal or as agent, he accepts from the public deposits of money as a regular feature of his business, or if, whether as principal or as agent, he advertises or solicits for such deposits, without regard to the terms and conditions under which such deposits are solicited or received and without regard to whether certificates or other instruments are issued in respect of any such deposits:

Provided that the acceptance of money against any issue of debentures or debenture stock or other instruments creating or acknowledging indebtedness offered to the public in accordance with any law in force in St Helena shall not of itself be deemed to constitute acceptance of deposits of money for the purposes of this Ordinance.

(3) The Governor may by an order published in the Gazette vary the percentage holdings which constitute significant shareholdings and qualifying shareholdings for the purposes of this Ordinance.

### **Powers and duties of the Governor and Banking Supervisor**

3. (1) It shall be the duty of the Banking Supervisor to exercise the powers conferred upon him by this Ordinance to ensure compliance by banks with the provisions of this Ordinance and the conditions of bank licences.

(2) The Governor shall by Order in the *Gazette* appoint a body to be the Competent Authority for the purposes of this Ordinance and persons to be members of that body, under the Chairmanship of the Banking Supervisor to carry out the functions of the Competent Authority under this Ordinance and to perform such other functions as the Governor may consider appropriate in relation to the operation of this Ordinance. Such persons shall be appointed for such period and on such terms as the Governor may determine and the Governor shall have the power at any time to prolong, renew or terminate such appointment by Order in the *Gazette*.

(3) The Governor in Council in consultation with the competent authority may make regulations as may be required for carrying into effect

any of the provisions of this Ordinance and may amend or revoke such regulations.

(4) The Governor in Council may, after consultation with the Competent Authority, if it deems it expedient in the public interest so to do, by Order published in the *Gazette* declare any day or days to be a bank holiday or holidays.

#### **Powers and duties of the Competent Authority .**

4. (1) It shall be the duty of the Competent Authority to carry out the functions prescribed by this Ordinance and to ensure that banks carrying on business in St Helena and its dependencies comply with this Ordinance, Regulations and Directives issued under this Ordinance and with the conditions of their licences.

(2) The Competent Authority may make Banking Directives as may be required for carrying into effect any of the provisions of this Ordinance. The Competent Authority may amend or revoke such Banking Directives.

(3) Banking Directives and any amendment or revocation thereof shall be officially communicated to banks and the Competent Authority shall make copies thereof available to the public.

(4) Banking Directives imposing an obligation or requirement on the public shall be made by regulations in accordance with subsection (3) of section 3 of this Ordinance.

#### **Licences for banking activities.**

5. (1) Subject to the proviso set out below, no business of banking shall be transacted in or from St Helena or its dependencies except by a company which is in possession of a licence granted under this Ordinance by the Competent Authority in accordance with the policy established by the Governor in Council from time to time.

Provided however that the company qualification shall not apply to an institution that is or was created under the provisions of the Savings Bank Ordinance Cap, 111.

(2) In the event of reasonable doubt as to whether the business of banking is or is not being transacted in or from St Helena and its dependencies by any person, the matter shall be conclusively determined by the Competent Authority.

(3) The granting of a licence shall be subject to such annual fee as the Competent Authority may from time to time determine.

(4) Any person conducting any form of banking business in St Helena prior to the commencement of this Ordinance shall either apply for a licence under this Ordinance or cease to conduct such business within 3 months of the coming into force of this Ordinance.

### **Application for a licence**

6. (1) Any company desirous of commencing the business of banking in St Helena shall, before commencing any such business, apply in writing to the Competent Authority for a licence under this Ordinance.

(2) All applications for a licence shall be in such form and accompanied by such information as shall be prescribed from time to time by Banking Directive and an application may only be withdrawn by written notice to the Competent Authority at a time before it has been granted or refused.

(3) All applications for a licence shall be accompanied by a business plan which specifies the range of services to be provided by the bank. If a licence is granted this range of services cannot be materially varied without the express written consent of the Competent Authority

(4) The Competent Authority shall have the power to require any person to provide such information as it shall deem necessary for the purposes of determining an application for a licence or for the purposes of determining whether to restrict or revoke a licence.

### **Issuing of a licence.**

7. (1) No company shall be granted a licence unless—

- (a) its own funds, whether in St Helenian pounds or in another currency acceptable to the Competent Authority, is not less than the value of two hundred and fifty thousand pounds or such other amount as may be determined by the Governor in Council;
- (b) there are at least two persons at least one of whom is resident in St Helena who will effectively direct the business of the bank in St Helena or its dependencies;
- (c) the applicant is a fit and proper person to carry on a banking business;
- (d) all qualifying shareholders, controllers and all persons who will effectively direct the business of the bank are fit and proper persons to ensure its prudent management.
- (e) the Competent Authority is satisfied that the mind and management and principle books and records of the banking business will be in St Helena;

(f) any other conditions determined by the Competent Authority can be complied with in full.

(2) The Competent Authority shall determine each application for a licence within six months of receipt of the application or, if the application does not comply with subsection (2) of section 6 of this Ordinance or additional information is required, within six months of compliance with the said subsection or the furnishing of the information as the case may be, whichever be the later. In any event an application shall be determined within twelve months of its receipt.

(3) The Competent Authority may determine an application by doing any of the following:

- (a) granting a licence without conditions;
- (b) granting a licence subject to such conditions as it may deem appropriate;
- (c) refusing to grant a licence.

(5) Where the Competent Authority for any reason fails to determine an application for a licence within the time prescribed under subsection (3) of this section, such fact shall be deemed to constitute a refusal to grant a licence.

### **Representative offices of non-St Helenian banks.**

**8. (1)** A company incorporated outside St Helena which carries on the business of banking shall not establish a representative office in St Helena or its dependencies unless it has given not less than two months' notice to the Competent Authority that it proposes to establish such an office. Such notice shall—

- (a) specify the name it is proposed to use in relation to the activities of the representative office and the address of such office;
- (b) be accompanied by a certified copy of the authorisation of the company to conduct the business of banking in a country other than St Helena.

(2) A company mentioned in subsection (1) of this section having a representative office in St Helena or its dependencies shall likewise notify the Competent Authority—

- (a) at least two months in advance of any proposed change in name of the representative office;



(b) of any change in its licence to conduct the business of banking in a country other than St Helena, no more than two months after such change.

(3) The Competent Authority may, at any time, serve on a representative office in St Helena a notice objecting to the name or the proposed name of such office.

(4) The Competent Authority shall not give a notice pursuant to subsection (3) of this section unless it considers that the name or proposed name is misleading to the public or otherwise undesirable, and upon receipt of such notice, the representative office shall not use the name to which the Competent Authority has objected in relation to activities conducted in St Helena.

(5) A representative office to which a notice is given under subsection (3) of this section may, within a period of three weeks beginning with the day it receives the notice, apply to the Governor in Council to set aside the objection, and upon such application, the Governor in Council may set aside the objection or confirm it (but without prejudice to its operation before that time).

(6) The Competent Authority may, by notice in writing, require any company having a representative office in St Helena or which has given notice pursuant to subsection (1) of this section, to provide the Competent Authority with such information or documents as the Competent Authority may reasonably require, and the said company shall comply with such notice in the period as is reasonably specified by the notice.

(7) A representative office in St Helena shall supply the Competent Authority with a copy of any document which it is required to provide to the Registrar of Companies no later than the time by which such document must be provided to the said Registrar.

(8) The Governor in Council may, after consultation with the Competent Authority, provide by order that sections 20, 21 and 24 of this Ordinance shall apply to representative offices in St Helena as they apply to banks.

(9) The Governor in Council may, after consultation with the Competent Authority, by regulations impose on companies which have established or which propose to establish representative offices in St Helena, such requirements as the Governor in Council considers appropriate in connection with those offices and the activities conducted from them.

(10) The Competent Authority may, within the two months referred to in subsection (1), order a company referred to in the said subsection (1)

not to establish a representative office in St Helena and at any time thereafter order the closure of any representative office so established.

(11) Where a company mentioned in subsection (1) of this section has been ordered by the Competent Authority to close any representative office in St Helena, an appeal from that order shall lie to the Governor in Council in accordance with section 10 of this Ordinance.

### **Restriction and revocation of a licence.**

9. (1) A licence shall automatically cease to have any effect if the holder—

- (a) renounces the licence; or
- (b) does not commence business pursuant to the licence within twelve months of its issue, or within such other period of time as may be specified in the licence; or
- (c) is declared bankrupt or goes into liquidation or makes a composition with its creditors or is otherwise dissolved; or
- (d) has ceased to operate as a result of a merger with another bank; or
- (e) is a branch of a bank incorporated outside St Helena and the competent authorities in the country of incorporation withdraw the authorisation to the bank.

(2) The Competent Authority may impose restrictions on a licence or may revoke a licence in any of the following circumstances—

- (a) if any document or information accompanying an application for a licence or any information given in connection therewith is false in any material particular or if the holder of a licence conceals from, or fails to notify to the Competent Authority any document or information or change therein which it was its duty to reveal or notify under this Ordinance; or
- (b) if the holder ceases to carry on the business of banking in St Helena for more than 6 months; or
- (c) if the holder fails to comply with any of the provisions of this Ordinance or with the conditions under which the licence is granted; or
- (d) if the holder no longer possesses sufficient own funds; or
- (e) if the holder is likely to become unable to meet its obligations or can no longer be relied upon to fulfill its obligations towards depositors and creditors; or
- (f) if the holder has insufficient assets to cover its liabilities; or

- (g) if the holder has suspended payment or is about to suspend payment; or
- (h) if the Competent Authority considers that, by reason of the manner in which the bank is conducting or proposes to conduct its affairs, or for any other reason, the interests of the depositors of the bank are threatened.

(3) Restrictions imposed by the Competent Authority pursuant to subsection (2) of this section shall be such restrictions as the Competent Authority shall consider appropriate for the proper compliance by the bank with the provisions of this Ordinance and the conditions, if any, of its licence and for the protection of depositors and may include (without prejudice to the generality hereof):

- (a) a recommendation regarding the removal of any officer of the bank;
- (b) the requirement for any person who directly or indirectly possesses a qualifying shareholding in the bank to divest himself of all or part of that holding;
- (c) the requirement for the bank to take or refrain from taking any action;
- (d) the requirement that the bank be prohibited from undertaking any transaction or transactions or any class of business or be permitted to undertake any transaction or transactions or any class of business only upon such terms as the Competent Authority may prescribe.

(4) The Competent Authority shall have the power to vary or remove any restrictions imposed under this section.

(5) Where the Competent Authority intends to restrict or revoke a licence or to vary any restriction, it shall serve written notice of its intention on the bank; such notice shall specify the grounds upon which the Competent Authority intends to take action and shall specify a period in which the bank shall be entitled to make representations to the Competent Authority as to why such action should not be taken. Unless the Competent Authority decides that the matter is urgent, it shall not impose or vary any restriction or revoke a licence before the expiry of such period.

(6) A licence granted to a branch of a bank incorporated outside St Helena may only be revoked after consultation with the competent authorities of the country of incorporation, unless the Competent Authority decides that the matter is urgent or that there are circumstances which make such prior consultation inappropriate.

(7) Upon the restriction or revocation of a licence of a bank incorporated in St Helena, the Competent Authority shall inform the

competent authorities of the country of any foreign states in which the bank or its subsidiaries are carrying on the business of banking.

### **Appeals.**

**10. (1)** Any person who is aggrieved by a decision of the Competent Authority—

- (a) to impose any condition on the grant of a licence;
- (b) to impose or vary any restriction;
- (c) to revoke a licence;
- (d) to issue a notice under subsection (3) of section 8 of this Ordinance;
- (e) to close a representative office;
- (f) to issue any notice or make any order under section 13 of this Ordinance;
- (g) to make any order under section 14 of this Ordinance;

may lodge an appeal in writing against the decision of the Competent Authority within 30 days of being notified of the decision.

**(2)** In the first instance the appeal will be lodged with the Chairman of the Competent Authority who will deal with any appeal with the utmost urgency.

**(3)** An appeal against a decision of the Competent Authority shall not suspend the operation of that decision except in the case of an appeal from a decision as is mentioned in paragraph (d) of subsection (1)(d) of this section.

**(4)** Upon the hearing of an appeal, the Competent Authority shall have the power:

- (a) to confirm, reverse or vary its original decision and to take any action within its powers under this Ordinance to implement the new decision
- (b) to require the attendance of any witness and to require the production of any document or other information;
- (c) to order the payment of costs and expenses by any party to the appeal.

**(5)** If the Competent Authority confirms its original decision in accordance with Section 10(3)(a) the aggrieved person will have a further right of appeal to the Governor in Council, but such right of appeal will be limited to the following grounds:

- (a) the Competent Authority has, in its decision wrongly applied any of the provisions of this Ordinance; or
- (b) the decision of the Competent Authority constitutes an abuse of discretion or is manifestly unfair;

Provided that the discretion of the Competent Authority may not, so long as it has been exercised properly, be queried by the Governor in Council.

(6) The Governor in Council may make regulations governing the procedure for bringing and conducting appeals under this section.

(7) There shall be an appeal on a question of law only from a decision of the Governor in Council to the St. Helena Court of Appeal.

### **Opening of branches.**

11. (1) A bank shall inform the Competent Authority in writing before opening a new branch, agency or office in St Helena or its dependencies.

(2) Unless with the written consent of the Competent Authority, no bank incorporated in St Helena may open a new branch, agency or office or set up or acquire any subsidiary in any place outside St Helena.

### **Use of the word "bank".**

12. (1) Subject to subsections (2) and (3) of this section, and save with the written permission of the Competent Authority, no person other than a bank with a current licence may use the word "bank" or any of its derivatives or other words as may indicate or purport to indicate the carrying on of the business of banking in any language in the description or title under which such person is carrying on business, or make any such use on any letter paper, in any notice or advertisement, or in any other similar manner.

(2) A bank incorporated outside St Helena may use the name used in its country of incorporation save that, where there is a risk that the use of such a name may be misleading, such bank shall add such explanatory particulars to its name as the Competent Authority shall direct.

(3) Every bank shall use as part of its description or title the word "bank" or one or more of its derivatives.

### **Participation in a Bank**

13. (1) Notwithstanding anything contained in any other law, the consent of the Competent Authority shall be required before any person may lawfully—

- (a) acquire a significant shareholding or a qualifying shareholding in a bank;
- (b) increase an existing holding which is not a significant shareholding or a qualifying shareholding so as to cause it to become a significant shareholding or a qualifying shareholding in a bank;
- (c) increase a significant shareholding in a bank so as to cause it to become a qualifying shareholding;
- (d) increase a qualifying shareholding so as to cause it to equal or exceed, twenty per centum or thirty-three per centum or fifty per centum or to cause the bank to become that person's subsidiary;
- (e) reduce a qualifying shareholding so as to cause it to fall below fifty per centum or thirty-three per centum or twenty per centum or to cause the bank to cease to be that person's subsidiary;
- (f) reduce a qualifying shareholding or a significant shareholding so as to cause it to cease to be a qualifying shareholding or significant shareholding;
- (g) divest himself of a qualifying shareholding or a significant shareholding.

(2) The Governor in Council may by an order published in the Gazette vary or remove any of the percentages mentioned in paragraphs (d) and (e) of subsection (1) of this section.

(3) It shall be the duty of a bank and of the directors thereof to notify the Competent Authority forthwith upon becoming aware that any person intends to take any of the actions set out in subsection (1) of this section.

(4) Notwithstanding anything contained in any other law, the consent of the Competent Authority shall be required before any bank may lawfully—

- (a) sell or dispose of its business or any significant part thereof;
- (b) merge with any other company, whether a bank or otherwise;
- (c) undergo any re-construction;
- (d) increase its nominal or issued share capital or effect any material change in voting rights.

(5) It shall be the duty of all directors and qualifying shareholders of a bank to notify the Competent Authority forthwith upon becoming aware that the bank intends to take any of the actions set out in subsection (5) of this section.

(6) Any person intending to take any of the actions set out in subsection (1) of this section and any bank intending to take any of the actions set out in subsection (5) of this section shall notify the Competent Authority in writing and the Competent Authority may issue a Banking Directive regulating the form in which such notification shall take place and the information required to be furnished to the Competent Authority with such notification.

(7) Within two months of receipt of such notification or receipt of such information as the Competent Authority may lawfully require, whichever be the later, the Competent Authority shall issue a notice—

- (a) granting unconditional consent to the taking of the action; or
- (b) granting consent to the taking of the action subject to such conditions as the Competent Authority may deem appropriate; or
- (c) refusing consent to the taking of the action;

Provided that where the Competent Authority fails for any reason to issue such a notice within the prescribed period, this fact shall be construed as if a refusal notice had been issued in terms of paragraph (c) of this subsection.

(8) If any person or any bank takes or intends to take any action set out in subsections (1) and (5) of this section without obtaining the consent of the Competent Authority, then, without prejudice to any other penalty which may be imposed under this Ordinance, the Competent Authority shall have the power to make an order—

- (a) restraining the person or bank from taking the action;
- (b) declaring the action to be void and of no effect;
- (c) requiring the person or bank to take such steps as may be necessary to restore the position existing immediately before the action was taken;
- (d) restraining the person or bank from exercising any rights which the action would, if lawful, have conferred upon them, including the right to receive any payment;
- (e) restraining the person or bank from taking any similar action or any other action within the categories set out in subsections (1) and (5) of this section.

#### **Control of a bank.**

14. (1) Any person who is a controller of a bank shall be a fit and proper person to exercise such control.

(2) A bank shall forthwith notify to the Competent Authority—

- (a) full particulars of all persons who are controllers of the bank but are neither significant shareholders nor qualifying shareholders of the bank;
- (b) full particulars of any person who is proposed to become a controller of the bank without being or becoming a significant shareholder or qualifying shareholder;
- (c) full particulars of any person who is proposed to cease to be a controller of the bank.

(3) A bank shall furnish the Competent Authority with any further information it may require concerning any existing or proposed controller.

(4) If the Competent Authority is of the opinion that any person who is or is proposed to become a controller of a bank without being or becoming a significant shareholder or a qualifying shareholder is not a suitable person to be a controller, the Competent Authority may make an order requiring such a person to cease to be a controller or restraining such a person from becoming a controller.

### **Prohibited Transactions.**

15. (1) A bank shall not—

- (a) grant any credit facility against the security of its own shares or against any other securities issued by the bank itself or against any shares or any other securities of another body corporate in which the bank has control;
- (b) grant or permit to be outstanding, unsecured credit facilities which in the aggregate exceed the sum of one thousand St Helenian pounds or its equivalent in any other currency—
  - (i) to any one of its directors or their spouses whether jointly or severally as well as with third parties;
  - (ii) to any person in whom or in which the bank or any one or more of its directors is interested as a director, partner, manager, agent or member, or to any person of whom or of which any one or more of the bank's directors is a guarantor;
  - (iii) to any body of persons in which the bank or any one or more of its directors jointly or severally maintains control, not being itself a bank or the parent undertaking of the bank, a subsidiary of this parent undertaking or a subsidiary of the bank;

Unless the bank can demonstrate to the Competent Authority that such facilities are in the ordinary course of its banking business.



- (c) grant to or permit to be outstanding in respect of any officer, other than a director, or any employee, unsecured credit facilities which in the aggregate exceed twelve months' emolument of such officer or employee;
- (d) acquire or hold any part of the share capital of, or otherwise have a direct or indirect interest in any one bank or other company or group of connected persons, the original cost value of which exceeds fifteen per centum of the bank's own funds and such holdings shall not exceed in the aggregate one hundred per centum of its own funds;

Provided that:

- (i) a bank's subsidiaries considered as a whole shall not constitute a group of connected persons for the purpose of this section;
  - (ii) where the share capital acquired is that of a subsidiary bank the limit of fifteen per centum laid down in this paragraph shall be twenty-five per centum of the bank's own funds;
  - (iii) shareholding in companies other than those falling under (ii) above shall not exceed in the aggregate sixty per centum of the bank's own funds;
  - (iv) where the said percentages are exceeded as a result of the acquisition of shares in satisfaction of debts due to the bank, it shall have a maximum of twelve months or such longer period as may be determined by the Competent Authority within which to comply with the provisions of this paragraph;
  - (v) the Competent Authority may allow a bank to exceed temporarily the limits laid down in this paragraph whenever, in the opinion of the Competent Authority, such excess is the result of an unavoidable reduction of the own funds of the bank;
  - (vi) where the bank is a parent or subsidiary undertaking compliance with the limits laid down in this paragraph shall be monitored on a consolidated basis;
- (e) without the consent of the Competent Authority acquire or hold shares in another company which is not a bank, which exceeds five per centum of that company's issued share capital;
  - (f) purchase, acquire or otherwise hold any immovable property or any right thereon except as may be reasonably necessary for the purpose of conducting its business or of housing or providing amenities for its staff;

Provided that this paragraph shall not prevent a bank—

- (i) from letting part of any building which is used for the purpose of conducting its business; or
- (ii) from securing a debt on any immovable property and, in the event of default in payment of such debt, from acquiring or holding such property for realisation within twelve months, or any longer period as may be determined by the Competent Authority;
- (iii) in other instances from acquiring immovable property with the prior approval of the Competent Authority the original cost of which property shall not in the aggregate exceed five per centum of the bank's own funds.

(2) In paragraphs (b) and (c) of subsection (1) of this section the expression "unsecured credit facilities" shall mean credit facilities made without security or, in respect of any credit facility made with security, any part thereof which at any time exceeds the market value of the assets constituting that security, or where the Competent Authority is satisfied that there is no established market value, on the basis of a valuation approved by the Competent Authority itself.

### **Large Exposures.**

**16.** The Competent Authority shall issue a Banking Directive as it shall consider appropriate for the regulation of large exposures.

### **Own funds and reserves.**

**17. (1)** A bank shall—

- (a) maintain a ratio of own funds to risk-weighted assets and off balance sheet items defined in and calculated according to the provisions of a Banking Directive;
- (b) notify the ratio to the Competent Authority at such times and in such manner as shall be prescribed by a Banking Directive;
- (c) notify the Competent Authority forthwith upon the ratio falling below the level required by paragraph (a) of this subsection whereupon the Competent Authority shall require the bank to take necessary measures to restore the ratio to the required level within such period as the Competent Authority may determine.

(2) Reserve funds created under any former legislation, are abolished. Such funds are to be allocated to such other internal reserves forming part of own funds as each bank may deem appropriate.

(3) Every bank shall maintain adequate provisions for bad and doubtful debts.

### **Liquidity.**

18. The Competent Authority shall issue a Banking Directive specifying what shall constitute the specified assets and the deposit liabilities of a bank and laying down the minimum holding of specified assets as a proportion of deposit liabilities which a bank must hold.

### **Information to be submitted to the Competent Authority.**

19. (1) A bank shall submit to the Competent Authority—

- (a) periodic statements showing its assets and liabilities and profit and loss position on an individual and, where appropriate, on a consolidated basis including analysis thereof;
- (b) such information as is required by the Competent Authority for statistical purposes;
- (c) such information as the Competent Authority may require to satisfy itself that the bank is complying with the provisions of this Ordinance and the Banking Directives;
- (d) such separate statements relating to its offices and branches outside St Helena in such form and at such times as the Competent Authority may require in the discharge of its duties.

(2) The provisions of this section shall also apply to all branches, agencies or offices in St Helena of a bank which is not incorporated in St Helena.

(3) All statements required under subsections (1) and (2) of this section shall be submitted in such form and at such periods as shall be prescribed by Banking Directive.

(4) At least once per annum the Competent Authority shall require the bank's Auditors to provide them with a report as to the completeness and accuracy of one of the periodic statements provided in accordance with this section.

(5) All statements and other information furnished by any bank under subsections (1) and (2) of this section shall be regarded as secret and confidential except as between that bank and the Competent Authority—

- (a) the Competent Authority shall furnish such information under this section as may be required by the Governor and

shall inform the Governor if at any time in its opinion there is concern regarding the state of affairs of that bank;

- (b) the Competent Authority shall prepare and publish consolidated statements aggregating the statistical information furnished under this section no less frequently than twice a year.

### **Supervision of banks.**

**20. (1)** Every bank shall submit to the Competent Authority any information which it may require in the exercise of its duties under this Ordinance, and the Competent Authority may enquire into and ask for clarification of any information so submitted.

**(2)** Any request for information or for clarification thereof under this section shall be by notice in writing and shall require the recipient to provide the information at such time or times or at such intervals or in respect of such period or periods as may be specified by the notice.

**(3)** Further, the Competent Authority may—

- (a) by notice in writing served on a bank, require the bank to provide a report by an accountant or other person with relevant professional skill on, or on any aspect of, any matter about which the Competent Authority has required or could require the bank to provide information under subsection (1) of this section;
- (b) by notice in writing served on a bank, require it to produce within such time and at such place as may be specified in that notice, such document or documents of such description as may be so specified in the notice;
- (c) authorise an officer, servant or agent of the Competent Authority, on producing evidence of his authority, to require any bank to provide him forthwith with such information, or to produce to him forthwith such documents, as he may specify, being such information or documents as the Competent Authority may reasonably require for the performance of its functions under this Ordinance.

**(4)** The accountant or other person appointed by a bank to make any report required under paragraph (a) of subsection (3) of this section shall be a person nominated or approved by the Competent Authority; and the Competent Authority may require the report to be in such form as is specified in the notice.

**(5)** Where, by virtue of subsection (3) of this section, any person has power to require the production of any documents from a bank, that person

shall have the like power to require the production of those documents from any person who appears to be in possession of them.

**(6)** The power under this section to require a bank or any other person to produce any documents includes power—

- (a) if the documents are produced, to take copies of them or extracts from them and to require that bank or person, or any other person who is a present or past officer of, or is or was at any time employed by or acting as an employee of, the bank in question, to provide an explanation of any of them; and
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

**(7)** If it appears to the Competent Authority to be desirable in the interests of the depositors or potential depositors of a bank to do so, it may also exercise the powers conferred by subsections (1) and (3) of this section in relation to any person who is or has at any relevant time been—

- (a) a holding company, subsidiary or a company which is a connected person of that bank;
- (b) a subsidiary or a person which is a company connected to a holding company of that bank;
- (c) a holding company of a subsidiary of that bank; or
- (d) a controller of that bank.

**(8)** The Competent Authority may by notice in writing served on any person who is or is to be an officer of a bank require him to furnish, within such time as may be specified in the notice, such information or documents as the Competent Authority may reasonably require for determining whether he is a suitable person to hold the particular position which he holds or is to hold.

**(9)** The Competent Authority may exercise the powers conferred by subsections (1) and (3) of this section in relation to any person who has a significant shareholding or qualifying shareholding in a bank if it considers that the exercise of those powers is desirable in the interests of the depositors or potential depositors of that bank.

**(10)** A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

**(11)** The Competent Authority shall have the power to recover from a bank reported on under subsection (3) of this section the costs and expenses incurred in relation to such report.

**Right of entry to obtain information and documents.**

**21. (1)** Any officer, employee or agent of the Competent Authority may, on producing, if required, evidence of his authority—

- (a) enter any premises occupied by a person on whom a notice has been served under section 20 above or section 22 below for the purpose of obtaining there the information or documents required by that notice;
- (b) enter any premises occupied by any person on whom a notice could be served under section 20 above or section 22 below for the purpose of obtaining there such information or documents as are specified in the authority, being information or documents that could have been required by such a notice; but the Competent Authority shall not authorise any person to act under this paragraph unless it has reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed;

Provided that where an entry as is mentioned in this subsection involves premises that are occupied for the purposes of habitation, such entry shall be carried out in the presence of a police officer of a rank not below that of Inspector, and shall moreover not take place between 8pm and 7am.

**(2)** No person shall intentionally obstruct a person exercising rights conferred by this section.

**Investigations.**

**22. (1)** If it appears to the Competent Authority desirable to do so in the interests of the depositors or potential depositors of a bank or in the public interest, it may appoint one or more competent persons to investigate and report on—

- (a) the nature, conduct or state of the bank's business or any particular aspect of it; or
- (b) the ownership or control of the bank,

and the Competent Authority shall give written notice of any such appointment to the bank concerned.

**(2)** If a person appointed under subsection (1) of this section thinks it necessary for the purposes of his investigation, he may also investigate the business of any person who is or has at any relevant time been—

- (a) a holding company, subsidiary or a company which is a connected person of the bank under investigation;
- (b) a subsidiary or a company which is a connected person of a holding company of that bank;

- (c) a holding company of a subsidiary of that bank; or
- (d) a controller of that bank.

(3) The Competent Authority may exercise the powers conferred by subsection (1) of this section in relation to any person who has a significant shareholding or qualifying shareholding in a bank if it considers that the exercise of those powers is desirable in the interests of the depositors or potential depositors of that bank.

(4) Where a person appointed under subsection (1) of this section decides to investigate the business of any person by virtue of subsection (2) or subsection (3) of this section he shall inform that person by notice in writing.

(5) It shall be the duty of every person who is or was an officer, employee, agent, banker or auditor of a body which is under investigation under this Ordinance, or any person appointed to make a report in respect of that body under this Ordinance and anyone who has a significant shareholding in, qualifying shareholding in, or is a controller of that body—

- (a) to produce to the persons appointed under subsection (1) of this section, within such time and at such place as they may require, all documents relating to the body concerned which are in his custody or power;
- (b) to attend before the persons so appointed at such time and place as they may require; and
- (c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give, and those persons may take copies of or extracts from any documents produced to them under paragraph (a) above.

(6) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.

(7) No person shall—

- (a) without lawful excuse fail to produce any documents which it is his duty to produce under subsection (5) of this section;
- (b) without lawful excuse fail to attend before the persons appointed under subsection (1) of this section when required to do so; or
- (c) without lawful excuse fail to answer any question which is put to him by persons so appointed with respect to any bank which is under investigation or a body which is being investigated by virtue of subsection (2) or (3) of this section.

(8) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

(9) The Competent Authority shall have the power to recover from a bank reported on under subsection (1) of this section the costs and expenses incurred in relation to such report.

(10) For the purposes of this section, reference to a bank shall include reference to persons appearing to be carrying out the business of banking.

### **Suspected offences.**

23. (1) Where the Competent Authority has reasonable grounds for suspecting that a person is guilty of committing any offence under this Ordinance, it may by notice in writing require that person or any other person—

- (a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as it may reasonably require for the purpose of investigating the suspected offence;
- (b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description as may be specified which it may reasonably require for that purpose;
- (c) to attend at such place and time as may be specified in the notice, and answer questions relevant for determining whether such an offence has occurred.

(2) The Competent Authority or their duly authorised officer, employee or agent may take copies of or extracts from any documents produced under this section.

(3) Any officer, employee or agent of the Competent Authority may, between 7am and 8pm, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under subsection (1) of this section for the purpose of obtaining there the information or documents required by the notice, putting the questions referred to in paragraph (c) of that subsection or exercising the powers conferred by subsection (2) of this section.

(4) No person shall without lawful excuse fail to comply with a requirement imposed on him under this section or intentionally obstruct a person in the exercise of the rights conferred by subsection (3) of this section.



(5) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

**Obstruction.**

24. (1) No person who knows or suspects that an investigation is being or is likely to be carried out—

(a) under section 20, section 22 or section 23 of this Ordinance;  
or

(b) into the suspected commission of any offence under this Ordinance,

shall falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

**Co-operation and sharing of information.**

25. (1) On the basis of international agreements, or upon reciprocity agreements, the Competent Authority may share its supervisory duties with other foreign competent authorities in the case of a bank or branch operating in St Helena which is fully or partly owned by a foreign person or in the case of a bank fully or partly owned by residents of St Helena which is operating abroad.

(2) The Competent Authority may exchange information with overseas supervisory authorities responsible for the regulation of financial institutions in order to assist them in the exercise of their supervisory functions

(3) A person appointed under section 20 or section 22 of this Ordinance shall be given access to any accounts, returns, or other information with regard to any bank which are in the possession of the Competent Authority, the Registrar of Companies and any other officer of the Government of St Helena.

(4) There shall be meetings held between a bank, its appointed auditors and the Competent Authority on a trilateral or bilateral basis as circumstances may warrant. These meetings may be called by any of the parties concerned but shall always be chaired by the Competent Authority.

**Communication by auditors etc. with the Competent Authority.**

26. (1) No duty to which—

(a) an auditor of a bank; or

- (b) a person appointed to make a report under paragraph (a) of subsection (3) of section 20 above or subsection (1) of section 22 above, may be subject,

shall be regarded as contravened by reason of his communicating in good faith to the Competent Authority, whether or not in response to a request made by it, any information or opinion on a matter to which this section applies and which is relevant to any function of the Competent Authority under this Ordinance.

(2) In relation to an auditor of a bank this section applies to any matter falling within subsection (9) of section 31 of this Ordinance.

(3) In relation to a person appointed to make a report under paragraph (a) of subsection (3) of section 20 of this Ordinance, this section applies to any matter of which he becomes aware in his capacity as the person making the report and which—

- (a) relates to the business or affairs of the bank in relation to which his report is made or any associated body of that bank, or
- (b) if by virtue of subsection (7) of section 20 of this Ordinance the report relates to an associated body of a bank, to the business or affairs of that body.

(4) In relation to a person appointed to make a report under subsection (1) of section 22 of this Ordinance, this section applies to any matter of which he becomes aware in his capacity as the person making the report and which—

- (a) relates to the business or affairs of the bank in relation to which his report is made or any associated body of that bank, or
- (b) if, by virtue of subsection (2) of section 22 of this Ordinance, the report relates to an associated body of a bank, to the business or affairs of that body.

(5) In this section "associated body", in relation to an institution, means any such body as is mentioned in subsection (7) of section 20 of this Ordinance or mentioned in subsection (2) of section 22 of this Ordinance.

(6) If it appears to the Governor in Council that any accountants or class of accountants who are persons to whom subsection (1) above applies are not subject to satisfactory rules made or guidance issued by a professional body specifying circumstances in which matters are to be communicated to the Competent Authority as mentioned in that subsection, the Governor in Council may, after consultation with such bodies as appear to the Governor in Council to represent the interests of accountants and banks, make regulations applying to those accountants and specifying such

circumstances; and it shall be the duty of an accountant to whom the regulations apply to communicate a matter to the Competent Authority in the circumstances specified by the regulations.

**Banks unable to meet obligations.**

**28.** Notwithstanding any investigation provided for in this Ordinance—

- (a) where a bank considers that it is likely to become unable to meet its obligations or that it is about to suspend payment it shall forthwith inform the Competent Authority and the Governor in writing;
- (b) where the Competent Authority becomes aware that a bank is likely to become unable to meet its obligations or that it is about to suspend payment, it shall forthwith inform the Governor in writing.

**Power of the Competent Authority to take control of banks.**

**29. (1)** If, whether from any report made under section 20 or section 22 of this Ordinance or otherwise, it appears to the Competent Authority that any of the circumstances indicated in subsection (2) of section 9 of this Ordinance apply, the Competent Authority may—

- (a) require the bank forthwith to take such steps as the Competent Authority may consider necessary to remedy or rectify the matter;
- (b) appoint a competent person to advise the bank in the proper conduct of its business;
- (c) appoint a competent person to take charge of the assets of the bank or any portion of them for the purpose of safeguarding the interests of depositors;
- (d) appoint a competent person to assume control of the business of the bank and either to carry on that business or to carry out such other function or functions in respect of such business, or part thereof, as the Competent Authority may direct;
- (e) revoke or restrict a licence according to the provisions of section 9 of this Ordinance;
- (f) require the bank to wind up its business or to wind up its business in St Helena;
- (g) appoint a competent person to act as liquidator for the purpose of winding up the affairs of the bank;
- (h) fix the remuneration to be paid by the bank to any competent person appointed under this subsection.

(2) Where a competent person is appointed by the Competent Authority—

- (a) under paragraph (b) of subsection (1) of this section, the bank shall act in accordance with the advice given by such person unless and until the Competent Authority otherwise directs;
- (b) under paragraph (c) of subsection (1) of this section, the bank shall deliver to such person all the assets of which he is placed in charge, and all the powers, functions and duties of the bank in respect of those assets whether exercisable by the company in general meeting or by the board of directors or by any other person, including the legal and judicial representation of the bank, shall be exercisable by and vest in him to the exclusion of the bank;
- (c) under paragraph (d) of subsection (1) of this section, the bank shall submit its business to the control of such person and shall provide him with such facilities as he may require in order to carry on that business or to carry out the functions assigned to him under that paragraph, and all the powers, functions and duties of the bank, whether exercisable by the company in general meeting or by the board of directors or by any other person, including the legal and judicial representation of the bank in all matters, shall be exercisable by and vest in him to the exclusion of any other person.

(3) Where a person is appointed under paragraph (c) or paragraph (d) of subsection (1) of this section—

- (a) any function, power or duty exercisable by any other person, including the curator of a bankrupt or any other person appointed by or under any other law, and relating to any assets or business of which the person appointed under either of the paragraphs aforesaid is placed in charge or in control, shall, unless or until the Competent Authority otherwise directs or an express provision of law specifically provides otherwise, cease to be so exercisable;
- (b) the person appointed under either of the paragraphs aforesaid shall, in respect of such property, partnerships, firms or other business as the Competent Authority may specify and in which the bank has an interest, whether directly or indirectly, including any interest arising from advances or loans made or credit facilities given or any liability undertaken, have such powers, functions and duties, including legal and judicial representation, as the Competent Authority may direct, and any such power, function or duty

shall be exercisable by and vest in such person to the exclusion of any other person;

Provided that:

- (i) the Competent Authority shall have power to direct that all or any of the powers, functions or duties aforesaid should be exercisable by any other person, and in any such case, with effect from such date or dates as the Competent Authority may specify and unless and until the Competent Authority otherwise directs, the powers, functions and duties to which the direction of the Competent Authority applies shall be exercisable by and vest in such other person appointed for the purpose to the exclusion of all others;
- (ii) where the Competent Authority is of the opinion that the bank has ceased to have any interest as aforesaid, it shall direct that any powers, functions and duties exercisable under this paragraph shall cease to be so exercisable, but any such direction shall not affect anything done or omitted to be done by virtue or by reason of any of the aforesaid powers, functions or duties;
- (c) the person appointed under either of the paragraphs aforesaid shall have the power to require any other person to provide him with such facilities as he may deem necessary to carry out any of the powers, functions or duties under this section;
- (d) the provision of law relating to bankruptcy shall cease to apply to, and shall cease to operate in respect of, any property, partnership, firm or other business specified by the Competent Authority under paragraph (b) of this subsection, unless and until, or except to the extent that, the Competent Authority otherwise directs; and in any such case the person appointed as aforesaid shall, subject to any directions of the Competent Authority given in the interest of the creditors, act as if those provisions did not exist and as if any declaration of bankruptcy had not been made;
- (e) any person appointed by the Competent Authority under any of the provisions of this section shall submit six-monthly reports of his activities and annual accounts of all transactions carried out by him in the performance of his functions audited by an independent auditor to the Governor in Council.

(4) Where a person is appointed under paragraph (g) of subsection (1) of this section, such person shall be the liquidator of the company for all purposes of law to the exclusion of any other person.

(5) The provisions of this section shall have effect notwithstanding any other provision of any enactment, and notwithstanding any deed, contract, instrument or other document whatsoever.

(6) The foregoing provisions of this section vesting exclusive powers of representation in a person appointed by the Competent Authority thereunder shall apply also to any act or proceedings commenced or instituted before such representation vested as aforesaid, and in respect of any such act or proceedings any other person acting or purporting to act, or in respect of whom action is taken, in that capacity shall cease to be a party to, and shall be excluded from, any such act or proceedings.

(7) No person shall in any way obstruct a person appointed under subsection (1) of this section in the performance of any of his functions, powers or duties under this section.

(8) In respect of a bank operating in St Helena and elsewhere the Competent Authority shall satisfy itself that depositors in St Helena are adequately protected before issuing a licence.

(9) Upon receipt of a report as is mentioned in subsection (1) of this section, the Competent Authority shall inform the Governor on whether it intends to take any action pursuant to such report and of any action it intends to take thereon.

#### **Publication of audited financial statements.**

**30.** Every bank shall, not later than four months from the closing of its financial year or at any other time as may be exceptionally authorised by the Competent Authority—

- (a) forward to the Competent Authority,
- (b) publish in a local newspaper , and
- (c) exhibit in a conspicuous position in each of its offices and branches in St Helena and its dependencies and keep so exhibited throughout the year,

a copy of its audited financial statements drawn up in accordance with a Banking Directive.

#### **Auditors.**

**31. (1)** (a) Every bank shall each year appoint an approved auditor or auditors whose duty shall be to report on the financial statements of the bank examined by them and on all financial statements prepared by the bank.

- (b) For the purpose of this section an approved auditor shall be the Chief Auditor of the Government of St Helena or other person who is qualified to be an auditor on St Helena and who holds the authorisation of the Competent Authority to act as auditor of a bank.

(2) If a bank fails to appoint an auditor under subsection (1) of this section or, at any time fails to fill any vacancy in the office of an auditor, the Competent Authority shall have the power to appoint an auditor for that bank and shall fix the remuneration to be paid by that bank to such auditor.

(3) The auditors' report shall contain statements as to the following matters—

- (a) whether they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purpose of their audit;
- (b) whether, in their opinion, proper books of account have been kept by the bank, so far as appears from their examination of those books;
- (c) whether the bank's financial statements dealt with by the report are in agreement with the books of account;
- (d) whether, in their opinion, and to the best of their knowledge and according to the explanations given them, the said financial statements give the information required by any law which may from time to time be in force in the manner so required and give a true and fair view.

(4) The report of the auditors shall be presented together with the report of the directors of the bank at the annual meeting of shareholders.

(5) Every auditor of a bank shall have the right to demand such information or explanation as he or she deems necessary in the performance of his or her duties from any officer or employee of the bank.

(6) A bank shall forthwith give written notice to the Competent Authority—

- (a) on the appointment of its auditors;
- (b) if it proposes to give notice to its shareholders to—
  - (i) replace its auditors at the expiration of their term of office;
  - (ii) remove its auditors before the expiration of their term of office;
- (c) if the auditors cease to be auditors of the bank for any reason other than those in paragraph (b) of this subsection.

(7) The Competent Authority may require a bank to change its appointed auditors where, in the Competent Authority's opinion, such auditors are considered unfit for this appointment, at any time during their term of office.

(8) An auditor shall immediately advise the Competent Authority if—

- (a) he or she resigns;
- (b) he or she does not seek to be re-appointed; or
- (c) he or she decides to qualify the audit report.

(9) If, in his or her capacity as an auditor of a bank or due to a direct request by the Competent Authority under section 20 or under section 22 of this Ordinance, an auditor becomes aware of any matter which relates to and may have a serious adverse effect upon the depositors of that bank, of the branches in St Helena or its dependencies of a bank which is not incorporated in St Helena, or of any connected person which is a bank, he or she shall immediately inform the Competent Authority through the bank's management or, if circumstances so warrant, directly to the Competent Authority.

(10) Notwithstanding any of the provisions of the foregoing subsections, the Competent Authority may in the case of a bank not incorporated in St Helena grant exemption by way of Banking Directive from any of the requirements of this section provided that the same does not materially detract from the main objects of this section.

### **Disqualification of officers.**

32. (1) No person—

- (a) who has been adjudged bankrupt or has made a composition with his creditors or has been an officer of a bank which has had its licence revoked under subsection (2) of section 9 of this Ordinance; and who has not been exempted in writing by the Competent Authority from the provisions of this section; or
- (b) who is interdicted or incapacitated or who has been involved in money laundering or found guilty of a crime affecting public trust, theft, fraud, extortion or of knowingly receiving property obtained by theft or fraud,

shall act or continue to act as an officer of a bank.

### **Duties of officers.**

33. Every officer of a bank shall take all reasonable steps—



- (a) to secure compliance by the bank with all of the provisions of this Ordinance and of its licence or any Banking Directive or regulation issued under this Ordinance, and
- (b) to ensure that no incorrect information is provided either willfully or as the result of gross negligence.

### **Confidentiality**

**34. (1)** Nothing in this Ordinance shall authorise the Competent Authority or any person appointed by the Competent Authority under this Ordinance to enquire or cause an enquiry to be made in a bank into the affairs of any individual customer of a bank except—

- (a) for the purpose of carrying out its duties under this Ordinance, or
- (b) where the customer's exposure is large within the terms of the Large Exposures Directive and they believe that such an exposure can be a threat to that bank or to the banking sector in general.

**(2)** No person, including past and present officers or agents of a bank, shall disclose any information relating to the affairs of a bank or of a customer of a bank which he has acquired in the performance of his duties or the exercise of his functions under this Ordinance except—

- (a) when authorised to do so under any of the provisions of this Ordinance;
- (b) for the purpose of the performance of his duties or the exercise of his functions;
- (c) when lawfully required to do so by any court or under a provision of any law.

**(3)** When an officer of a bank has reason to believe that a transaction or a proposed transaction could involve money laundering, he shall act in accordance with any guidelines provided by the Competent Authority. Compliance with the provisions of this subsection shall not constitute a breach of confidentiality.

**(4)** Notwithstanding anything contained in this section, exchange of information between a parent bank and its banking and credit card services subsidiaries and vice-versa on mutual customers to whom the parent bank or its subsidiaries may have granted or is granting a credit facility, shall not constitute a breach of confidentiality:

Provided that for the purposes of this subsection, a connected person or a group of connected persons or members of such group shall also be considered mutual customers.

**Offences and penalties.****35. (1)** Any person who—

- (a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive, or dishonestly conceals any material facts; or
- (b) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive, if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not to the person to whom the statement, promise or forecast is made or from whom the facts are concealed)—
  - (i) to make, or refrain from making, a deposit with him or any other person; or
  - (ii) to enter, or refrain from entering, into an agreement for the purpose of making such a deposit,

shall be guilty of an offence and liable to a fine not exceeding £10,000.

**(2)** Subsection (1) of this section does not apply unless—

- (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, St Helena or arrangements are made in or from St Helena for the statement, promise or forecast to be made or the facts to be concealed;
- (b) the person on whom the inducement is intended to or may have effect is in St Helena; or
- (c) the deposit is or would be made, or the agreement is or would be entered into, in St Helena.

**(3)** Any person who—

- (a) contravenes or fails to comply with any of the provisions of this Ordinance;
- (b) contravenes or fails to comply with the provisions of any Banking Directive or regulation;
- (c) fails to comply with any lawful order or requirement of the Competent Authority;
- (d) fails to comply with any lawful order or requirement of any other person made under this Ordinance;
- (f) without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he is lawfully required to produce by any person under this Ordinance,

shall be guilty of an offence and liable to a fine not exceeding £10,000 or to imprisonment for a term not exceeding two years.

(4) Any person who is knowingly a party to, or procures or aids and abets the commission of any offence under subsections (1) and (3) of this section shall be guilty of an offence and shall be liable to the same penalties as the principal offender.

(5) (a) The Governor in Council may by regulations provide for administrative penalties which may be imposed by the Competent Authority without recourse to a court hearing; Provided that the Competent Authority may not impose a financial penalty exceeding £1,000.

(b) Regulations made under paragraph (a) shall provide for an appeal from any decision of the Competent Authority to impose an administrative penalty.

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#### **EXPLANATORY NOTE**

*(This note does not form part of the Bill)*

The purpose of this Bill is to enable the establishment of commercial banking in St. Helena and to regulate the business of such banking.