

MONTSERRAT

INTERNATIONAL BANKING AND TRUST COMPANIES ACT, 2006

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I Assent

Governor

Date: 10/4/06

MONTSERRAT

NO. 4 OF 2006

An Act to make provision for the regulation of international banking and for trust companies in Montserrat

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council of Montserrat and by the Authority of the same as follows—

PART 1

PRELIMINARY PROVISIONS

Short Title

1. This Act may be cited as the International Banking and Trust Companies Act, 2006.

Interpretation

2. (1) In this Act —

“attorney-at-law” means an attorney admitted before the Eastern Caribbean Supreme Court to practice in Montserrat;

“auditor” means a person is in good standing as a member of an association of chartered or public accountants or other similar body approved by the Commission as a reputable auditing association;

“authorised agent” means a person licenced under the Company Management Act (Cap. 11.26) or holding a general trust licence under this Act.

“bank” means a person carrying on banking business;

“banking business” means—

- (a) the business of receiving funds through the acceptance of money deposits payable on demand or after a fixed period or after notice or any similar operation; through the frequent sale or placement of bonds, certificates, notes or other securities; and the use of such funds either in whole or in part for loans or investment for the account and the risk of the person doing such business; and
- (b) any other activity prescribed by the Commission as constituting customary banking practice that a bank engaged in activities described in paragraph (a) may additionally be authorised to do;

“board” means a board of directors or other body responsible for the management of a licensee;

“company” means a company incorporated or continued under the Companies Act (Cap.11.12);

“Commission” means the Financial Services Commission as appointed under the Financial Services Commission Act (Cap. 11.02);

“Commissioner” means the person appointed under section 8 of the Financial Services Commission Act (Cap. 11.02);

“Court” means the High Court;

“dollar” or “\$” means a dollar in the currency of the United States of America;

“domestic bank” means a person holding a licence under the Banking Act (Cap. 11.03) or any succeeding legislation;

“financial institution” means a person licensed to undertake banking business;

“foreign company” means a person from outside Montserrat that is registered under Division D of Part III of the Companies Act (Cap.11.02);

“foreign regulatory authority” means an authority in a jurisdiction outside Montserrat which exercises functions corresponding or similar to those exercised by—

- (a) the Commission appointed under the Financial Services Commission Act. (Cap.11.02);
- (b) the Commission under this Act;
- (c) the Commission under the Company Management Act, (Cap.11.26); or
- (d) the Commission under the Insurance Act, 2001;

“international banking business” means banking business carried on in or from within Montserrat in a currency other than Eastern Caribbean dollars with a non-resident of Montserrat;

“international banking licence” means a licence issued under section 7;

“international business company” means a company incorporated or continued under the International Business Companies Act (Cap. 11.13);

“prescribed” means prescribed by regulations made by the Governor in Council under section 50;

“trust” means the legal relationship created when assets have been placed under the control of a person (a trustee) to be held for the benefit of another (the beneficiary) or for a specified purpose;

“trust business” means carrying on the business of acting as trustee of property;

“trust company licence” means a licence issued under section 16.

“unimpaired capital” means total equity capital in the most recent report plus any subordinated notes and debentures approved by the Commission as an addition to capital structure plus any valuation reserves created by charges to income reported on the most recent report.

(2) Subject to subsection (3), for the purposes of this Act, the following are regarded as non-residents of Montserrat—

- (a) an international business company;
- (b) a company or an LLC formed or continued under the Limited Liability Company Act (Cap. 11.04) that, at the relevant time does not engage in any revenue generating activities in Montserrat.

(3) An LLC or a company shall not be regarded as engaging in a revenue generating activity in Montserrat in respect of—

- (a) any international banking business conducted with it by a person holding an international banking licence; or
- (b) any activity which the Commission may prescribe as not being a revenue generating activity in Montserrat.

(4) A company, an international business company; or an LLC formed or continued under the Limited Liability Company Act, (Cap.11.04); that carries on banking business or trust business outside Montserrat carries on banking business or trust business, as the case may be, from within Montserrat.

Application

3. (1) This Act applies, in respect to their international banking business, to a person, including a domestic bank, that conducts international banking business.

(2) A person, including a domestic bank, that holds an international banking licence—

- (i) is exempt from the provisions of the Banking Act (Cap.11.03) in respect of international banking business, and
 - (ii) is subject to the provisions of the Banking Act (Cap.11.03) in respect of banking business other than international banking business;
- (3) This Act does not apply to the Caribbean Development Bank.
- (4) A person holding an international banking licence or trust company licence, other than a domestic bank, does not require a licence under the Trades Licences Act (Cap.15.02), in respect of its international banking or trust business.

PART 2

INTERNATIONAL BANKING BUSINESS

Interpretation

4. In this Part—

“licence” means an international banking licence;

“licensee” means a person holding an international banking licence.

Licence required

5. (1) No person, including a domestic bank, shall carry on international banking business unless they hold a licence that is not suspended under section 20.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000, or to a term of imprisonment of 2 years or to both for each day that they contravene the subsection.

Application for licence

6. (1) A company or a foreign company may apply to the Commission for a licence.

(2) An application under subsection (1) must—

(a) contain the information and be in the form prescribed in the regulations to this Act; and

(b) be accompanied by the documentation and the fee prescribed in the regulations to this Act, and such other information and documentation that the Commission may deem necessary.

(3) In considering an application for a licence, the Commission may review and investigate the information provided for in regulation 2, but is not limited to the information contained in that regulation.

Issuance of licence

7. (1) If the Commission is satisfied—
- (a) that an applicant is—
 - (i) fit and proper, in accordance with the criteria set out in regulation 3 of the regulations; and
 - (ii) qualified to carry on international banking business;
 - (b) that the persons having any share or other interest, whether legal or equitable, in the applicant and its directors and officers are fit and proper to have an interest in or be concerned with the management of a licensee, as the case may be,
 - (c) that the applicant intends, if issued with a licence, to commence international banking business within 12 months of receiving the banking licence,
 - (d) that the applicant satisfies the requirements of this Act in respect of the application and will, upon issuance of the licence, be in compliance with this Act in respect of licencing; and
 - (e) that issuing the licence is not against the public interest;

it may issue a licence to the applicant upon payment of the prescribed fee and subject to such terms and conditions as it thinks fit.

(2) If the Commission is of the opinion that it would be undesirable in the public interest to grant the licence, it may refuse to grant the same and need not give any reason for so refusing, but shall still inform the applicant that it has refused to grant the licence.

(3) There is no appeal from the decision of the Commission in subsection (2).

Restrictions on business that may be carried on by licensee

8. (1) A licensee that is not a domestic bank may not—
- (a) invest in any asset that represents a claim on any person resident in Montserrat except a claim resulting from—
 - (i) a transaction with another licensee, or a domestic bank;
 - (ii) the purchase of bonds or other securities issued by the Government, a statutory corporation or a company in which the Government is the sole or majority beneficial owner; and
 - (iii) the renting of property, maintenance of books and records and dealing with any other matter or person necessary to carrying out or done in relation to the carrying out of its business; or

(b) without the written approval of the Commission, carry on any international banking business other than that for which the licence has been issued.

(2) A licensee shall not directly or indirectly, without the written approval of the Commission, carry on business as set out in Schedule 3 of the regulations.

(3) A licensee that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of \$25,000.

Maintenance of capital

9. (1) A licensee, other than a domestic bank, or a branch of a foreign bank, must ensure that its paid up share capital is maintained in an amount not less than \$1,000,000, or the equivalent in another currency, or such greater sum as may be ordered under subsection (2).

(2) The Commission may order a licensee to increase its fully paid-up capital to such greater amount as it may determine having regard to the nature of the international banking business being, or sought to be, undertaken and to a capital adequacy ratio, as the Commissioner may from time to time determine.

(3) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000 for each week that it contravenes the said subsection.

(4) Where an offence under this section is committed by a company, a director or officer of the company who knowingly authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction to a fine of \$25,000, or to a term of imprisonment for 6 months or to both.

Maintenance of Reserve Fund

10. Every licensee shall maintain a reserve fund and shall out of its net profits of each year transfer to that fund a sum equal to not less than 20% of such profits whenever the amount of the reserve fund is less than 100% of the paid-up capital of the licensee.

Restrictions on distribution of dividends

11. No licensee shall declare, credit or pay any dividend or make any other transfer from profits whenever such declaration, credit, payment or transfer would result in an impairment of the shareholders equity of the licensee or the capital required under section 10.

Maintenance of liquidity

12. Every licensee shall maintain adequate liquidity by way of cash or marketable securities or call or time deposits of less than 12 months with a prime or other acceptable international bank amounting to at least 12 percent of the total assets or such other percentage as may from time to time be determined by the Commissioner.

PART 3**TRUST BUSINESS****Interpretation**

13. In this Part—

“licence” means a trust company licence;

“licensee” means a person holding a trust company licence.

Licence required

14. (1) Subject to subsection (2), no person shall carry on trust business in or from within Montserrat unless he holds a licence that is not suspended under section 20.

(2) Subsection (1) does not apply to an attorney-at-law in so far as he is engaged in trust business that relates solely to the practice of law.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000 or to a term of imprisonment of 2 years or to both for each day that he contravenes the said subsection.

Application for licence

15. (1) A company, a foreign company or, subject to section 17(2), an international business company may apply to the Commission for a licence.

(2) An application under subsection (1) must—

(a) contain the information and be in the form prescribed in the regulations to this Act; and

(b) be accompanied by the documentation and the non-refundable fee prescribed in the regulations to this Act.

(3) In considering an application for a licence, the Commission may review and investigate the information provided for in regulation 2 of the regulations but is not limited to information contained in that regulation.

Issuance of licence

16. (1) If the Commission is satisfied—

(a) that an applicant is—

(i) a fit and proper person, in accordance with the criteria set out in regulation 3 of the regulations; and

- (ii) is qualified to carry on trust business;
- (b) that the persons having any share or other interest, whether legal or equitable, in the applicant and its directors and officers are fit and proper persons to have an interest in or be concerned with the management of a licensee, as the case may be;
- (c) that the applicant intends, if issued with a licence, to commence carrying on trust business in or from within Montserrat within 12 months of receiving the licence;
- (d) that the applicant satisfies the requirements of this Act in respect of the application and will, upon issuance of the licence, be in compliance with this Act in respect of licencing; and
- (e) that issuing the licence is not against the public interest;

it may issue a licence to the applicant subject to such terms and conditions as it thinks fit.

(2) If the Commission is of the opinion that it would be undesirable in the public interest to grant the licence, it may refuse to grant the same and need not give any reason for so refusing but shall inform the applicant that it has refused to grant the licence.

(3) There is no appeal from the decision of the Commission in subsection (2).

Class and extension of licence

17. (1) A licence shall be in one of the following classes—

- (a) a general trust company licence;
- (b) a restricted trust company licence.

(2) A general trust company licence shall not be issued to an international business company.

(3) A restricted trust company licence is subject to the restriction that the licensee does not undertake trust business on behalf of persons other than those persons or classes of persons listed in the undertaking accompanying the application for the licence or any amendment to the list approved by the Commission.

(4) An applicant for a general trust company licence may apply for the licence to extend to a wholly owned subsidiary of the applicant.

(5) An application under subsection (4) must be made in writing to the Commission accompanied by—

- (a) the name of the subsidiary;
- (b) documentary proof sufficient to establish that the subsidiary is wholly owned by the applicant;

- (c) a description of the type of trust business being, or to be, carried on by the subsidiary; and
- (d) any other information or documentation that the Commission considers necessary.

(6) The Commission may, upon granting a general trust company licence to the applicant, extend the licence to include the subsidiary referred to in subsection (4), subject to such terms and conditions as it thinks fit.

(7) The licence is automatically suspended if the subsidiary becomes no longer wholly owned by the applicant and the Commission may revoke the licence on further review.

Maintenance of capital

18. (1) A holder of a general trust company licence, other than a domestic bank, must ensure that its paid up share capital is maintained in an amount not less than \$250,000, or the equivalent in another currency, or such greater sum as may be ordered under subsection (3).

(2) A holder of a restricted trust company licence must ensure that its fully paid up share capital is maintained in an amount not less than the amount prescribed by the Commission as being the minimum capital for a restricted trust company, or such greater sum as may be ordered under subsection (3).

(3) The Commission may order a licensee to increase its fully paid up capital to such greater amount than that required under subsection (1) or (2) as it may determine having regard to the nature of the general or restricted trust business being, or sought to be, undertaken.

(4) A company that contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine of \$25,000 per week for each week that it contravenes the subsection.

(5) Where an offence under this section is committed by a company, a director or officer of the company who knowingly authorized, permitted or acquiesced in the commission of the offence also commits an offence and is liable on conviction to a fine of \$25,000 or to a term of imprisonment for 6 months or to both.

PART 4

MATTERS APPLICABLE TO INTERNATIONAL BANKING BUSINESS AND TRUST BUSINESS

Interpretation

19. In this Part—

“licence” means an international banking licence or a trust company licence;

“licenced business” means the international banking business or the trust business, as the case may be, that the licensee is licenced to carry on;

“licensee” means a person holding an international banking licence or holding a trust company licence.

*Revocation, Suspension and Surrender of Licence
and Variation of Terms of Licence*

Revocation or suspension of licence

20. (1) The Commission may at any time suspend or revoke a licence if it appears—

- (a) that the licensee—
 - (i) is not a fit and proper person in accordance with the criteria as set out in regulation 3 of the regulations or is not qualified to carry on the licenced business,
 - (ii) is carrying on the licenced business in a manner detrimental to the public interest or to the interests of any of its creditors or, in the case of a holder of an international banking licence, of any depositors or, in the case of a holder of a trust company licence, of any beneficiary of a trust of which it is a trustee,
 - (iii) has failed to maintain sufficient capital or liquidity to meet its liabilities or is insolvent,
 - (iv) has contravened or is in contravention of any provision of this Act, the Code of Practice or Guidelines issued under section 51 or of the Practice Code of the Prevention of Money Laundering or the Money Laundering Regulations,
 - (v) has breached or is in breach of any term or condition of its licence,
 - (vi) failed to commence operations within a period of 12 months following the granting of the licence or has ceased to carry on the licensed business, or
 - (vii) has furnished the Commission with false, inaccurate or misleading information whether on making application for a licence or subsequent to the issue of the licence; or
- (b) that any person having a share or interest in the licensee, whether equitable or legal, or any director or officer of the licensee is not a fit and proper person to have an interest in or to be concerned with the management of a licensee, as the case may be; or
- (c) that the licensee has merged or amalgamated with another company and the licence is no longer required.

(2) The Commission shall revoke a licence if the licensee fails to pay the prescribed annual fee together with the appropriate late payment penalty in full on or before 7 months of the date the fees were due or 31st December in the year in which the annual fee was due, whichever comes first.

(3) Subject to subsections (4) and (5), the period of suspension of a licence under subsection (1), except subsection (1)(a)(iii), shall not exceed 90 days.

(4) Subject to subsection (5), if it is satisfied that it is in the public interest to do so the Commission may extend, the period of suspension as set out in subsection (3), of a licence under this section for one or more further periods not exceeding 90 days each.

(5) Where the Commission suspends a licence under subsection (1)(a)(iii), the period of suspension of a licence shall continue for such period of time as the condition therein continues or until such time as the Commission decides to revoke the licence.

Appointment of administrator by the Court

21. (1) If a licence is or is about to be suspended or revoked under section 20, the Commission may apply to the Court—

- (a) for the appointment of an administrator to take over and manage the licensed business then carried on by the licensee or carried on by it immediately prior to the revocation or suspension of its licence, as the case may be; or
- (b) for an order that the licensee be wound up by the Court or subject to the supervision of the Court under the Companies Act, or the International Business Companies Act, as the case maybe.

(2) An application made under subsection (1) may be made on an ex parte basis.

(3) On an application made under subsection (1), the Court may make such order as it considers necessary to safeguard—

- (a) in the case of a holder of an international banking licence, the interests of any depositors; or
- (b) in the case of a holder of a trust company licence, the interests of any beneficiary of a trust of which the licensee is a trustee.

(4) Without limiting subsection (3), an order made under that subsection may—

- (a) grant an administrator the powers of a licensee under this Act;
- (b) require the administrator to provide security;
- (c) fix the remuneration of the administrator;
- (d) require such persons as it considers necessary to appear before the Court for the purposes of giving information concerning the licenced business; and
- (e) make any order that could be made by the Magistrate on an application made under section 37.

Surrender of licence

22. (1) A licensee that ceases to carry on the licenced business may apply to the Commission to surrender its licence.

(2) An application under subsection (1) must—

- (a) contain the information and be in the form prescribed in the regulations to this Act; and
- (b) be accompanied by the documentation prescribed in the regulations to this Act.

(3) If the Commission is satisfied that—

- (a) the licensee has ceased to carry on the licenced business and that—
 - (i) the licensee has repaid all deposits accepted by it, or
 - (ii) the licensee has properly distributed, transferred or otherwise dealt with all trust assets that were held or administered by it; or
- (b) the licensee being wound up, is solvent and is able on demand—
 - (i) in the case of a company holding an international banking licence, to repay all deposits accepted by it, or
 - (ii) in the case of a person holding a trust company licence, to properly distribute, transfer or otherwise deal with all trust assets that are or were held or administered by it:

the Commission may approve the surrender.

(4) In the case of a surrender of a licence under paragraph (3)(b), the Attorney General or the Commission may apply to the Court for an order that the licensee be wound up by the Court or subject to the supervision of the Court under the Companies Act or the International Business Companies Act as the case maybe.

Variation of terms or conditions of licence

23. The Commission may, upon giving reasonable notice to the licensee—

- (a) vary or cancel any terms or conditions imposed on the issue of a licence or under the extension of a licence under section 17 (4) or imposed thereafter; or
- (b) impose new terms or conditions.

*Principal Office and Authorised Agent***Principal office and authorised agent**

24. (1) A licensee must have—

- (a) a principal office in Montserrat being a place of business; and
- (b) 2 authorised agents who comply with subsection (2):

Providing that where the licensee is a bank, “place of business” means any bank (other than a subsidiary or branch of a bank licenced in a country or territory outside Montserrat) having such resources (including staff and facilities) and such books and records as the Commission considers appropriate having regard to the nature and scale of business.

(2) Each authorised agent—

- (a) must be an individual resident in Montserrat; or a general trust company licenced under this Act; and
- (b) must, prior to his appointment—
 - (i) have consented in writing to act as an authorised agent, and
 - (ii) be approved in writing as an authorised agent by the Commission under the Company Management Act or as a general trust company under this Act;
- (c) if he is an individual, may be a principal or a senior officer of a Company licensed under the Company Management Act or as a general trust company under this Act and approved as in (b)(ii) herein.

(3) The licensee must appoint its first authorised agents not later than the day of the issue of its licence and shall forthwith notify the Commission that the approved appointments have been made.

(4) A licensee may not change the address of its principal office or appoint an authorised agent without the prior written approval of the Commission.

(5) An agent whose licence has been suspended or cancelled under sections 8 and 9 respectively of the Company Management Act or whose trust licence has been suspended or cancelled under this Act cannot continue as an agent under this section.

(6) Subject to subsection (7), a licensee that contravenes this section commits an offence and is liable on summary conviction—

- (a) in respect of a breach of subsection (1), to a fine of \$25,000; and
- (b) in respect of a breach of subsection (3) or subsection (4), to a fine of \$10,000.

(7) A licensee does not contravene subsection (1) when an authorised agent dies or resigns or has his licence suspended or cancelled as set out under subsection (5) if—

- (a) the licensee forthwith submits to the Commission the name of a person to replace the authorised representative; and
- (b) appoints an authorised agent forthwith after he is approved;

so long as the licensee has at least 1 authorised agent.

(8) This section does not apply to a domestic bank but does apply to a subsidiary of a domestic bank.

(9) The Authorised Agents of a licensee shall in their capacity as representatives of the licensee ensure compliance with all statutory requirements under this Act.

Operation outside Montserrat

25. (1) A licensee, unless it is a foreign bank must not operate a subsidiary, branch, agency or office outside Montserrat without the prior approval of the Commission.

(2) A licensee must keep the Commission informed at all times of the location addresses, telephone numbers, fax numbers and e-mail addresses of any subsidiary, branch, agency or office of the licensee and the Commission must be notified immediately of any change.

(2) A licensee who contravenes subsection (1) or subsection (2) commits an offence and is liable on summary conviction to a fine of \$25,000 for each week or part thereof that the contravention continues.

Restrictions on and Change of Names

Restrictions on use of certain terms

26. (1) No person other than a licensee shall, except with the authority of the Commission or under the authority of any other written law—

- (a) use, whether in the name under which he is registered or in the description or title under which he carries on business in or from within Montserrat and whether in English or in any language—
 - (i) the words “bank”, “fund”, “mutual”, “savings” or “trust” or any derivative, or
 - (ii) any word that, in the opinion of the Commission, suggests international banking business or trust business; or
- (b) make any representation in any document or in any other manner that is likely to suggest that he is carrying on international banking business or trust business.

(2) The Commission may, by written notice, require a licensee who carries on international banking business or trust business under a name that is—

- (a) identical to that of any other person, whether within or outside Montserrat, or which so nearly resembles that name as to be likely to deceive;
- (b) likely to suggest falsely the patronage of or connection with some person whether within or outside Montserrat; or
- (c) likely to suggest falsely that it has special status in relation to or derived from the Government or has the official approval of, or acts on behalf of, the Government or of any of its departments or officials;

forthwith to change the name and in default of compliance may suspend or revoke the licence.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000 or to a term of imprisonment of 1 year or to both.

(4) A licensee who fails to change his name within 7 days of the date of receipt of a written notice under subsection (2) commits an offence and is liable on summary conviction to a fine of \$10,000 and to a daily default fine of \$500.

Change of name

27. A licensee shall not change its name without the prior written approval of the Commission.

Transfer of Shares and Appointment of Directors

Transfer of shares

28. (1) No share or other interest, whether legal or equitable, in a licensee shall be issued, transferred or otherwise disposed of without the prior written approval of the Commission.

(2) The Commission may grant written approval of the transfer provided that it is satisfied that the new shareholder is a fit and proper person in accordance with the criteria set out in regulation 3 of the regulations.

(3) Where the company is a publicly listed company, or as otherwise determined by the Commission, such company may be exempted from the provisions of subsection (1), subject to such terms and conditions as the Commission thinks fit.

Number and appointment of directors

29. (1) A licensee shall have not less than 2 directors.

(2) Subject to subsection (3), no appointment of a director or other senior officer of a licensee shall be made without the prior written approval of the Commission.

(3) Subsection (2) does not apply to a licensee that is exempted in writing by the Commission.

(4) An exemption under subsection (3) may be granted subject to such terms and conditions as the Commission considers fit and may be revoked by the Commission in writing.

Exemption for domestic bank

30. Sections 28 and 29 do not apply to a domestic bank but it does apply to a subsidiary of a domestic bank.

Obligations of Licensee

Annual fee

31. (1) A licensee shall pay the prescribed annual licence fee each year in advance, on or before 15th January of that year.

(2) If a licensee fails to pay the annual fee in full on or before 15th January in any year, it is liable to pay a late payment penalty calculated as prescribed.

(3) A licensee that fails to pay the prescribed annual fee on or before 15th January in any year is deemed not to have contravened subsection (1) if—

(a) it pays the annual fee and the appropriate late payment penalty in full on or before 14th March of the year due; and

(b) at the time of payment his licence has not been revoked or suspended.

(4) The annual fee and any late payment penalty payable by a licensee remains payable notwithstanding that his licence has been suspended.

Display of licence

32. A licensee must prominently display its licence on the premises where its licensed business is carried on.

Returns and Accounts

33. (1) Every licensee shall in relation to its operations submit, within 30 days of the end of each quarter, to the Commission in English, in such form as the Commission may from time to time approve, a statement of its assets and liabilities in such detail as the Commission may require, as at the close of the last business day of each quarter.

(2) The Commission may require a licensee to submit such further information as it may deem necessary for the proper understanding of any statement or return furnished by that licensee under subsection (1) of this section and such information shall be submitted within such a period and in such manner as the Commission may require.

(3) Every licensee shall have its accounts audited annually or at such other periods as the Commission may require.

(4) The licensee shall forward the audited accounts to the Commission within 3 months from the end of the financial year of the licensee unless the Commission has granted prior written approval for an extension.

Audit requirements

34. (1) A licensee shall appoint an Approved Auditor.

(2) The Auditor's duties are set out in regulation 5 of the regulations.

(3) Where a licensee changes its Auditor, the licensee shall authorise the former Auditor to disclose the circumstances that gave rise to the change, and when so authorised, the Auditor shall disclose such circumstances and if the Commission so requires, the Auditor shall provide such further information with regard to the circumstances as the Commission may request.

Directions for the reporting of information

35. (1) The Commission may issue directions to licensees for the making of returns, or the furnishing of documentation, for regulatory purposes.

(2) A notice under subsection (1) must specify the period within which returns must be made or documentation filed.

(3) Directions issued under subsection (1) may make different provision in relation to different persons, circumstances or cases.

(4) A licensee that fails, within the period specified, to make a return or furnish documentation to the Commission in accordance with directions issued under subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000.

Administration

Commissioner

36. (1) The Commission, by its Commissioner, shall ensure the proper administration of this Act.

(2) The functions of the Commissioner include—

(a) supervising international banking business and trust business;

(b) advising the Commission on all matters concerning the regulation and supervision of international banking business and trust business;

(c) examining and evaluating all applications for—

(i) international banking licences, and

- (ii) trust licences,
and making recommendations to the Commission concerning such applications;
 - (d) examining and, if he thinks fit, reporting to the Commission upon returns made and documents filed by licensees under this Act;
 - (e) where he thinks fit or when required by the Commission, to examine in such manner, including an on-site examination, as he considers necessary, the affairs or business of any licensee for the purpose of satisfying himself that the provisions of this Act, the Code of Practice or Guidelines issued under section 51, the Practice Code on the Prevention of Money Laundering and the Money Laundering Regulations and any similar Acts and Regulations are being complied with and that the licensee is in a sound financial position and is carrying on its business in a satisfactory manner;
 - (f) the provision of assistance in the investigation of any offences under the laws governing banking and other commercial activities committed by the licensee, its directors, agents or officers; and
 - (g) reporting to the Commission where he thinks fit, regarding the examination of any documents produced to him in the course of the performance of his functions.
- (3) For the purposes of performing his functions under subsection (2), the Commissioner shall be entitled—
- (a) to have access to and take copies of such books, records, vouchers, documents, cash and securities and all other financial instruments and business records of any licensee and its subsidiary and shall be entitled to ask questions of any person employed by or engaged by the licensee;
 - (b) to request such information, matter or thing from any person who, he has reasonable grounds to believe, is carrying on international banking business or trust business in contravention of any part of this Act; and
 - (c) to call upon the authorised agent, or manager, of the licensee for such information or explanation;
- as the Commissioner may reasonably require for the purpose of enabling him to perform his functions under this Act.
- (4) The Commission may assess a licensee for the reasonable expenses of conducting an examination under subsection 2(e).
- (5) The Commissioner may authorize in writing any person to assist him in the performance of his functions under this Act.
- (6) Where an appraisal of any loan or asset held by a bank or its subsidiaries has been made by the Commissioner to the Commission and the value varies materially from the value placed by the bank

on the asset, the Commission shall send to the bank and auditor a written notice of the appropriate value of the asset as determined by the Commission.

(7) If the Commission is satisfied that there is reasonable ground for suspecting that an offence against this Act has been or is being committed by a licensee, the Commission shall issue an order as the Commission may consider necessary in the interest of the depositors or of the beneficiaries of any trust or other creditors of the licensee and to preserve any assets of the licensee.

Power of search

37. (1) If a Magistrate is satisfied by information on oath or affirmation given by the Commissioner or by a person authorised by him—

- (a) that a licence has been revoked or suspended under section 20;
- (b) that there are reasonable grounds for believing that an offence under this Act has been or is being committed and that evidence of the commission of the offence is to be found on any premises or in any vehicle, vessel or aircraft specified in the information; or
- (c) that any document that ought to have been produced under section 35 and has not been produced is to be found at any premises or in any vehicle, vessel or aircraft specified in the information;

he may grant a search warrant authorising the Commissioner, together with any other person named in the warrant, to enter the premises or any premises upon which the vehicle, vessel or aircraft may be located at any time within 1 month from the date of the warrant and to search the premises or the vehicle, vessel or aircraft.

(2) The Commissioner or any other person authorised by a warrant to search any premises or any vehicle, vessel or aircraft—

- (a) may search every person who is found in or whom he has reasonable grounds to believe to have recently left, or to be about to enter, those premises or that vehicle, vessel or aircraft; and
- (b) may seize any document found on the premises or in the vehicle, vessel or aircraft that he has reasonable grounds for believing ought to have been produced under section 36(3).

(3) Where under this section a person has any power to enter any premises or a vehicle, vessel or aircraft, he may use such force as is reasonably necessary for the purpose of exercising that power.

Attorney General may apply to Court

38. Where a licensee or a person who has at any time been a licensee is being wound up voluntarily the Attorney General may, when requested by the Commissioner apply to the Court for leave to intervene on behalf of any interested party if he considers that the winding up is not being conducted in the best interests of its depositors, the beneficiaries of any trust, or other creditors and the Court shall make such order as it shall consider appropriate.

Measures to be taken by the Commissioner

39. (1) The Commissioner may require one or more measures to be taken by the licensee where in the opinion of the Commissioner an examination conducted under sections 36(2)(d) and 36(2)(e) shows the licensee or any affiliate, director, officer, employee or shareholder of the licensee to be—

- (a) engaging in unsafe or unsound practices in conducting the business of the licensee ;or
- (b) violating any provision of this Act, or any Regulation or Guideline issued.

(2) The measures to be taken under subsection (1) are set out in regulation 6 of the regulations

*Corporate Governance***Removal and disqualification of directors**

40. (1) Any person who is a director, a manager or other officer concerned with the management of a licensee shall cease to hold office if any of the events set out in regulation 7 of the regulations occur or have occurred.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of 1 year or to both.

Declaration and registration of related interest and conflicts of interest by directors

41. (1) Every director of a licensee who is in any manner, whether directly or indirectly, interested in loans, advances, contracts or transactions from that licensee shall as soon as possible declare the nature of his interest to the board or other body responsible for the management of the licensee and shall cause such declaration to be minuted and circulated forthwith to all of the members of the board.

(2) Every director of a licensee who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as such director shall declare the fact, nature, character and extent of such duties and interests at the first meeting of the board held –

- (a) after he becomes a director of the licensee, or
- (b) if already a director, after he commences to hold office or to possess the property.

(3) A director who contravenes subsections (1) and (2) commits an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of 1 year or to both.

Responsibility for deceptive statements and obstruction of audit or examination

42. (1) Any director, manager, secretary, employee or agent of a licensee, who -

- (a) with intent to deceive—

- (i) makes any false or misleading statement or entry, or
 - (ii) omits any statement or entry that should be made in any book, account, report or statement of the licensee, or
- (b) obstructs or endeavours to obstruct—
- (i) the proper performance by an auditor of his duties in accordance with the provisions of this Act, or
 - (ii) a lawful examination of the licensee by a duly authorized examiner,

commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of 1 year or to both.

Management's duty of compliance with the requirements of the laws

43. Any director, manager, secretary or other officer concerned in the management of a licensee, who fails to take all reasonable steps to secure compliance by the licensee with the requirements of this Act commits an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of 1 year or to both.

Advertising

44. (1) No licensee shall engage in advertising or promotion practices which are in the opinion of the Commissioner likely to mislead the public.

(2) Any licensee that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000 for each contravention.

Miscellaneous

Insurance

45. (1) The Commissioner may by written notice require a licensee to effect a policy of insurance with an approved insurance company and maintain it.

- (2) The policy of insurance shall insure against—
- (a) losses arising out of claims of negligence or breach of duty by the licensee or by an employee;
 - (b) the dishonesty of employees or of the licensee;
 - (c) the loss of documents; and
 - (d) such other risks as the Commissioner may stipulate;

in such amount and of such nature as the Commissioner determines having due regard to the nature and type of business carried on by the licensee.

(3) The licensee shall effect the policy of insurance within the time specified in the notice or any extension of the time given by the Commissioner.

(4) The licensee shall without delay give notice to the Commissioner in writing if—

(a) it is unable to obtain insurance as required by the Commissioner; or

(b) it ceases to maintain the insurance.

(5) A licensee who contravenes this section commits an offence and is liable on summary conviction to a fine of \$10,000, to a term of imprisonment of 1 year or to both.

Confidentiality

46. (1) For the purposes of this section, “protected person” means—

(a) a person who has applied for a licence under this Act;

(b) a licensee;

(c) a customer of a licensee;

(d) a settlor or beneficiary of a trust of which the licensee is a trustee; or

(e) a company managed by a licensee.

(2) Subject to subsection (3), the Commissioner, a person acting under the Commissioner’s authority, and a person appointed by the Commissioner under section 36(5) to assist the Commissioner must not disclose to any person information concerning the affairs of a protected person that he has acquired in the course of his duties or in the exercise of his functions under this Act.

(3) Subsection (2) does not apply to a disclosure—

(a) required or permitted by any Court of competent jurisdiction in Montserrat;

(b) to the Commission;

(c) to any person for the purpose of discharging any duty or exercising any power under this Act;

(d) in respect of the affairs of a protected person made with the consent of that person;

(e) if the information disclosed is or has been available to the public from any other source;

- (f) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of a protected person to which the information relates to be determined; or
- (g) made by the Commissioner to a foreign regulatory authority upon the written request of that authority.

(4) The Commissioner may not disclose information concerning the affairs of a protected person to a foreign regulatory authority under paragraph (3)(g) unless he is satisfied—

- (a) that the foreign regulatory authority is subject to adequate legal restrictions on further disclosure; and
- (b) that the information disclosed is reasonably required by the authority for the purposes of its regulatory functions.

(5) The Commission may issue guidelines to the Commissioner concerning the discharge of his functions under this section.

(6) Any person who contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine of \$10,000 and to imprisonment for one year, and on conviction on indictment to a fine of \$50,000 and imprisonment for three years.

Immunity

47. No liability, including any costs incurred or to be incurred in defending an action, attaches to the Commission, the Commissioner or any person acting under the authority of the Commission or the Commissioner for an act done in good faith in the discharge or purported discharge of his functions under this Act.

Gazette notices

48. (1) The Commission shall cause notice of the issue, revocation or suspension of a licence to be published in the Gazette.

(2) A notice of issue of a licence published in the Gazette must specify the terms and conditions, if any, to which the licence is subject.

Appeals

49. (1) A decision of the Commission under sections 7, 16, 17, 18 or 23 is final and conclusive and shall not be called into question in any court of law.

(2) An appeal lies to the Court from a decision of the Commission to suspend or revoke a licence under section 20.

(3) Unless the Court otherwise orders, an appeal made under subsection (2) does not operate to suspend the decision of the Commission.

Regulations

50. The Governor in Council may make regulations generally for giving effect to the provisions of this Act and specifically but not limited to —

- (a) requiring the payment of fees under this Act and prescribing them, including—
 - (i) fees for filing an application;
 - (ii) fees for the issuance of a licence;
 - (iii) annual fees;
 - (iv) penalty fees for late submission of documents required under this Act;
 - (v) administrative fees;
 - (vi) administrative penalties;
- (b) prescribing the documents to be submitted in an application for a licence;
- (c) prescribing anything required or permitted to be prescribed by this Act;
- (d) exempting any trust company from this Act or any provision of this Act, subject to such conditions, if any, as are imposed in respect of the exemption;
- (e) relating to loan concentrations, related party transactions and matters relating to self-dealing.

Code of Practice or Guidelines

51. (1) The Commissioner may issue a Code of Practice or Guidelines with respect to the procedures to be followed by and the conduct expected of a licensee in the operation of its licensed business.

- (2) The Code of Practice or Guidelines may include—
 - (a) due diligence procedures;
 - (b) record keeping requirements;
 - (c) accounting standards;
 - (d) policies, procedures and systems for identifying, monitoring and controlling country risk, transfer risk, market risk, liquidity risk, interest rate risk, operational risk and such other risks as may from time to time be specified.
 - (e) treatment of investments, loans and other assets and credit facilities;

(f) anti-money laundering and combating the financing of terrorism matters.

(3) The Code of Practice or Guidelines may make different provision in relation to different persons, circumstances or cases.

(4) The Commissioner must publish a notice of the creation of a Code of Practice or Guidelines and any amendments thereto in the Gazette.

Offences

52. (1) A person who with intent to deceive, or for any purpose of this Act makes any representation that he knows, or would reasonably be expected to know, to be false or does not believe to be true commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for a term of 1 year or to both.

(2) A person who—

- (a) assaults or obstructs the Commissioner or other person in the performance of his functions under this Act;
- (b) uses any insulting language to a Commissioner or other person in the performance of his functions under this Act;
- (c) by the offer of any gratuity, bribe or other inducement prevents or attempts to prevent a Commissioner or other person from performing his functions under this Act; or
- (d) contravenes any provision of this Act or regulations, for which no penalty is specifically provided;

commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of 1 year or to both.

(3) A licensee that carries on business contrary to the terms or conditions of its licence or, in the case of the holder of a restricted trust company licence, in contravention of the restriction, commits an offence and is liable on summary conviction to a fine of \$25,000.

(4) Where an offence under this Act is committed by a company, a director or officer of that company who knowingly authorised, permitted or acquiesced in the commission of the offence also commits the offence and is liable on summary conviction to—

- (a) a fine of the amount specified for the offence; or
- (b) to a term of imprisonment as specified for the offence, if any; or
- (c) to both a fine and imprisonment.

(5) Notwithstanding that the offence is punishable only on summary conviction, the Proceeds of Crime Act applies to the following offences—

- (a) section 5(2);
- (b) section 9(3);
- (c) section 9(4);
- (d) section 14(3);
- (e) section 18(4);
- (f) section 18(5);
- (g) section 25(2);
- (h) section 45(5);
- (i) section 52(1) and 52(3);
- (j) section 52(4), where the offence committed by the company is an offence referred to in paragraphs (a) to (f).

Transitional provisions

53. (1) A person holding a licence under the Offshore Banking Act immediately before the commencement of this Act is deemed to have been granted a licence under this Act subject to such terms and conditions as may have been imposed on the granting of the licence under that Act.

(2) The Governor-in-Council may make regulations providing for such further savings and transitional provisions to have effect in connection with the coming into operation of this Act as he considers necessary or expedient.

(3) Regulations made under subsection (2) may be given retrospective operation to a day not earlier than the date that this Act comes into operation.

Repeal

54 The Offshore Banking Act (Cap. 11.04) is hereby repealed.

Speaker

Passed the Legislative Council this 23rd day of March, 2006.

Clerk of Councils